

**GENERAL LAWS**  
**OF THE**  
**STATE OF IDAHO**



**PASSED BY**  
**THE FIRST REGULAR SESSION OF THE**  
**SIXTY-FIRST IDAHO LEGISLATURE**

**Convened January 10, 2011**  
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**Volume 1**

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**Idaho Official Directory and Roster of State Officials and Members  
of State Legislature follows the Index.**

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**BEN YSURSA**  
Secretary of State  
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CHAPTER 1  
(H.B. No. 102)

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3004, IDAHO CODE, TO UPDATE REFERENCES TO THE INTERNAL REVENUE CODE; AMENDING SECTION 63-30220, IDAHO CODE, TO REVISE HOW THE ADJUSTED BASIS OF DEPRECIABLE PROPERTY, DEPRECIATION AND CAPITAL GAINS AND LOSSES SHALL BE COMPUTED AS A RESULT OF TWO 2010 CONGRESSIONAL ENACTMENTS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3004, Idaho Code, be, and the same is hereby amended to read as follows:

63-3004. INTERNAL REVENUE CODE. (a) The term "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the ~~seventeenth~~ first day of ~~February~~ January, 200911.

(b) Provisions of the Internal Revenue Code amended, deleted, or added prior to the effective date of the latest amendment to this section shall be applicable for Idaho income tax purposes on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

SECTION 2. That Section 63-30220, Idaho Code, be, and the same is hereby amended to read as follows:

63-30220. ADJUSTMENT -- PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001, ~~AND BEFORE DECEMBER 31, 2007~~ -- EXPENSES OF ELEMENTARY AND SECONDARY TEACHERS -- SMALL BUSINESS EXPENSES -- LIMITATIONS ON ASSESSMENTS AND REFUNDS. For taxable years commencing on and after January 1, 2001, in computing Idaho taxable income:

(1) The adjusted basis of depreciable property, depreciation and gains and losses from sale, exchange or other disposition of depreciable property acquired after September 10, 2001, and before December 31, 2007, shall be computed without regard to subsection (k) of section 168 of the Internal Revenue Code and the adjusted basis of depreciable property, depreciation and capital gains and losses shall be computed without regard to subsection (k) of section 168 of the Internal Revenue Code, as amended by the "tax relief, unemployment insurance reauthorization and job creation act of 2010" and as amended by the "small business jobs act of 2010"; and

(2) No deduction shall be allowed relating to expenses of elementary and secondary teachers otherwise allowable under section 62(a)(2)(D) of the Internal Revenue Code; and

(3) Adjustments in computing Idaho taxable income required by subsection (1) of this section shall be made without regard to loss limitations imposed by sections 465, 469, 704(d) and 1366(d) of the Internal Revenue Code; and

(4) A taxpayer's basis in an interest in a pass-through entity, amount at risk, and passive activity loss carryover shall be the same amount for purposes of the Idaho income tax act as the amount determined under the Internal Revenue Code; and

(5) Each partner, shareholder, member or beneficiary, shall include in Idaho taxable income his share of the adjustments required by this section in computing Idaho taxable income of any pass-through entity; and

(6) Notwithstanding the provisions of sections 63-3068 and 63-3072, Idaho Code, the period of limitations for issuing a notice of deficiency

determination or filing a claim for refund for any year for which an adjustment is required by this section shall not expire before three (3) years from the later of: (a) the due date of the return for the last taxable year an adjustment was required by this section, or (b) the date the return was filed for the last taxable year an adjustment was required by this section. Upon the expiration of the period of limitations as provided in subsections (a) and (m) of section 63-3068, Idaho Code, and subsections (b) and (h) of section 63-3072, Idaho Code, only those specific items of basis, deductions, gains or losses that are computed, without regard to subsection (k) of section 168 of the Internal Revenue Code, as required by this section shall be subject to adjustment.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2010.

Approved February 11, 2011.

CHAPTER 2  
(H.B. No. 7)

AN ACT

RELATING TO CIGARETTE AND TOBACCO PRODUCT TAXES; AMENDING SECTION 63-2502, IDAHO CODE, TO REVISE THE DEFINITION OF "WHOLESALE"; AMENDING SECTION 63-2513, IDAHO CODE, TO CORRECT A TYPOGRAPHICAL ERROR; AND AMENDING SECTION 63-2551, IDAHO CODE, TO REVISE DEFINITIONS OF "TOBACCO PRODUCTS," "WHOLESALE SALES PRICE," AND "PLACE OF BUSINESS."

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-2502, Idaho Code, be, and the same is hereby amended to read as follows:

63-2502. DEFINITIONS. For the purpose of this act, unless otherwise required by the context:

(a) The word "wholesaler" means and includes every person who purchases, sells or distributes cigarettes to other wholesalers or to retailers for the purpose of resale and "delivery sellers" as defined in 15 U.S.C. section 375.

(b) The word "retailer" means every person, other than a wholesaler, who purchases, sells, offers for sale, or distributes cigarettes at retail, irrespective of quantity or amount, or the number of sales.

(c) The phrase "wholesale sale" means a sale of cigarettes by a wholesaler to a retailer.

(d) The word "cigarette" shall be taken in the ordinary context of that word and shall be any roll for smoking, made wholly or in part of tobacco, where such roll has a wrapper or cover made of paper or any other material, except where such wrapper is wholly or in the greater part made of tobacco.

(e) The phrase "package of cigarettes" means the individual package, box, or other container in or from which retail sales of cigarettes are normally made or intended to be made. A package shall contain no less than twenty (20) cigarettes and be packaged in increments of five (5).

SECTION 2. That Section 63-2513, Idaho Code, be, and the same is hereby amended to read as follows:

63-2513. **CONTRABAND ARTICLES.** Any unstamped cigarettes held, owned, possessed or in control of any person for a period of time longer than necessary to affix Idaho stamps, and are hereby declared to be contraband goods, except as authorized under subsection (b) of section 63-2512, Idaho Code, and may be seized by the state tax commission, or an employee of the state tax commission, or any peace officer, when directed by the state tax commission, without a warrant. Any vehicle, not a common carrier operating in interstate commerce, used in violating this act, shall likewise be subject to confiscation. Said cigarettes or vehicles seized shall be offered for sale. Fifteen (15) days' notice of the sale shall be given; net proceeds from the sale shall be deposited in the general fund. The state tax commission shall require the purchaser at the sale to affix the proper amount of tax stamps to cigarette packages.

SECTION 3. That Section 63-2551, Idaho Code, be, and the same is hereby amended to read as follows:

63-2551. **TOBACCO PRODUCTS TAX -- DEFINITIONS.** As used in this act:

(1) "Tobacco products" shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug, cut, crimp cut, ready rubbed and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including cavendish, twist, plug, scrap and any other kinds and forms of tobacco suitable for chewing) and snuff, however prepared; and shall include any other articles or products made of tobacco ~~or any substitute therefor~~, except cigarettes;

(2) "Manufacturer" means a person who manufactures and sells tobacco products;

(3) "Distributor" means (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (b) any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state, (c) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers;

(4) "Subjobber" means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers;

(5) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers;

(6) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of this chapter, or for any other purposes whatsoever;

(7) "Wholesale sales price" means the established price for which a manufacturer or any person sells a tobacco product to a distributor that is not a related person as defined in section 267 of the Internal Revenue Code, exclusive of any discount or other reduction;

(8) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state;

(9) "Place of business" means any place where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, ~~or train, or vending machine~~;

(10) "Retail outlet" means each place of business from which tobacco products are sold to consumers;

(11) "Commission" means the Idaho state tax commission.

CHAPTER 3  
(H.B. No. 8)

AN ACT

RELATING TO INCOME TAXATION; AMENDING SECTION 63-3022L, IDAHO CODE, TO DISALLOW THE ELECTION FOR PAYMENT OF TAX BY PASS-THROUGH ENTITIES TO NONRESIDENTS WHO HAVE ADDITIONAL IDAHO TAXABLE INCOME AND PROVIDING FOR RULEMAKING AUTHORITY; AMENDING SECTION 63-3026A, IDAHO CODE, TO CLARIFY THE COMPUTATION OF REPORTABLE INCOME FROM THE SALE OF A PUBLICLY TRADED PARTNERSHIP; AMENDING SECTION 63-3036B, IDAHO CODE, TO MODIFY THE SYSTEM OF BACKUP WITHHOLDING FOR INDIVIDUALS WHO ARE OWNERS OF PASS-THROUGH ENTITIES, TO PROVIDE APPLICATION TO PUBLICLY TRADED PARTNERSHIPS THAT PROVIDE TAX INFORMATION REGARDING CERTAIN PARTNERS AND TO MAKE TECHNICAL CORRECTIONS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3022L, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022L. INDIVIDUALS WHO ARE OFFICERS, DIRECTORS OR OWNERS OF AN INTEREST IN A PASS-THROUGH ENTITY OR BENEFICIARIES OF A TRUST OR ESTATE. (1) Individuals who are officers, directors or owners of an interest in a pass-through entity, as defined in section 63-3006C, Idaho Code, transacting business in Idaho or who are beneficiaries of a trust or estate with income taxable in Idaho may elect to have Idaho tax relating to income described in subsection (2) of this section reported and paid by the pass-through entity. Income subject to the election in this subsection shall be taxed at the rate applicable to corporations. The election in this section is not available to an individual who is an Idaho resident or to a nonresident who has Idaho taxable income in addition to income subject to the election allowed in this section.

(2) The election in subsection (1) of this section applies to:

(a) Wages, salary and other compensation paid by the pass-through entity to such officers, directors, owners of an interest in a pass-through entity or beneficiaries to the extent the compensation is Idaho taxable income of the individual to whom it is paid; and

(b) The share of any income, loss, deduction or credit of a pass-through entity required to be included on such individual's Idaho return.

(3) The election in subsection (1) shall be made at the time and in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the taxable year. A new election may be made each year. The state tax commission may, by rule, provide for continuing elections or for the renewal of elections or both.

(4) If no election is made under subsection (1) of this section, the pass-through entity shall withhold taxes as required in section 63-3036B, Idaho Code.

(5) For purposes of subsection (2) of this section, deductions, loss and credits allowed in computing the tax liability attributable to an electing individual shall be prescribed in the rules of the state tax commission.

SECTION 2. That Section 63-3026A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3026A. COMPUTING IDAHO TAXABLE INCOME OF PART-YEAR OR NONRESIDENT INDIVIDUALS, TRUSTS AND ESTATES. (1) For nonresident individuals, trusts, or estates the term "Idaho taxable income" includes only those components of

Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(2) For part-year resident individuals, trusts or estates the term "Idaho taxable income" includes the total of: (a) Idaho taxable income as computed for a resident for the portion of the tax period during which a taxpayer is domiciled in or is residing in Idaho, plus (b) those components of Idaho taxable income which are derived from or related to sources within Idaho for that portion of the tax period during which a taxpayer is not domiciled in and is not residing in Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(3) For the purposes of subsections (1) and (2) of this section:

(a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:

(i) Any business, trade, profession or occupation conducted or carried on in this state, including the distributive share of partnership income and deductions, and the pro rata share of S corporation income and deductions;

(ii) The ownership or disposition of any interest in real or tangible personal property located in this state;

(iii) The ownership or disposition of any interest in intangible personal property only to the extent that such property is employed in a business, trade, profession or occupation conducted or carried on in this state. Provided however, that interest income from an installment sale of real or tangible personal property shall constitute income from sources within this state to the extent that the property sold was located within this state. Provided further, that interest income received by a partner or shareholder of a partnership or S corporation from such partnership or S corporation shall constitute income from sources within this state to the extent that the partnership or S corporation is transacting business within this state;

(iv) A resident estate or trust; provided however, that income distributed to beneficiaries of an estate or trust shall constitute income from sources within this state only to the extent the income would be Idaho source income if such income had been received directly by a nonresident individual;

(v) A nonresident estate or trust to the extent the income and deductions of the nonresident estate or trust were derived from or related to sources within this state;

(vi) The conduct of pari-mutuel wagering, charitable gaming or any other form of gambling taking place within this state, except as expressly limited in section 67-7439, Idaho Code;

(vii) Gains or losses realized from the sale or other disposition of a partnership interest or stock in an S corporation to the extent of the partnership's or S corporation's Idaho apportionment factor in the taxable year immediately preceding the year of sale. In the case of a nonresident individual who sells the nonresident's interest in a publicly traded partnership defined in section 7704 of the Internal Revenue Code doing business in Idaho, the gains or losses shall be determined using the amount described in section 751 of the Internal Revenue Code, multiplied by the apportionment factor for the year in which the sale occurred.

(b) Notwithstanding the provisions of subsection (3)(a) of this section, transactions and investments made, placed or directed by Idaho resident registered broker-dealers and investment advisers or institutions exempt from registration under the Idaho securities act

in securities listed with or through the New York Stock Exchange, the American Stock Exchange or any other stock exchange registered with the United States securities and exchange commission and approved by the director of the department of finance which generate dividends, interest, capital gains or similar profits or returns for nonresidents not otherwise subject to Idaho income taxation shall not result in the intangible property being deemed to have a situs outside the domicile of the owner.

(c) Nonresident individuals shall not be taxable on investment income from a qualified investment partnership. For purposes of this paragraph, a "qualified investment partnership" means a partnership, as defined in section 63-3006B, Idaho Code, that derives at least ninety percent (90%) of its gross income from investments that produce income that would not be taxable to a nonresident individual if the investment were held by that individual.

(d) Compensation paid by the United States for active service in the armed forces of the United States, performed by an individual not domiciled in this state, shall not constitute income derived from or related to sources within this state.

(e) The income of nonresident or part-year resident individuals, trusts or estates which is derived from or related to sources both within and without this state shall be attributable to this state in the manner prescribed in the rules of the state tax commission.

(4) In computing the Idaho taxable income of a part-year or nonresident individual, trust or estate, the standard deduction or itemized deductions, as defined in section 63-3022(j), Idaho Code, if applicable, and the exemptions, as defined in section 151 of the Internal Revenue Code or any allowance in lieu of such deduction, shall be allowed in the proportion that paragraph (a) of this subsection bears to paragraph (b) of this subsection:

(a) The Idaho taxable income of the taxpayer modified as follows:

(i) No allowance shall be made for either the standard deduction or itemized deductions;

(ii) No deduction shall be made for personal exemptions or any allowance in lieu of such deduction.

(b) The Idaho taxable income as would be calculated for a resident of Idaho modified as follows:

(i) No allowance shall be made for either a standard deduction or itemized deductions;

(ii) No deduction shall be made for personal exemptions or any allowance in lieu of such deduction;

(iii) Compensation for active military service in the armed forces shall not be deducted;

(iv) Income earned within the original exterior boundaries of any federally created Indian reservation by an enrolled Indian in a federally recognized Indian tribe on a federally recognized Indian reservation shall be added if not otherwise included.

(5) An adjustment may be made to eliminate distortions in the amount of net income attributable to a taxpayer's activities within the state of Idaho. Such deductions shall be limited to circumstances involving itemized deductions as referred to in subsection (4) of this section and which reflect:

(a) A failure to reflect the net income or deduction after reimbursements have been received; or

(b) A failure to reflect the net amount of mortgage interest income or expense from activities within Idaho.

(6) For the purposes of subsections (1) and (2) of this section, deductions and adjustments allowed in computing the Idaho taxable income of nonresident and part-year resident individuals, trusts and estates shall be

prescribed in the rules of the state tax commission. Such rules shall be based upon:

- (a) Whether or not the deduction or adjustment is related to the production of income reportable to Idaho;
- (b) Whether or not the deduction or adjustment is related to income received, expenses paid, or events of tax consequence which occurred during a portion of a taxable year that the taxpayer was domiciled in or residing in Idaho; or
- (c) Any other appropriate basis for making the adjustment. An "appropriate basis" is one which the state tax commission finds is needed to insure that the amount of Idaho taxable income is fairly and reasonably related to a taxpayer's activities in this state.

SECTION 3. That Section 63-3036B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3036B. PASS-THROUGH ENTITIES -- BACKUP WITHHOLDING. (1) A pass-through entity, as defined in section 63-3006C, Idaho Code, that is transacting business in Idaho during a taxable year shall withhold tax as prescribed in this section.

(2) For each individual for whom withholding is required under subsection (4) of section 63-3022L, Idaho Code, the pass-through entity shall withhold tax on ~~any actual distributions of funds from income described in subsection (2) of section 63-3022L, Idaho Code~~ the individual's share of income from the pass-through entity required to be included in Idaho taxable income of the individual, at the highest marginal rate applicable for the taxable year under section 63-3024, Idaho Code.

(3) A pass-through entity is not required to withhold taxes under this section:

- (a) In regard to an individual who is a resident of Idaho as defined in section 63-3013, Idaho Code; or
- (b) In regard to an individual who makes a timely election under section 63-3022L, Idaho Code, to have the individual's tax reported and paid on the pass-through entity's return; or
- (c) If the pass-through entity is a publicly traded partnership, as defined in section 7704(b) of the Internal Revenue Code, that is treated as a partnership for purposes of the Internal Revenue Code and that has agreed to file an annual information return reporting the name, address, taxpayer identification number and other information requested by the state tax commission concerning each unitholder whose distributive share of partnership income from Idaho sources is more than five hundred dollars (\$500); or
- (d) If wWithholding is not required pursuant to a rule adopted under this section.

(4) A pass-through entity that is required to withhold tax under this section shall file a withholding return with the state tax commission setting forth the amount of income described in subsection (2) of section 63-3022L, Idaho Code, the amount of tax withheld under this section and any other information required by the state tax commission. The return shall be filed with the state tax commission on the form and taxes withheld under this section shall be paid to the state tax commission in the time and manner prescribed by rules of the state tax commission. To the extent the state tax commission finds practicable, the rules shall generally conform to the requirements of section 63-3035, Idaho Code.

(5) A pass-through entity that is required to withhold tax under the provisions of this section shall furnish a statement to each individual on whose behalf tax is withheld. The statement shall state the amount of tax withheld on behalf of the individual for the taxable year of the pass-through

entity. The statement shall be made on a form prescribed by the state tax commission and shall contain any other information required by it.

(6) A pass-through entity is liable to this state for amounts of tax required to be withheld and paid under the provisions of this section. A pass-through entity is not liable to an officer, director, or individual owner of an interest in the pass-through entity for amounts required to be withheld under the provisions of this section that were paid to the state tax commission as prescribed in this section. Amounts required to be withheld and paid over to the state tax commission under this section that are not withheld or paid over at the time and in the manner required by the provisions of this section shall be a deficiency in tax as defined in section 63-3044, Idaho Code.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2011.

Approved February 15, 2011.

CHAPTER 4  
(H.B. No. 10)

AN ACT

RELATING TO TAXATION OF MOTOR FUELS; AMENDING SECTION 63-2430, IDAHO CODE, TO PROVIDE NONAPPLICATION TO DISTRIBUTOR'S LICENSES CANCELED FOR FAILING TO COMPLY WITH THE BONDING REQUIREMENT AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-2430, Idaho Code, be, and the same is hereby amended to read as follows:

63-2430. REVOCATION OR CANCELLATION OF LICENSE. (1) The commission may revoke the license of a distributor or a carrier licensed in Idaho under the international fuel tax agreement in any of the following circumstances:

(a) The licensee refuses or neglects to comply with the provisions of this chapter or rules of the commission promulgated pursuant to this chapter;

(b) When, upon investigation, the commission ascertains or finds that the person to whom the license was issued is no longer engaged in business as a distributor or an Idaho IFTA carrier and has not been so engaged for a period of six (6) months prior to the cancellation; or

(c) The licensee files a written request with the commission asking that the license be revoked and the commission determines, upon investigation, that the licensee is no longer a person required to be a licensed distributor or required to have an IFTA license.

(2) In the case of a cancellation under paragraph (c) of subsection (1) of this section, the cancellation shall not be effective nor shall the licensee's surety be discharged from any bond unless the licensee has paid to the state of Idaho all taxes imposed under this chapter together with all penalties, interest and additional amounts which have accrued.

(3) In the case of revocation of a license under paragraph (a) or (b) of subsection (1) of this section, except those distributor's licenses canceled as provided in section 63-2428(1), Idaho Code, prior to revoking the license the commission shall give notice of the proposed revocation to the licensee in the manner provided in section 63-3045, Idaho Code, which shall

be subject to review as provided in section 63-3045, Idaho Code. If a petition for redetermination of the license revocation is not filed within the time period allowed, the determination becomes final as provided in section 63-3045B, Idaho Code. The state tax commission shall not issue a new license after the revocation of a license unless the state tax commission is satisfied that the former holder of the license has filed all returns and reported and paid all taxes, penalty and interest required by this chapter and corrected any other violations of this chapter upon which the revocation was based.

Approved February 15, 2011.

CHAPTER 5  
(H.B. No. 11)

AN ACT

RELATING TO TAXATION OF FOREST LANDS; AMENDING SECTION 63-1705, IDAHO CODE, TO REMOVE A REQUIREMENT TO CONDUCT A FOREST MANAGEMENT COST STUDY EVERY FIVE YEARS, TO REQUIRE A FOREST MANAGEMENT COST STUDY BE CONDUCTED PERIODICALLY AND TO REVISE THE MEMBERSHIP OF THE COMMITTEE ON FOREST LAND TAXATION METHODOLOGIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-1705, Idaho Code, be, and the same is hereby amended to read as follows:

63-1705. TAXATION OF FOREST LANDS UNDER THE PRODUCTIVITY OPTION. (1) In order to encourage private forest landowners to retain and improve their holdings of forest lands and to promote better forest management, forest lands subject to this option shall be appraised, assessed and taxed as real property under the provisions of this section.

(2) The forest land value shall be determined by the timber productivity valuation process, as provided for in the committee on forest land taxation methodologies, User's Guide to the Timber Productivity Option's Valuation Method - 2005 (Schlosser, January 1, 2005, Moscow, Idaho), referred to in this chapter as the "user's guide," on file with the Idaho state tax commission, available on the website of the Idaho state tax commission, and which shall be made available in the office of each county assessor, which values the net wood production over a reasonable rotation period plus other agricultural-related income, if any, less annualized custodial expenses as defined in section 63-1701, Idaho Code. Pursuant to the provisions of this section, the inventory of forest products shall not be included as part of the valuation of the forest land as provided in section 63-602W, Idaho Code. The state tax commission shall promulgate rules relating to the timber productivity valuation process, including custodial expenses, as provided for in the user's guide and the provisions of this chapter.

(3) ~~Effective January 1, 2005,~~ ~~†~~The market value for assessment purposes shall be determined annually by the county assessor using the timber productivity valuation process developed by the CFTM, and as further prescribed in rule. Notwithstanding any other provision of law, the state tax commission is authorized to cite the user's guide in its rules and shall:

(a) Divide the state into appropriate forest valuation zones, with each zone designated so as to recognize the uniqueness of marketing areas, timber types, growth rates, access, operability, and other pertinent factors of that zone;

(b) Establish a uniform system of forest land classification which considers the productive capacity of the soil to grow forest products and furnish other associated agricultural uses;

(c) Provide for the annual input to the timber productivity valuation process including the stumpage value, rotation length, mean annual increment, guiding discount rate, annualized custodial expenses, appropriate property tax rates, and real price appreciation rate of stumpage according to the user's guide. The guiding discount rate and the real price appreciation rate for timber products shall remain constant at four percent (4%) and one and one-quarter percent (1.25%) respectively, until January 1, 2012;

(d) Upon the recommendation of the CFTM or when deemed appropriate by the commission according to evidence of significant trends in custodial expenses, cConduct a forest management cost study; every five (5) years to determine the annualized custodial expenses to be used in the timber productivity valuation process as provided in the user's guide. The first study shall be conducted in 2005 and evaluated by the CFTM, with the results incorporated into the user's guide timber productivity valuation process on January 1, 2007. The forest management cost study shall be funded by the state tax commission, subject to appropriation by the legislature provided however, that such forest management cost study shall be no more frequent than five (5) years from the previous forest management cost study. The forest management cost study and a report shall be provided to the CFTM following a recommendation of any changes in custodial expenses and the CFTM shall determine whether the cost study will be incorporated into the forest land valuation process; and

(e) Provide for any additional data as needed.

(4) The state tax commission shall by March 1 of each year, furnish all input for the timber productivity valuation process to the county assessor.

(5) Stumpage values shall be based upon the preceding five (5) year rolling average value of timber harvested within the forest value zone from state timber sales and/or the best available data for the same five (5) year period. Average agricultural-related income and the average expense component for each forest value zone shall be determined for the same time period as the period used to determine average stumpage values.

(6) Forest lands upon which, at any time after January 1, 1982, the trees are destroyed by fire, disease, insect infestation or other natural disaster such that the lands affected will not meet minimum stocking requirements under rules adopted pursuant to chapter 13, title 38, Idaho Code, shall be eligible for a reduction in value for the first ten (10) property tax years following the loss. The amount of reduction shall be determined by dividing the average age of the trees destroyed by the rotation age for the specific forest productivity class appropriate for the affected acres. In no instance shall the annual reduction exceed eighty percent (80%) of the original forest value per year. In order to obtain a reduction, the landowner shall, on or before January 1, following the destruction, make written application to the assessor indicating the legal description of the lands in question and stating all pertinent facts. The assessor may investigate the facts and may request assistance from the state tax commission in performing such investigations. If the requirements are met, such forest lands shall be assessed and taxed on the reduced basis herein provided.

(7) Buildings and other improvements, other than roads, located on forest lands shall be appraised, assessed and taxed as provided by applicable laws and rules.

(8) ~~Effective January 1, 2004, t~~There is created within the Idaho state tax commission the CFTM. The membership of the CFTM shall be:

(a) A nonvoting chairman who shall be the member of the Idaho state tax commission assigned to property tax matters;

(b) Four (4) members selected from the membership of the intermountain forest association who are representing business entities owning not less than five thousand (5,000) acres of Idaho forest land, provided that there shall be only one (1) representative for each individual business entity and provided further that affiliated business entities shall be considered a single business entity for the purposes of this section. The business entity employing such member shall designate a successor member at its discretion. If a vacancy occurs among the representatives of forest landowners owning not less than five thousand (5,000) acres, a replacement member will be selected by the remaining members qualifying under the provisions of this section;

(c) One (1) member selected from the membership of the Idaho forest owners' association;

(d) Five (5) members selected from the membership of the Idaho association of counties; and

(e) The state superintendent of public instruction or his/her designee, in a nonvoting capacity.

The CFTM may retain a forest economist selected by a majority of its members to advise the CFTM.

The costs of each CFTM member shall be borne by the respective member. The fees and costs of the forest economist shall be borne as determined by the CFTM.

The CFTM may prepare and deliver written reports to the house of representatives revenue and taxation and senate local government and taxation committees of its findings and recommendations for legislation as the need may arise. The CFTM may meet periodically as determined by its chairman or the CFTM.

Approved February 18, 2011.

CHAPTER 6  
(H.B. No. 12)

AN ACT

RELATING TO TAXATION OF MOTOR FUELS; AMENDING SECTION 41-4903, IDAHO CODE, TO REVISE THE DEFINITION OF PETROLEUM; AMENDING SECTION 63-2404, IDAHO CODE, TO PROVIDE THAT MOTOR FUELS AND OTHER PETROLEUM PRODUCTS SHALL BE REPORTED TO THE STATE TAX COMMISSION AND SHALL BE ACCOUNTED FOR USING MOTOR FUELS TAX ACCOUNTING PURPOSES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-2411, IDAHO CODE, TO PROVIDE WHO MAY LAWFULLY ACCEPT OR PURCHASE MOTOR FUEL; AMENDING SECTION 63-2423, IDAHO CODE, TO PROVIDE THAT A PERSON WHO HAS PAID HIS SPECIAL FUELS TAX DIRECTLY TO THE DISTRIBUTOR MAY BE ELIGIBLE FOR A REFUND OF THE TAX; AMENDING SECTION 63-2424, IDAHO CODE, TO PROVIDE FOR SELLING OF GASEOUS FUELS PERMITS BY GASEOUS FUELS DISTRIBUTORS; AMENDING SECTION 63-2429, IDAHO CODE, TO PROVIDE REQUIRED RECORDS OF MOTOR FUELS DISTRIBUTORS AND SPECIAL FUELS DEALERS AND EVERY PERSON REPORTING, MANUFACTURING, REFINING, DEALING, TRANSPORTING OR STORING MOTOR FUELS IN IDAHO; AMENDING SECTION 63-2431, IDAHO CODE, TO PROVIDE THAT THE TAX ON MOTOR FUELS SHALL BE IN LIEU OF ALL OTHER EXCISE TAXES, LICENSE FEES OR PROPERTY TAXES IMPOSED UPON MOTOR FUELS BY THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE; AND AMENDING SECTION 63-2436, IDAHO CODE, TO PROVIDE FOR REPORTS BY RAILROADS, OTHER COMMON CARRIER OR CONTRACT CARRIER OTHER THAN A LICENSEE WHO MAKES A DELIVERY OF MOTOR FUELS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-4903, Idaho Code, be, and the same is hereby amended to read as follows:

41-4903. DEFINITIONS. For the purposes of this chapter:

(1) "Aboveground storage tank" means any one (1) or a combination of tanks, including pipes connected thereto, that is used to contain an accumulation of petroleum or petroleum products, and the volume of which, including the volume of pipes connected thereto, is less than ten percent (10%) beneath the surface of the ground. This term does not include a heating tank, farm tank or residential tank or any tank with a capacity of one hundred ten (110) gallons or less.

(2) "Accidental release" means any sudden or nonsudden release of petroleum from a storage tank that results in a need for corrective action or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

(3) "Administrator" means the state insurance fund or any person employed by the board of trustees to replace the state insurance fund, employed by the board to administer the Idaho petroleum clean water trust fund.

(4) "Application fee" means the amount paid or payable by an owner or operator applying for a contract of insurance with the trust fund to offset the costs of issuing contracts of insurance and other costs of administering this fund.

(5) "Board" means the board of trustees appointed by the governor.

(6) "Bodily injury" means any bodily injury, sickness, disease or death sustained by any person and caused by an occurrence defined in subsection (19) of this section.

(7) "Contamination" means the presence of petroleum or petroleum products in surface or subsurface soil, surface water, or ground water.

(8) "Commission" means the state tax commission of the state of Idaho.

(9) "Corrective action" means those actions as are reasonably necessary to satisfy applicable federal and state standards in the event of a release into the environment from a petroleum storage tank. Corrective action includes initial corrective action response or actions consistent with a remedial action to clean up contaminated soil and ground water or address residual effects after initial corrective action is taken, as well as actions necessary to monitor, assess and evaluate a release. Corrective action also includes the cost of removing a tank which is releasing or has been releasing petroleum products and the release cannot be corrected without removing the tank; but corrective action does not include the cost of replacing this tank with another tank.

(10) "Department" means the department of insurance of the state of Idaho.

(11) "Director" means the director of the department of insurance.

(12) "Farm tank" means any tank with a capacity of more than one hundred ten (110) gallons but less than one thousand one hundred (1,100) gallons situated above ground or underground which is used for storing motor fuel for noncommercial purposes and which is located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

(13) "Free product" means petroleum or petroleum products in the non-aqueous phase, (e.g., liquid not dissolved in water).

(14) "Fund" or "trust fund" means the Idaho petroleum clean water trust fund.

(15) "Heating tank" means any tank with a capacity of more than one hundred ten (110) gallons situated above ground or underground which is used for storing heating oil for consumptive use on the premises where stored.

(16) "Legal defense costs" means any expense that an owner or operator or the trust fund incurs in defending against claims or actions brought by the federal environmental protection agency or a state agency to require corrective action or to recover the costs of corrective action; or by or on behalf of a third party for bodily injury or property damage caused by a release.

(17) "Licensed distributor" means any distributor who has obtained a license under the provisions of section 63-2427A, Idaho Code. If a person subject to the fee imposed by section 41-4909(7), Idaho Code, is not required to obtain a distributor's license under paragraph (a) or (b) of subsection (1) of section 63-2427A, Idaho Code, such person shall apply to the commission for a limited license for the purpose of complying with the requirements of this chapter. Such a limited license shall not be valid for any other purpose. No bond shall be required for a limited license. A holder of a limited license is a "licensed distributor" for the purposes of filing reports, paying fees and other actions necessary to the proper administration and enforcement of this chapter.

(18) "Noncommercial purposes" means not for resale, with respect to motor fuels.

(19) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which resulted in a release into the environment of petroleum products from a petroleum storage tank.

(20) "Operator" means any person in control, or having responsibility for, the daily operations of a petroleum storage tank.

(21) "Owner" means the owner of a petroleum storage tank, except that "owner" does not include any person who, without participation in the management of a petroleum storage tank, holds indicia of ownership primarily to protect the owner's security interest in the tank.

(22) "Person" means any corporation, association, partnership, one (1) or more individuals, or any governmental unit, or agency thereof, other than federal or state agencies.

(23) "Petroleum" and/or "petroleum products" mean crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure (i.e., at sixty (60) degrees fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute). The term includes motor gasoline, gasohol, other alcohol blended fuels, diesel fuel, heating oil and aviation fuel. Biodiesel and biodiesel blends, as those terms are defined in section 63-2401, Idaho Code, ethanol, and natural gasoline are also petroleum or petroleum products.

(24) "Property damage" means injury or destruction to tangible property caused by an occurrence.

(25) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into ground water, surface water, or surface or subsurface soils.

(26) "Residential tank" means any tank with a capacity of more than one hundred ten (110) gallons but less than one thousand one hundred (1,100) gallons situated above ground or underground which is used for storing motor fuel for noncommercial purposes and which is located on property used primarily for dwelling purposes.

(27) "Site" means a single parcel of property where petroleum or petroleum products are stored in a petroleum storage tank and includes all contiguous land, structures, other appurtenances, surface water, ground water, surface and subsurface soil, and subsurface strata within and beneath the property boundary.

(28) "State" means the state of Idaho or any office, department, agency, authority, commission, board, institution, hospital, college, university or other instrumentality thereof.

(29) "Tank" means a stationary device designed to contain an accumulation of petroleum or petroleum products and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

(30) "Trustees" means the trustees of the Idaho petroleum clean water trust fund, who are appointed by the governor pursuant to this chapter.

(31) "Underground storage tank" means any one (1) or combination of tanks, including underground pipes connected thereto, that is used to contain an accumulation of petroleum or petroleum products, and the volume of which, including the volume of underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground. This term does not include any:

- (a) Farm or residential tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (b) Tank used solely for storing heating oil for consumptive use on the premises where stored;
- (c) Septic tank;
- (d) Pipeline facility including gathering lines regulated under:
  - (i) The natural gas pipeline safety act of 1968 (49 U.S.C. app. 1671, et seq.); or
  - (ii) The hazardous liquid pipeline safety act of 1979 (49 U.S.C. app. 2001, et seq.); or
  - (iii) State laws comparable to the provisions of the law referred to in paragraph (d) (i) or (d) (ii) of this subsection as an intrastate pipeline facility;
- (e) Surface impoundment, pit, pond or lagoon;
- (f) Storm water or wastewater collection system;
- (g) Flow-through process tank;
- (h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
- (i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor;
- (j) Tanks with a capacity of one hundred ten (110) gallons or less.

The term "underground storage tank" does not include any pipes connected to any tank which is described in paragraphs (a) through (i) of this definition.

(32) "Underground storage tank regulations" means regulations for petroleum storage tanks promulgated by the United States environmental protection agency (EPA) pursuant to subtitle I of the solid waste disposal act, as amended by the resource conservation and recovery act, regulations promulgated by the state of Idaho as part of a state program for underground storage tank regulation under subtitle I, or other regulations affecting underground storage tank operations and management, including the international fire code adopted by the state of Idaho.

SECTION 2. That Section 63-2404, Idaho Code, be, and the same is hereby amended to read as follows:

63-2404. METHOD OF MEASUREMENT OF GALLONS RECEIVED. ~~Gasoline and/or aircraft engine fuel~~ Motor fuels and other petroleum products received by distributors shall be reported under rules and regulations prescribed by the state tax commission, and be based upon consistent methods, generally recognized and accepted for ~~gasoline and/or aircraft engine fuel motor fuels~~ tax accounting purposes, in respect to gallonage, stock transfers and stock accounting records.

SECTION 3. That Section 63-2411, Idaho Code, be, and the same is hereby amended to read as follows:

63-2411. PURCHASE OF GASOLINE MOTOR FUEL BY RETAIL DEALERS. It shall be unlawful for any retail dealer in ~~gasoline or aircraft engine~~ motor fuel or for any person in the state of Idaho other than a licensed distributor to purchase, receive or accept any gasoline motor fuel from any other person, unless that person is a licensed distributor. Any person in violation of these provisions shall be guilty of a misdemeanor.

SECTION 4. That Section 63-2423, Idaho Code, be, and the same is hereby amended to read as follows:

63-2423. CREDITS AND REFUNDS TO CONSUMERS. (1) Any person who has paid his special fuels tax directly to the ~~vender~~ distributor from whom it was purchased shall be refunded the amount of:

(a) Except as provided in subsection (2) of this section, any special fuels tax paid on special fuels used for purposes other than operation or propulsion of motor vehicles upon the highways in the state of Idaho;

(b) Any tax paid on special fuels used in motor vehicles owned or leased and operated by an instrumentality of the federal government or of the state of Idaho, including the state and all of its political subdivisions;

(c) Any tax paid on special fuels used in motor vehicles to which gaseous special fuel is delivered and which displays a valid gaseous special fuels permit under section 63-2424, Idaho Code;

(d) Any special fuels tax paid on special fuels exported for use outside the state of Idaho. Special fuels carried from the state in the fuel tank of a motor vehicle will not be deemed to be exported from the state unless it is subject to a like or similar tax in the jurisdiction to which it is taken and that tax is actually paid to the other jurisdiction; and

(e) Any tax, penalty or interest erroneously or illegally paid or collected.

(2) No refund of special fuels tax shall be paid on:

(a) Special fuels used in a recreational vehicle; or

(b) Special fuels used in noncommercial motor boats or in motor boats operated by a governmental entity; or

(c) Special fuels used while idling a registered motor vehicle, pursuant to the definition of "idling" as provided in section 63-2401, Idaho Code.

(3) Refunds authorized in this section shall be claimed in the same manner as applies to refunds of gasoline tax under section 63-2410, Idaho Code, and shall be subject to interest computed pursuant to subsection (5) of that section.

SECTION 5. That Section 63-2424, Idaho Code, be, and the same is hereby amended to read as follows:

63-2424. GASEOUS FUELS. (1) In the case of special fuels which are in a gaseous form, the commission shall provide by rule the method to be used for converting the measurement of the fuel to the equivalent of gallons for the purpose of applying tax rates. The method provided shall cause the tax rate provided in section 63-2402, Idaho Code, to apply to an amount of gaseous fuels having energy equal to one (1) gallon of gasoline.

(2) As an alternative to the provisions of subsection (1) of this section, an annual fee in lieu of the excise tax may be collected on a vehicle powered by gaseous fuels. The rate of the fee shall be based on the following schedule for all types of gaseous fuels as adjusted by the formula for proration set out below. The permits shall be sold by gaseous fuels ~~venders~~ distributors dispensing gaseous fuels into motor vehicles.

VEHICLE TONNAGE (GVW)	FEE
0 -- 8,000	\$ 60.00
8,001 -- 16,000	\$ 89.00
16,001 -- 26,000	\$179.00
26,001 and above	\$208.00

Permits for vehicles which are converted to gaseous fuels after the first of July in any year shall have the fee prorated for the appropriate number of months until renewal. The commission shall provide by rule the method to be used for converting the measurement of fuel to the equivalent of gallons for the purpose of applying increases in tax rates after this law becomes effective. A decal issued by the commission shall be displayed in any vehicle for which a permit is issued hereunder as evidence that the annual fee has been paid in lieu of the fuel tax. This decal shall be displayed in a conspicuous place.

SECTION 6. That Section 63-2429, Idaho Code, be, and the same is hereby amended to read as follows:

63-2429. **REQUIRED RECORDS.** (1) Every distributor and every special fuels dealer and every person reporting, manufacturing, refining, dealing, transporting or storing ~~gasoline, aircraft engine fuel or special motor~~ fuels in this state shall keep records, receipts, invoices and other pertinent records as the commission may require. Records required and all other relevant books and records shall be available for inspection by the commission at all times during regular record keeper's business hours.

(2) Records required in subsection (1) of this section shall be kept for a period of three (3) years from the date on which the distributor's report or special fuels dealer's return to which they relate was required to be filed with the commission.

SECTION 7. That Section 63-2431, Idaho Code, be, and the same is hereby amended to read as follows:

63-2431. **TAX IN LIEU OF ALL OTHER TAXES IMPOSED.** The taxes imposed by this chapter shall be in lieu of all other excise taxes, license fees or property taxes imposed upon ~~gasoline, aircraft engine fuel or special motor~~ fuels by this state or any political subdivision of this state.

SECTION 8. That Section 63-2436, Idaho Code, be, and the same is hereby amended to read as follows:

63-2436. **REPORTS OF IMPORTATIONS BY CARRIER -- CONTENTS.** The commission may require any railroad or other common carrier, or contract carrier, or any person, other than a licensee, who makes delivery in this state of any ~~gasoline, aircraft engine fuel or special motor~~ fuels to report in writing to the commission, not later than the last day of each calendar month, all the deliveries for the preceding calendar month. The commission may require information in the reports to include the place of origin and place of destination of the ~~gasoline, aircraft engine fuel or special motor~~ fuels delivered, the names and addresses of consignors and consignees, loading ticket numbers, number of gallons delivered, and any other information the commission may require.

Approved February 18, 2011.

CHAPTER 7  
(S.B. No. 1003)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-518, IDAHO CODE, TO REVISE THE STANDARDS FOR THE DETENTION OF JUVENILES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 20-518, Idaho Code, be, and the same is hereby amended to read as follows:

20-518. STANDARDS FOR DETENTION. The following shall be minimum standards for the detention of juveniles provided for in section 20-517, Idaho Code:

(1) Juvenile detention facilities must be so constructed and/or maintained as to keep juveniles segregated from adult offenders ~~or those being treated as adult offenders under section 20-508 or 20-509, Idaho Code,~~ with there to be no contact as to sight and/or sound between the two (2) classes. Those juveniles being treated as adult offenders pursuant to section 20-508 or 20-509, Idaho Code, may be housed in a juvenile detention center if so ordered by the court. Such juveniles may be housed in the general juvenile population without sight and sound separation if it is determined by the detention administration that the safety and security of the other juveniles would not be at risk.

(2) Juvenile detention facilities must provide supervision and observation of juveniles detainees sufficient to protect the physical and mental health of the detainees.

(3) Juveniles held in detention must be provided with at least three (3) adequate and nutritional meals per day.

(4) Juveniles held in detention must have access to reading materials on a regular and systematic basis. ~~Detained juveniles may receive books, newspapers and periodicals from any source including delivery to the detention facilities by family members,~~ are subject to the right of detention authorities to inspect and remove dangerous or harmful materials. Detention authorities may forbid the introduction into holding quarters of obscene books or periodicals.

(5) A visiting program shall be established in juvenile detention facilities which will allow for family visits to each juvenile for at least two (2) hours each week.

(6) The juvenile detention facility shall meet the standards and rules set forth in IDAPA 05.01.02 and IDAPA 11.11.02.

(7) Notwithstanding any other provision in this chapter, the minimum standards set forth herein shall not apply to any person who attains his or her eighteenth birthday prior to beginning or while in detention. When such person attains his or her eighteenth birthday, he or she shall be transferred from juvenile detention to the county jail.

Approved February 18, 2011.

CHAPTER 8  
(S.B. No. 1048)

AN ACT

RELATING TO THE OFFICE OF STATE APPELLATE PUBLIC DEFENDER; AMENDING SECTION 19-869, IDAHO CODE, TO REMOVE CERTAIN LANGUAGE RELATING TO THE APPOINTMENT OF THE STATE APPELLATE PUBLIC DEFENDER.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-869, Idaho Code, be, and the same is hereby amended to read as follows:

19-869. CREATION -- APPOINTMENT -- QUALIFICATIONS -- TERM -- COMPENSATION. (1) The office of state appellate public defender is hereby created in the department of self-governing agencies.

(2) The state appellate public defender shall be appointed by the governor, with the advice and consent of the senate, ~~from a list of not less than two (2) nor more than four (4) qualified persons recommended by a committee consisting of the president of the Idaho state bar association, the chairman of the senate judiciary and rules committee and the chairman of the house judiciary, rules and administration committee and a citizen at large appointed by the governor. The chief justice of the Idaho supreme court, or her designee, shall be an ex officio member of the committee.~~

(3) The state appellate public defender shall be an attorney licensed to practice law in the state of Idaho and shall have a minimum of five (5) years' experience as a practicing attorney. The governor may prescribe such further qualifications as he deems necessary for the position.

(4) The state appellate public defender shall serve for a term of four (4) years, during which term he may be removed only for good cause, and shall be compensated in an amount determined by the governor.

(5) The state appellate public defender may adopt policies or rules necessary to give effect to the purposes of this act.

Approved February 18, 2011.

CHAPTER 9  
(H.B. No. 27)

AN ACT

RELATING TO ASSAULT AND BATTERY; AMENDING SECTION 18-915, IDAHO CODE, TO REVISE PROVISIONS RELATING TO ASSAULT OR BATTERY UPON CERTAIN PERSONNEL AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-915, Idaho Code, be, and the same is hereby amended to read as follows:

18-915. ASSAULT OR BATTERY UPON CERTAIN PERSONNEL -- PUNISHMENT. (1) Any person who commits a crime provided for in this chapter against or upon a justice, judge, magistrate, prosecuting attorney, public defender, peace officer, bailiff, marshal, sheriff, police officer, peace officer standards and training employee involved in peace officer decertification activities, emergency services dispatcher, correctional officer, employee of the department of correction, employee of a private prison contractor while employed at a private correctional facility in the state of Idaho, employees

of the department of water resources authorized to enforce the provisions of chapter 38, title 42, Idaho Code, jailer, parole officer, misdemeanor probation officer, officer of the Idaho state police, fireman, social case-workers or social work specialists of the department of health and welfare, employee of a state secure confinement facility for juveniles, employee of a juvenile detention facility, a teacher at a detention facility or a juvenile probation officer, ~~emergency medical technician certified by the department of health and welfare, emergency medical technician-ambulance certified by the department of health and welfare, advanced emergency medical technician and EMT-paramedic certified by the state board of medicine~~ emergency medical services personnel licensed under the provisions of chapter 10, title 56, Idaho Code, a member, employee or agent of the state tax commission, United States marshal, or federally commissioned law enforcement officer or their deputies or agents and the perpetrator knows or has reason to know of the victim's status, the punishment shall be as follows:

(a) For committing battery with intent to commit a serious felony the punishment shall be imprisonment in the state prison not to exceed twenty-five (25) years.

(b) For committing any other crime in this chapter the punishment shall be doubled that provided in the respective section, except as provided in subsections (2) and (3) of this section.

(2) For committing a violation of the provisions of section 18-901 or 18-903, Idaho Code, against the person of a former or present justice, judge or magistrate, jailer or correctional officer or other staff of the department of correction, or of a county jail, or of a private correctional facility, or of an employee of a state secure confinement facility for juveniles, an employee of a juvenile detention facility, a teacher at a detention facility, misdemeanor probation officer or a juvenile probation officer:

(a) Because of the exercise of official duties or because of the victim's former or present official status; or

(b) While the victim is engaged in the performance of his duties and the person committing the offense knows or reasonably should know that such victim is a justice, judge or magistrate, jailer or correctional officer or other staff of the department of correction, or of a private correctional facility, an employee of a state secure confinement facility for juveniles, an employee of a juvenile detention facility, a teacher at a detention facility, misdemeanor probation officer or a juvenile probation officer;

the offense shall be a felony punishable by imprisonment in a correctional facility for a period of not more than five (5) years, and said sentence shall be served consecutively to any sentence being currently served.

(3) For committing a violation of the provisions of section 18-903, Idaho Code, except unlawful touching as described in section 18-903(b), Idaho Code, against the person of a former or present peace officer, sheriff or police officer:

(a) Because of the exercise of official duty or because of the victim's former or present official status; or

(b) While the victim is engaged in the performance of his duties and the person committing the offense knows or reasonably should know that such victim is a peace officer, sheriff or police officer;

the offense shall be a felony punishable by imprisonment in a correctional facility for a period of not more than five (5) years, and said sentence shall be served consecutively to any sentence being currently served.

Approved February 22, 2011.

CHAPTER 10  
(H.B. No. 13)

AN ACT

RELATING TO TAXATION; AMENDING SECTION 63-4502, IDAHO CODE, TO REVISE A PROPERTY TAX EXEMPTION FOR CERTAIN NEW CAPITAL INVESTMENT, TO REVISE DEFINITIONS AND TO REVISE PROCEDURES; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-4502, Idaho Code, be, and the same is hereby amended to read as follows:

63-4502. TAX EXEMPTION FOR NEW CAPITAL INVESTMENTS. (1) For calendar years beginning on or after January 1, 2008, the net taxable value of all property of a taxpayer, whether acquired before, during or after the qualifying period, in excess of four hundred million dollars (\$400,000,000) located within a single county in Idaho shall be exempt from property taxation and any special assessment, but only to the extent that such property constitutes a new capital investment if the taxpayer makes a qualifying new capital investment as defined in subsection (2) of this section.

(2) For purposes of this section, the following definitions shall apply:

(a) "Qualifying nNew capital investment" means an investment of at least one billion dollars (\$1,000,000,000) made during the ~~project~~ qualifying period by the acquisition, construction, improvement or installation of real or personal property related to new plant and building facilities at a project site located within the county referred to in subsection (1) of this section.

(b) "New plant and building facilities" means:

(i) Qualified investments as defined in section 63-3029B, Idaho Code; or

(ii) Buildings or structural components of buildings, including equipment, materials and fixtures thereof whether used at a project site or temporarily stored off-site in the county referred to in subsection (1) of this section and intended for use at a project site.

(c) "Project Qualifying period" means ~~the~~ an eighty-four (84) month period of time beginning at the first inspection of the permanent building structure at a project site following issuance of the building permit, but in no case earlier than January 1, 2008, and ending no later than ~~seven (7) years~~ eighty-four (84) full months after the calendar year in which such inspection takes place.

(d) "Project site" means an area or areas at which the new plant and building facilities described in subsection (2) (b) of this section are located built.

(3) The property included in the calculation for purposes of determining a qualifying new capital investment value shall include all real property owned, and all personal property owned, leased or rented. With respect to leased or rented personal property, only that portion of the property for which a taxpayer is contractually liable for payment of property taxes thereon, shall be included in the calculation of the investment.

(4) Notwithstanding the exemption provided in subsection (4) of section 63-3029B, Idaho Code, no other exemption from property tax or any special assessment provided by the statutes of this state shall be applicable to any property described in subsection (2) of this section with respect to a

year in which the incentives set forth in subsection (1) of this section apply to any of the same property.

(5) Property subject to the provisions of this section shall not be included on the any property roll or the any new construction roll prepared by the county assessor in accordance with section 63-301 or 63-301A, Idaho Code, respectively.

(6) The state tax commission shall adopt all rules that may be necessary to implement the provisions of this section.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2010.

Approved February 23, 2011.

CHAPTER 11  
(H.B. No. 60)

AN ACT

RELATING TO ELECTION CONSOLIDATION; AMENDING SECTION 1, CHAPTER 341, LAWS OF 2009, TO REVISE HOW APPROPRIATED MONEYS MAY BE USED; AMENDING SECTION 22-2721, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE ELECTION OF SOIL CONSERVATION DISTRICT COMMISSIONERS; AMENDING SECTION 22-4301, IDAHO CODE, TO REVISE PROVISIONS REGARDING ELECTIONS IN WEATHER MODIFICATION DISTRICTS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 31-1410A, IDAHO CODE, TO REVISE PROVISIONS REGARDING ELECTIONS OF FIRE PROTECTION DISTRICT COMMISSIONERS; AMENDING SECTION 33-502, IDAHO CODE, TO REVISE WHEN DECLARATION OF CANDIDACIES FOR SCHOOL TRUSTEES SHALL BE FILED AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 33-503A, IDAHO CODE, TO REVISE WHEN CERTAIN TRUSTEES OF SCHOOL DISTRICTS SHALL SERVE; REPEALING SECTION 33-2717B, IDAHO CODE, RELATING TO WITHDRAWAL OF CANDIDACY FROM LIBRARY DISTRICT BOARDS; REPEALING SECTION 33-2717C, IDAHO CODE, RELATING TO PROCEDURE FOR CORRECTION OF BALLOTS IN LIBRARY DISTRICT ELECTIONS; AMENDING SECTION 33-2722, IDAHO CODE, TO REVISE WHO CONDUCTS LIBRARY DISTRICT ELECTIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 34-102, IDAHO CODE, TO REVISE WHEN THE PRIMARY ELECTION IS HELD; AMENDING SECTION 34-106, IDAHO CODE, TO REVISE WHEN ELECTIONS AND RECALL ELECTIONS MAY BE HELD AND TO REVISE ELECTION FUNDING; AMENDING SECTION 34-717, IDAHO CODE, TO REVISE PROVISIONS RELATING TO WITHDRAWAL OF CANDIDACY; AMENDING SECTION 34-902, IDAHO CODE, TO REVISE PROVISIONS RELATING TO COUNTY COMMISSIONERS PROVIDING SUFFICIENT BALLOTS AND BALLOT BOXES FOR EACH POLLING PLACE AT ALL ELECTIONS; AMENDING SECTION 34-1003, IDAHO CODE, TO REVISE PROVISIONS FOR ISSUANCE OF ABSENTEE BALLOTS; AMENDING SECTION 34-1401, IDAHO CODE, TO REVISE PROVISIONS FOR ADMINISTRATION OF MUNICIPAL ELECTIONS; AMENDING SECTION 34-1404, IDAHO CODE, TO REVISE PROVISIONS REGARDING DECLARATION OF CANDIDACY; AMENDING CHAPTER 14, TITLE 34, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 34-1405A, IDAHO CODE, TO PROVIDE FOR THE WITHDRAWAL OF CANDIDACY; AMENDING SECTION 34-1406, IDAHO CODE, TO REVISE PROVISIONS REGARDING NOTICE OF ELECTION; AMENDING SECTION 34-1407, IDAHO CODE, TO REVISE PROVISIONS REGARDING WRITE-IN CANDIDATES; AMENDING SECTION 34-1410, IDAHO CODE, TO REVISE PROVISIONS REGARDING CANVASSING OF ELECTION RESULTS; AMENDING CHAPTER 14, TITLE 34, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 34-1412, IDAHO CODE, TO ESTABLISH PROVISIONS FOR TERMS OF OFFICE GOING BEYOND THE NEXT ELECTION DATES; AMENDING SECTION 39-1330, IDAHO CODE, TO REVISE PROVISIONS REGARDING ELECTIONS OF HOSPITAL BOARD MEMBERS; AMENDING

SECTION 40-1304, IDAHO CODE, TO REVISE PROVISIONS REGARDING WHEN HIGHWAY DISTRICT COMMISSIONERS TAKE OFFICE; AMENDING SECTION 42-3211, IDAHO CODE, TO REVISE PROVISIONS REGARDING WATER AND SEWER DISTRICT ELECTIONS; AMENDING SECTION 50-1026, IDAHO CODE, TO REVISE PROVISIONS REGARDING CERTAIN CITY BOND ELECTIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-4911, IDAHO CODE, TO REVISE PROVISIONS REGARDING AUDITORIUM DISTRICT ELECTIONS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 1, Chapter 341, Laws of 2009, be, and the same is hereby amended to read as follows:

SECTION 1. In addition to the appropriation provided for by law, there is hereby appropriated to the Secretary of State to be used to provide training and training materials directly related to election consolidation and for trustee and benefit payments the sum of \$1,500,000 from the Budget Stabilization Fund for the period July 1, 2009, through June 30, 2010, which shall be placed in the Consolidated Elections Fund. The Secretary of State shall reimburse counties for the cost of needed equipment and computer software, maps and map development, materials, conducting and attending training sessions, and methodologies and tools for delineating a geographic ballot area, which are directly related to compliance with this act. Such moneys shall be expended from the Consolidated Elections Fund which is created in the State Treasury. Each county may apply to the Secretary of State for reimbursement of its actual costs incurred in acquiring equipment and computer software with the maximum amount reimbursed being the greater of one dollar (\$1.00) per person in the county according to the latest decennial census or ten thousand dollars (\$10,000). Moneys may be expended pursuant to appropriation or by the Secretary of State. The Consolidated Elections Fund shall cease to exist and shall be null and void on January 1, 2016, at which time any amounts remaining in the fund will revert to the General Fund.

SECTION 2. That Section 22-2721, Idaho Code, be, and the same is hereby amended to read as follows:

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.~~

(75) 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.

(86) 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.

(97) 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.

(108) 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.

(119) 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.

(120) 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.

SECTION 3. That Section 22-4301, Idaho Code, be, and the same is hereby amended to read as follows:

22-4301. ESTABLISHMENT -- PETITION -- ELECTION. (1) The county commissioners of any county shall, upon petition signed by not less than fifty (50) resident real property holders of said county, or any portion thereof, which may exclude incorporated cities, undertake the following procedure to determine the advisability of resolving to establish and maintain a weather modification district within the county as may be designated in the petition.

(a) A petition to form a weather modification district shall be presented to the county clerk and recorder. The petition shall be signed by not less than fifty (50) of the resident real property holders within the proposed district. The petition shall designate the boundaries of the district.

(b) The petition shall be filed with the county clerk and recorder of the county in which the signers of the petition are located. Upon the filing of the petition the county clerk shall examine the petition and certify whether the required number of petitioners have signed the petition. If the number of petition signers is sufficient, the clerk shall transmit the petition to the board of county commissioners.

(c) Upon receipt of a duly certified petition the board of county commissioners shall give notice of an election to be held, subject to the provisions of section 34-106, Idaho Code, in such proposed district for the purpose of determining whether or not the proposed district shall be organized and to elect the first board of trustees for the district. Such notice shall include the date and hours of the election, the polling places, the maximum percent of market value for assessment purposes of taxable property within the district which the proposed district will be permitted to levy, the general purposes of the proposed district, a description of lands to be included in the proposed district, a statement that a map of the proposed district is available in the office of the board of county commissioners, and the names and terms of the members to be elected to the first board of trustees. The notice shall be published once each week for three (3) consecutive weeks prior to such election, in a newspaper of general circulation within the county.

(d) The election shall be held and conducted consistent with the provisions of chapter 14, title 34, Idaho Code. The county clerk shall appoint judges of election, one (1) of whom shall act as clerk for the election. At such election the electors shall vote for or against the organization of the district, and the members of the first board of trustees.

(e) The county clerk shall certify the returns of the election to the board of county commissioners. If a majority of the votes cast at said election are in favor of the organization, the board of county commissioners shall declare the district organized and give it a name by which, in all proceedings, it shall thereafter be known, and shall further designate the first board of trustees elected, and thereupon the district shall be a legal taxing district.

(f) On the third Tuesday of May, in the next odd-numbered calendar year after the organization of any district, and on the third Tuesday of May every odd-numbered year thereafter, an election shall be held.

At the election in any district hereafter organized, there shall be elected by the qualified electors of the district, two (2) members of the board to serve for a term of four (4) years; at the next odd-numbered year election, there shall be elected one (1) member of the board to serve for a term of four (4) years. Such election shall be held and conducted consistent with the provisions of chapter 14, title 34, Idaho Code.

~~Not later than the sixth Friday before any such election, nominations may be filed with the secretary of the board and if a nominee does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot. The county clerk shall conduct such election, shall appoint judges, shall give notice of election by publication, and shall arrange such other details in connection therewith. The returns of the election shall be certified to and shall be canvassed and declared by the board. The candidate or candidates receiving the most votes shall be elected.~~

In any election for trustees, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that only one (1) qualified candidate has been nominated for a trustee position, it shall not be necessary for the candidate to stand for election, and the board of trustees of the district shall declare such candidate elected as trustee, and the sec-

retary of the district shall immediately make and deliver to such person a certificate of election.

SECTION 4. That Section 31-1410A, Idaho Code, be, and the same is hereby amended to read as follows:

31-1410A. DECISION TO INCREASE THE SIZE OF THE BOARD. Subsequent to the creation of a fire protection district and the appointment of the first board of fire protection commissioners, the fire protection board may, by a majority vote of all of the fire protection district board members elect to increase the size of the board to five (5) members.

If the board of fire protection commissioners elects to expand the board to five (5) members, the existing board members shall subdivide the district into five (5) subdivisions as nearly equal in population, area and mileage as practicable to be known as subdistricts one, two, three, four and five.

At the first election following the decision of the board of fire protection commissioners to expand the board from three (3) to five (5) members, five (5) commissioners shall be elected. ~~The commissioners from fire protection subdistrict one shall be elected for a term of one (1) year; the commissioner from subdistrict two for two (2) years; the commissioner from subdistrict three for three (3) years; and the commissioners from subdistricts four and five shall be elected for terms of four (4) years.~~ subdistricts one and two shall be elected to a term of two (2) years, the commissioners from subdistricts three, four and five shall be elected to a term of four (4) years. Thereafter, the term of all commissioners shall be four (4) years.

A fire district which, prior to the effective date of this section, had elected to expand a board from three (3) to five (5) members shall, prior to the next election of the district, adopt a transition schedule as nearly reflecting the schedule provided in this section as possible ~~so that one (1) commissioner is elected each year except that in one (1) year, two (2) commissioners are elected.~~ For commissioners whose offices expire in 2012 and in any even-numbered year, such commissioners shall remain in office until the next election in an odd-numbered year.

SECTION 5. That Section 33-502, Idaho Code, be, and the same is hereby amended to read as follows:

33-502. DECLARATIONS OF CANDIDACY FOR TRUSTEES. Any person legally qualified to hold the office of school trustee, may file a declaration of candidacy for the office, each of which shall bear the name of the candidate, state the term for which declaration of candidacy is made, and bear the signature of not less than five (5) school district electors resident of the trustee zone of which the candidate is resident. The declaration shall be filed with the clerk of the board of trustees of the school district ~~not later than 5:00 p.m. on the fifth Friday preceding the day of election of trustees as provided in section 34-1404, Idaho Code.~~

SECTION 6. That Section 33-503A, Idaho Code, be, and the same is hereby amended to read as follows:

33-503A. TRANSITION OF SCHOOL TRUSTEE TERMS FROM THREE YEARS TO FOUR YEARS. In order to achieve an orderly transition to terms of four (4) years, and to hold trustee elections in the odd-numbered years, the following schedule shall be followed:

(1) For school districts with five (5) trustees:

(a) If two (2) trustees were elected to a regular trustee term in 2007, and one (1) trustee was elected to a regular term in 2008, then these three (3) trustees shall each serve a term that expires on July 1, 2011,

and the trustees elected to a regular trustee term in 2009 shall each serve a term that expires on July 1, 2013.

(b) If two (2) trustees were elected to regular trustee terms in 2007, and two (2) trustees were elected to regular trustee terms in 2008, then those trustees elected in 2007 shall each serve a term that expires on July 1, 2011, and those elected in 2008 shall each serve a term that expires on July 1, 2013, and the trustee elected to a regular trustee term in 2009 shall serve a term that expires on July 1, 2013.

(c) If one (1) trustee was elected to a regular trustee term in 2007, the trustee shall serve a term that expires on July 1, 2011, and the trustees elected to a regular trustee term in 2008 shall each serve a term that expires on July 1, 2011.

(2) For school districts with six (6) trustees, two (2) trustees elected to a regular term in 2007 shall each serve a term that expires on July 1, 2011, and two (2) trustees elected to a regular term in 2009 shall each serve a term that expires on July 1, 2013, and one (1) of the trustees elected to a regular term in 2008 shall serve until July 1, 2011, and one (1) of the trustees elected to a regular term in 2008 shall serve until July 1, 2013, which shall be determined by the toss of a coin.

(3) For school districts with seven (7) trustees, two (2) trustees elected to a regular term in 2008 or 2009 shall each serve until July 1, 2011, and any remainder of the trustees elected in 2008 or 2009 shall serve until July 1, 2013, which shall be determined by the toss of a coin; and trustees elected to a regular term in 2007 shall serve until July 1, 2013.

(4) For elementary school districts with three (3) trustees, two (2) trustees elected to a regular term in 2007 and 2008 shall serve until July 1, 2011, and one (1) trustee elected to a regular term in 2009 shall serve until July 1, 2013.

SECTION 7. That Section 33-2717B, Idaho Code, be, and the same is hereby repealed.

SECTION 8. That Section 33-2717C, Idaho Code, be, and the same is hereby repealed.

SECTION 9. That Section 33-2722, Idaho Code, be, and the same is hereby amended to read as follows:

33-2722. TREASURER -- CLERK. The board of trustees of each library district shall appoint some qualified person, who may or may not be a member of the board of trustees, to act as treasurer of the library district. This person shall, on taking office, give bond to the library district, with sureties approved by the board of trustees, in the amount of at least five thousand dollars (\$5,000), which bond shall be paid for by the district, and shall be conditioned upon faithful performance of the duties of his office and his accounting for all moneys of the library district received by him or under his control. The treasurer shall supervise all moneys raised for the library district by taxation or received by the district from any other sources and shall supervise all disbursements of funds of the district by order of the board of trustees.

Under the direction of the board of trustees, the treasurer shall have all moneys of the district deposited in accordance with the public depositary law and other applicable state and federal laws.

The board of trustees of each library district shall appoint some qualified person, who may or may not be a member of the board of trustees, to act as clerk of the library board. The clerk shall ~~conduct library district elections, other than for excision, annexation, consolidation, or division;~~ shall prepare and distribute legal notices, and shall have other duties as the board may prescribe.

SECTION 10. That Section 34-102, Idaho Code, be, and the same is hereby amended to read as follows:

34-102. "PRIMARY ELECTION" DEFINED -- PURPOSES. "Primary election" means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties. Primary elections shall be held on the ~~fourth~~ third Tuesday of May in each even-numbered year.

"Presidential primary" or "presidential preference primary" means an election held for the purpose of allowing voters to express their choice for candidates for nominations for president of the United States. Presidential primary elections shall be held in conjunction with the primary election, on the ~~fourth~~ third Tuesday of May in each presidential election year.

SECTION 11. That Section 34-106, Idaho Code, be, and the same is hereby amended to read as follows:

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) and subsection (7) of this section, 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 any of the four (4) dates~~ 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 of this section that falls more than forty-five (45) days after the clerk of the political subdivision orders that such election shall be held.~~

(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.

SECTION 12. That Section 34-717, Idaho Code, be, and the same is hereby amended to read as follows:

34-717. WITHDRAWAL OF CANDIDACY. A candidate for nomination or candidate for election to an partisan office may withdraw from the election by filing a notarized statement of withdrawal with the officer with whom his declaration of candidacy was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. The filing officer shall immediately notify the proper central committee of the party, if any, of the individual withdrawing. A candidate may not withdraw later than forty-five (45) days before an election, except in the case of a general election when the deadline shall be no later than September 7. Filing fees paid by the candidate shall not be refunded.

Any candidate who has filed a statement of withdrawal pursuant to this section shall not be allowed to be appointed to fill a vacancy unless such vacancy occurs because of the death of a previous candidate.

SECTION 13. That Section 34-902, Idaho Code, be, and the same is hereby amended to read as follows:

34-902. COUNTY COMMISSIONERS TO PROVIDE SUFFICIENT BALLOTS AND BALLOT BOXES FOR EACH POLLING PLACE AT ALL ELECTIONS. ~~At its regular meeting in March,~~ The board of county commissioners shall authorize that a suitable number of ballots be printed for each polling place. The county clerk shall cause such ballots to be printed upon receiving final instructions from the secretary of state, and the cost shall be paid from the county treasury. The board of county commissioners shall authorize the printing of ballots in the same manner for special elections when such special election is ordered by the governor or provided by law.

The board of county commissioners shall also provide a suitable number of ballot boxes for each polling place within the county, and shall have complete authority to determine the specifications for such ballot boxes.

SECTION 14. That Section 34-1003, Idaho Code, be, and the same is hereby amended to read as follows:

34-1003. ISSUANCE OF ABSENTEE BALLOT. Upon receipt of an application for an absent elector's ballot within the proper time, the county clerk receiving it shall examine the records of his office to ascertain whether or

not such applicant is registered and lawfully entitled to vote as requested and, if found to be so, he shall arrange for the applicant to vote by absent elector's ballot. The absentee ballot may be delivered to the absent elector in the office of the county clerk, by postage prepaid mail or by other appropriate means, including use of a facsimile machine or other electronic transmission. Validly requested absentee ballots for candidates for federal office, where the request is received at least forty-five (45) days before an election, shall be sent not later than forty-five (45) days before that election to all electors who are entitled to vote by absentee ballot.

Pursuant to the uniformed and overseas citizens absentee voting act (UOCAVA, 42 U.S.C. 1973 ff, et seq., as amended) the secretary of state shall establish procedures for the transmission of blank absentee ballots by mail and by electronic transmission for all electors who are entitled to vote by absentee ballot under the uniformed and overseas citizens absentee voting act, and by which such electors may designate whether the elector prefers the transmission of such ballots by mail or electronically. If no preference is stated, the ballots shall be transmitted by mail. The secretary of state shall establish procedures for transmitting such ballots in a manner that shall protect the security and integrity of such ballots and the privacy of the elector throughout the process of transmission.

A political party may supply a witness to accompany the clerk in the personal delivery of an absentee ballot. If the political party desires to supply a witness it shall be the duty of the political party to supply the names of such witnesses to the clerk no later than forty-five (45) days prior to the election. The clerk shall notify such witnesses of the date and approximate hour the clerk or deputy clerk intends to deliver the ballot.

A candidate for public office or a spouse of a candidate for public office shall not be a witness in the personal delivery of absentee ballots.

An elector physically unable to mark his own ballot may receive assistance in marking such ballot from the officer delivering same or an available person of his own choosing. In the event the election officer is requested to render assistance in marking an absent elector's ballot, the officer shall ascertain the desires of the elector and shall vote the applicant's ballot accordingly. When such ballot is marked by an election officer, the witnesses on hand shall be allowed to observe such marking. No county clerk, deputy, or other person assisting a disabled voter shall attempt to influence the vote of such elector in any manner.

SECTION 15. That Section 34-1401, Idaho Code, be, and the same is hereby amended to read as follows:

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. Municipal elections shall be conducted under the provisions of this chapter except for the specific provisions of chapter 4, title 50, Idaho Code. 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.

SECTION 16. That Section 34-1404, Idaho Code, be, and the same is hereby amended to read as follows:

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 clerk of the political subdivision 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 clerk of the political subdivision 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~~ ninth Friday preceding the election for which the nomination is made. The election-official clerk of the political subdivision 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.

SECTION 17. That Chapter 14, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-1405A, Idaho Code, and to read as follows:

34-1405A. WITHDRAWAL OF CANDIDACY. A candidate for nomination or candidate for election to an office may withdraw from the election by filing a notarized statement of withdrawal with the officer with whom his declaration of candidacy was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. A candidate may not withdraw later than forty-five (45) days before an election.

SECTION 18. That Section 34-1406, Idaho Code, be, and the same is hereby amended to read as follows:

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 official newspaper of the political subdivision.

SECTION 19. That Section 34-1407, Idaho Code, be, and the same is hereby amended to read as follows:

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 clerk of the political subdivision not less than twentyfourty-five (245) 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 twentyfourty-five (245) 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.

SECTION 20. That Section 34-1410, Idaho Code, be, and the same is hereby amended to read as follows:

34-1410. CANVASSING OF ELECTION RESULTS. The board of county commissioners shall conduct the canvass of the election results within ten (10) days after the election, 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.

SECTION 21. That Chapter 14, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-1412, Idaho Code, and to read as follows:

34-1412. TERMS OF OFFICE GOING BEYOND NEXT ELECTION DATE. Notwithstanding any other provision of law to the contrary, whenever a member of the governing board of a taxing district has been elected to a term of office that goes beyond the next election date as provided by statute, such member of the governing board shall be entitled to serve his or her term of office and shall continue to serve until the following election provided by statute.

All governing board members elected on and after January 1, 2011, shall serve terms of office beginning and ending as otherwise provided by statute.

SECTION 22. That Section 39-1330, Idaho Code, be, and the same is hereby amended to read as follows:

39-1330. BIENNIAL ELECTION OF BOARD MEMBERS -- TERMS OF OFFICE. On the third Tuesday of May in the next odd-numbered calendar year after the organization of any district, and on the third Tuesday of May every second year thereafter, an election shall be held which shall be known as the biennial election of the district.

At the first biennial election in any district hereafter organized and each sixth year thereafter there shall be elected by the qualified electors of the district three (3) members of the board to serve for a term of six (6) years; at the second biennial election and each sixth year thereafter there shall be elected two (2) members of the board to serve for a term of six (6) years; at the third biennial election and each sixth year thereafter there shall be elected two (2) members of the board to serve for terms of six (6) years.

~~Nominations may be filed with the secretary of the board not later than the sixth Friday preceding the election for which the nomination is made, and if a nominee does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot. The county clerk shall provide for holding such elections and shall appoint judges to conduct it; the county clerk shall give notice of election by publication and shall arrange such other details in connection therewith as the board may direct. The returns of the election shall be certified to and shall be canvassed and declared by the board of county commissioners. The candidate or candidates according to the number of directors to be elected, receiving the most votes shall be elected. Any new member of the board shall qualify in the same manner as members of the first board qualify.~~

In any election for director, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that only one (1) qualified candidate has been nominated for a director's position, it shall not be necessary for the candidate to stand for election, and the board of directors of the district shall declare such candidate elected as a director, and the secretary of the board of the district shall immediately make and deliver to such person a certificate of election.

For the purpose of achieving an orderly transition to a term of six (6) years and to hold trustee elections in odd-numbered years, the following schedule shall be followed:

(a) For trustees elected in 2005, their terms shall expire in 2011 and the terms for each of those elected in 2011 shall be six (6) years and thereafter those terms shall be for six (6) years;

(b) For trustees elected in 2006, their terms shall expire in 2013 and the terms for each of those elected in 2013 shall be six (6) years and thereafter those terms shall be for six (6) years;

(c) For trustees elected in 2007, their terms shall expire in 2013 and the terms for each of those elected in 2013 shall be six (6) years and thereafter those terms shall be for six (6) years;

(d) For trustees elected in 2008, their terms shall expire in 2015 and the terms for each of those elected in 2015 shall be six (6) years and thereafter those terms shall be for six (6) years;

(e) For trustees elected in 2009, their terms shall expire in 2015 and the terms for each of those elected in 2015 shall be six (6) years and thereafter those terms shall be for six (6) years;

(f) For trustees elected in 2010, their terms shall expire in 2017 and the terms for each of those elected in 2017 shall be six (6) years and thereafter those terms shall be for six (6) years.

SECTION 23. That Section 40-1304, Idaho Code, be, and the same is hereby amended to read as follows:

40-1304. DIVISION OF DISTRICTS INTO SUBDISTRICTS -- VACANCY IN OFFICE OF HIGHWAY COMMISSIONER. (1) At the meeting of the county commissioners at which the highway district is declared organized, the commissioners shall divide the highway district into three (3) subdistricts, as nearly equal in population, area and mileage as practicable, to be known as highway commissioners subdistricts one, two and three. Subdistricts may be revised or modified by the highway district commissioners as changes in conditions demand. Not more than one (1) of the highway district commissioners shall be an elector of the same highway subdistrict. The first highway district commissioners appointed by the governor shall serve until the next highway district election, at which their successors shall be elected. The highway commissioners shall take office on the date specified in the certificate of election but not more than sixty (60) days July 1 following their election.

(2) Any vacancy occurring in the office of highway commissioner, other than by expiration of the term of office, shall be determined by the remaining highway district commissioners using the criteria established in section 59-901, Idaho Code. If it is determined that a vacancy has occurred, the commissioners shall declare there is a vacancy and such vacancy shall be filled by the highway district board and be for the balance of the term of the person replaced. If the remaining highway district commissioners are unable to agree on a person to fill the vacancy within ten (10) days after the vacancy occurs, the chairman of the county commissioners of the county with the largest number of electors in the highway district shall then become a member of the highway district board for the purpose of filling the vacancy only. If a majority of the highway district board so constituted shall be unable to agree upon a person to fill the vacancy within ten (10) days, or if two (2) or more vacancies shall occur in the board of highway commissioners at one (1) time, a special election to fill the vacancy shall be called and held in the same manner provided by law for the holding of elections for highway commissioners, except that the date of the election shall be as soon as possible, and all duties imposed by law upon the highway district board in connection with elections shall be performed by the county commissioners.

(3) When there are two (2) or more vacancies on the highway district board at the same time, the chairman of the county commissioners along with the additional county commissioners that the county commission chairman appoints, and with the remaining highway district commissioner, if applicable, shall constitute a temporary board of highway district commissioners. The temporary board of highway district commissioners shall perform the duties required by law of a highway district board of commissioners until the newly elected highway commissioners take office.

SECTION 24. That Section 42-3211, Idaho Code, be, and the same is hereby amended to read as follows:

42-3211. ELECTIONS -- TERMS OF OFFICE. (1) On the third Tuesday in May, in the first odd-numbered year after the organization of any district, and on the third Tuesday in May every second year thereafter an election shall be held, which shall be known as the biennial election of the district. Such election shall be held and conducted consistent with the provisions of chapter 14, title 34, Idaho Code.

(2) In districts created under section 42-3202B, Idaho Code, biennial elections shall be held on the third Tuesday in May.

(3) At the first biennial election in any district hereafter organized, and each sixth year thereafter, there shall be elected by the qualified electors of the district, one (1) member of the board to serve for a term of six (6) years; at the second biennial election and each sixth year thereafter,

there shall be elected two (2) members of the board to serve for terms of six (6) years, and at the third biennial election, and each sixth year thereafter, there shall be elected two (2) members of the board to serve for terms of six (6) years.

~~Not later than 5:00 p.m. on the sixth Friday preceding the election, nominations may be filed with the secretary of the board and if a nominee does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot. The county clerk shall conduct the election and shall appoint judges to conduct it. The returns of the election shall be certified to and shall be canvassed and declared as provided in chapter 14, title 34, Idaho Code. The candidate or candidates, according to the number of directors to be elected, receiving the most votes, shall be elected. Any new member of the board shall qualify in the same manner as members of the first board qualify.~~

In any election for director, 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 directors to be elected, it shall not be necessary for the candidates to stand for election, and the board of directors shall declare such candidates elected as directors, and the secretary of the district shall immediately make and deliver to such persons certificates of election signed by him and bearing the seal of the district.

SECTION 25. That Section 50-1026, Idaho Code, be, and the same is hereby amended to read as follows:

50-1026. CITY BONDS -- ORDINANCE -- ELECTION. Whenever the city council of a city shall deem it advisable to issue the coupon bonds of such city, the mayor and council shall provide therefor by ordinance, which shall specify and set forth all the purposes, objects, matters and things required by section 57-203, Idaho Code, and make provision for the collection of an annual tax sufficient to pay the interest on such proposed bonds as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within thirty (30) years from the time of contracting the same as required by the constitution and laws of the state of Idaho.

The ordinance shall also provide the date for holding an election that is in accordance with the dates authorized in section 50-405, Idaho Code, ~~of~~ which falls more than forty-five (45) days after the clerk of the political subdivision orders that such election shall be held. Notice shall be given in the official newspaper of the city by the county clerk in accordance with election law in title 34, Idaho Code. Such election shall be conducted as other city elections. The voting at such elections must be by ballot, and the ballot used shall be substantially as follows: "In favor of issuing bonds to the amount of . . . . dollars for the purpose stated in Ordinance No. . . . .," and "Against issuing bonds to the amount of . . . . dollars for the purpose stated in Ordinance No. . . . ." If at such election, held as provided in this chapter, two-thirds (2/3) of the qualified electors voting at such election, assent to the issuing of such bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, such bonds shall be issued in the manner provided by the laws of the state of Idaho.

SECTION 26. That Section 67-4911, Idaho Code, be, and the same is hereby amended to read as follows:

67-4911. ELECTIONS -- TERMS OF OFFICE. On an election date as provided for in section 34-106(1), Idaho Code, in ~~November~~ May of the first odd-numbered year after the organization of any district, and every second year thereafter, an election shall be held, which shall be known as the biennial election of the district.

At the first biennial election in any district hereafter organized, and each sixth year thereafter, there shall be elected by the qualified electors of the district, one (1) member of the board to serve for a term of six (6) years; at the second biennial election and each sixth year thereafter, there shall be elected two (2) members of the board to serve for terms of six (6) years, and at the third biennial election, and each sixth year thereafter, there shall be elected two (2) members of the board to serve for terms of six (6) years. Provided, a member of the board once in office shall serve until his successor is elected, qualified and takes office.

Not later than 5:00 p.m. on the ~~sixth~~ ninth Friday before any such election, nominations may be filed with the secretary of the board ~~and if a nominee does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot.~~ The county clerk shall provide for holding such election and shall appoint judges to conduct it. The county clerk shall give notice of election by publication, and shall arrange such other details in connection therewith. Adequate polling places shall be provided throughout the district boundaries for all elections. The returns of the election shall be certified to and shall be canvassed and declared by the board of county commissioners which shall report the results to the district. The candidate or candidates, according to the number of directors to be elected, receiving the most votes, shall be elected. Any new member of the board shall qualify in the same manner as members of the first board qualify.

In any election for director, 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 directors to be elected, it shall not be necessary for the candidates to stand for election, and the board shall declare such candidates elected as directors, and the secretary of the board shall immediately make and deliver to such persons certificates of election signed by him and bearing the seal of the district.

SECTION 27. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2011.

Approved February 23, 2011.

CHAPTER 12  
(H.B. No. 34)

AN ACT

RELATING TO THE CAPITOL COMMISSION; AMENDING SECTION 67-1607, IDAHO CODE, TO REVISE THE NUMBER OF REQUIRED MEETINGS THE COMMISSION IS TO HOLD ANNUALLY AND TO MAKE A CODIFIER'S CORRECTION; AMENDING SECTION 67-1608, IDAHO CODE, TO REVISE POWERS AND DUTIES OF THE CAPITOL COMMISSION; AND REPEALING SECTION 67-1609, IDAHO CODE, RELATING TO ARCHITECT OF THE CAPITOL BUILDING.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-1607, Idaho Code, be, and the same is hereby amended to read as follows:

67-1607. ORGANIZATION OF THE COMMISSION. The commission shall meet not less than ~~four~~ two (42) times per year. A majority of the membership of the commission constitutes a quorum to transact business. Public members of the commission shall be reimbursed for actual and necessary expenses

as provided in section 59-909 59-509(c), Idaho Code. Public members are entitled to reimbursement for reasonable travel expenses incurred in the performance of their duties as a member as provided by law.

SECTION 2. That Section 67-1608, Idaho Code, be, and the same is hereby amended to read as follows:

67-1608. POWERS AND DUTIES OF THE COMMISSION. The commission shall have the following powers and duties:

(1) ~~In consultation with the director of the department of administration, to develop a comprehensive, multiyear, master plan ("master plan") for the restoration and refurbishment of the capitol building and to review periodically, and, as appropriate, to amend and modify the plan. The master plan shall address long-range modifications and improvements to the capitol building and its grounds.~~

~~(2) To develop and implement a program to fund the master plan. The program shall include recommendations to the legislature for appropriating public moneys as well as a comprehensive strategy to obtain moneys from the private sector periodically review the capitol building master plan and, as appropriate, amend and modify the plan:~~

~~(a) In cooperation with the department of administration, who shall provide administrative support to the commission, prepare, approve and submit each year to the division of financial management and the legislative services office a budget reflecting all proposed expenditures for the commission for the ensuing fiscal year.~~

~~(b) The budget provided for in subsection (1) (a) of this section may include, but shall not necessarily be limited to, recommendations for transfers of money made pursuant to section 67-1610(2), Idaho Code, from the capitol permanent endowment fund to the capitol endowment income fund.~~

~~(32) To review all proposals to reconstruct, redecorate remodel or restore all space within the capitol building. All such projects shall be approved by the commission and be in conformance with the capitol building master plan and may not be implemented without the written consent of the commission.~~

~~(43) To review all proposals involving objects of art, memorials, statues, or exhibits to be placed on a permanent or temporary basis in public space within the capitol building or on its grounds. All such proposals shall be in conformance with the master plan and may not be approved written policies of the commission and implemented without the written with the consent of the commission and consent of the legislature and governor pursuant to subsections (2) and (3) of section 67-1602, Idaho Code.~~

~~(54) To identify all furniture original to the capitol building and create an inventory of the original furniture. The possession of all original furniture used within the public and executive department space shall be retained by the director of the department of administration. The possession of all original furniture used by the legislative department shall be retained by the presiding officers of the senate and house of representatives. All original furniture is the property of the state of Idaho and shall remain in the capitol building or, during renovation of the capitol building, in temporary space approved by the commission Work cooperatively with the Idaho state historical society to support a capitol curator to preserve, manage and protect the capitol building, and its historic collections and exhibits. The possession of all historic, restored and new furniture used by the executive department shall be retained by the executive department, and the possession of all historic, restored and new furniture used by the legislative department shall be retained by the presiding officers of the senate and house of representatives. All~~

historic, restored and new furniture shall be inventoried annually, shall remain in the capitol building and is the property of the state of Idaho.

(65) For the purpose of promoting interest in the capitol building and obtaining funds to enhance the preservation of original and historic elements of the capitol building and its grounds, to develop and implement a plan for the publishing and sale of publications on the history of the capitol building and to develop other capitol building memorabilia for sale to the public.

(76) To solicit gifts, grants or donations of any kind from any private or public source to carry out the purposes of this chapter. All gifts, grants or donations received directly by the commission shall be transmitted to the state treasurer who shall credit the same to the capitol endowment fund created by this chapter.

(87) To request necessary assistance from all state agencies and the presiding officers of the senate and house of representatives in performing its duties pursuant to this chapter.

(98) To enter into agreements with tax-exempt nonprofit organizations for the purpose of assisting the commission in the performance of its duties under this chapter, including agreements for the establishment and maintenance of community foundation funds dedicated to the purposes of this chapter.

~~(10) To appoint and contract with the architect of the capitol building as provided by this chapter.~~

SECTION 3. That Section 67-1609, Idaho Code, be, and the same is hereby repealed.

Approved February 23, 2011.

CHAPTER 13  
(H.B. No. 68)

AN ACT

RELATING TO THE JUDICIAL COUNCIL; AMENDING SECTION 1-2102, IDAHO CODE, TO PROVIDE ADDITIONAL DUTIES OF THE JUDICIAL COUNCIL AND THE SUPREME COURT AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 67-3502, IDAHO CODE, TO PROVIDE THAT THE JUDICIAL DEPARTMENT SHALL INCLUDE IN A CERTAIN FILING THE BUDGET REQUEST OF THE JUDICIAL COUNCIL AS SUBMITTED BY THE JUDICIAL COUNCIL.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 1-2102, Idaho Code, be, and the same is hereby amended to read as follows:

1-2102. DUTIES OF COUNCIL. The judicial council shall:

- (1) Conduct studies for the improvement of the administration of justice;
- (2) Make reports to the Ssupreme Ccourt and legislature at intervals of not more than two (2) years;
- (3) Submit to the governor the names of not less than two (2) nor more than four (4) qualified persons for each vacancy in the office of justice of the Ssupreme Ccourt, judge of the court of appeals, or district judge, one (1) of whom shall be appointed by the governor; provided, that the council shall submit only the names of those qualified persons who are eligible to stand for election pursuant to section 1-2404, 34-615~~7~~ or 34-616, Idaho Code;

(4) Recommend the removal, discipline and retirement of judicial officers, including magistrates; and

(5) Prepare an annual budget request in the form prescribed in section 67-3502, Idaho Code, and submit such request to the supreme court, which shall include such request as submitted by the judicial council in the annual budget request of the judicial department; and

(6) Such other duties as may be assigned by law.

SECTION 2. That Section 67-3502, Idaho Code, be, and the same is hereby amended to read as follows:

67-3502. **FORMAT AND PREPARATION OF ANNUAL BUDGET REQUESTS.** In the preparation of a state budget, the administrator of the division of financial management shall, not later than the fifteenth day of July have available for all departments, offices and institutions of the state government forms necessary to prepare budget requests. Such forms, whether in electronic or written format, shall be developed by the administrator of the division and the legislative services office to provide the following information:

(1) For the preceding fiscal year, each of the entities listed above shall report all funds available to them regardless of source, including legislative appropriations, and their expenditures by fund and object of all sums received from all sources, segregated as provided for on the forms.

(2) For the current fiscal year, each of the entities listed above shall report their estimates of all funds available to them regardless of source, including legislative appropriations, and their estimated expenditures by fund and object of all sums received from all sources, segregated as provided for on the forms, including a statement of the purposes for which anticipated funds are expected to be expended.

(3) An estimate of appropriations needed for the succeeding fiscal year, showing each primary program or major objective as a separate item of the request and itemized by object code.

(4) A report concerning the condition and management of programs, program performance, and progress toward accomplishing program objectives.

The completed forms shall, not later than the first day of September, except with special permission and agreement of the administrator of the division of financial management and the director of the legislative services office, be filed in the office of the administrator of the division of financial management and the legislative services office. The legislative and judicial departments shall, as early as practicable and in any event no later than the first day of November, prepare and file in the office of the governor and the legislative services office upon the forms described in this section a report of all of the information required in this section. The judicial department shall include in its filing the budget request of the judicial council as submitted by the judicial council.

Approved February 23, 2011.

CHAPTER 14  
(H.B. No. 67)

AN ACT

RELATING TO DISPOSITIONS OF FINES, FORFEITURES, AND COSTS; AMENDING SECTION 19-4708, IDAHO CODE, TO ALLOW THE SUPREME COURT TO ENTER INTO CERTAIN CONTRACTS FOR COLLECTION SERVICES FOR DEBTS OWED TO COURTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-4708, Idaho Code, be, and the same is hereby amended to read as follows:

19-4708. COLLECTION OF DEBTS OWED TO COURTS -- CONTRACTS FOR COLLECTION. (1) The supreme court, or the clerks of the district court, with the approval of the administrative district judge, may enter into contracts in accordance with this section for collection services for debts owed to courts. The cost of collection shall be paid by the defendant as an administrative surcharge when the defendant fails to pay any amount ordered by the court and the court utilizes the services of a contracting agent pursuant to this section.

(2) As used in this section:

(a) "Contracting agent" means a person, firm or other entity who contracts to provide collection services.

(b) "Cost of collection" means the fee specified in contracts to be paid to or retained by a contracting agent for collection services.

(c) "Debts owed to courts" means any assessment of fines, court costs, surcharges, penalties, fees, restitution, moneys expended in providing counsel and other defense services to indigent defendants or other charges which a court judgment has ordered to be paid to the court in criminal cases, and which remain unpaid in whole or in part, and includes any interest or penalties on such unpaid amounts as provided for in the judgment or by law.

(3) The supreme court may adopt rules as deemed appropriate for the administration of this section, including procedures to be used in the negotiation and execution of contracts pursuant to this section, procedures to be followed by courts which utilize collection services under such contracts, and procedures for the compromise of debts owed to courts in criminal cases.

(4) Each contract entered into pursuant to this section shall specify the scope of work to be performed and provide for a fee to be paid to or retained by the contracting agent for collection services. Such fee shall be designated as the cost of collection, and shall not exceed thirty-three percent (33%) of the amount collected. The cost of collection shall be deducted from the amount collected but shall not be deducted from the debts owed to courts.

(5) Contracts entered into shall provide for the payment of any amounts collected to the clerk of the district court for the court in which the debt being collected originated after first deducting the collection fee. In accounting for amounts collected from any person pursuant to this section, the district court clerk shall credit the person's amount owed in the amount of the net proceeds collected and shall not reduce the amount owed by any person by that portion of any payment which constitutes the cost of collection pursuant to this section.

(6) With the appropriate cost of collection paid to the contracting agent as agreed upon in the contract, the clerk shall then distribute the amounts collected in accordance with the law.

Approved February 23, 2011.

CHAPTER 15  
(H.B. No. 61)

AN ACT

RELATING TO MOTOR VEHICLES AND CRIMES AND PUNISHMENTS; AMENDING SECTION 18-8002, IDAHO CODE, TO DELETE LANGUAGE RELATING TO A PERSON REFUSING TO SUBMIT TO OR FAILING TO COMPLETE CERTAIN EVIDENTIARY TESTING, TO REVISE A PENALTY PROVISION IF A MOTORIST REFUSES TO SUBMIT TO OR COMPLETE CERTAIN EVIDENTIARY TESTING AND TO REVISE PROVISIONS RELATING TO A REQUEST FOR A HEARING; AMENDING SECTION 18-8002A, IDAHO CODE, TO DELETE LANGUAGE RELATING TO A PERSON REFUSING TO SUBMIT TO OR FAILING TO COMPLETE AND PASS CERTAIN EVIDENTIARY TESTING, TO REVISE PROVISIONS RELATING TO SERVICE OF SUSPENSION, TO REVISE PROVISIONS RELATING TO A PEACE OFFICER FORWARDING TO THE DEPARTMENT A COPY OF A COMPLETED NOTICE OF SUSPENSION, TO DELETE REFERENCES TO A TEMPORARY PERMIT AND TO REVISE PROVISIONS RELATING TO AN ORDER VACATING A SUSPENSION; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-8002, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES -- PENALTY AND SUSPENSION UPON REFUSAL OF TESTS. (1) Any person who drives or is in actual physical control of a motor vehicle in this state shall be deemed to have given his consent to evidentiary testing for concentration of alcohol as defined in section 18-8004, Idaho Code, and to have given his consent to evidentiary testing for the presence of drugs or other intoxicating substances, provided that such testing is administered at the request of a peace officer having reasonable grounds to believe that person has been driving or in actual physical control of a motor vehicle in violation of the provisions of section 18-8004, Idaho Code, or section 18-8006, Idaho Code.

(2) Such person shall not have the right to consult with an attorney before submitting to such evidentiary testing.

(3) At the time evidentiary testing for concentration of alcohol, or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if he refuses to submit to or if he fails to complete, evidentiary testing:

(a) He is subject to a civil penalty of two hundred fifty dollars (\$250) for refusing to take the test;

~~(b) His driver's license will be seized by the peace officer and a temporary permit will be issued; provided however, that no peace officer shall issue a temporary permit pursuant to this section to a driver whose driver's license or permit has already been and is suspended or revoked because of previous violations, and in no instance shall a temporary permit be issued to a driver of a commercial vehicle who refuses to submit to or fails to complete an evidentiary test;~~

~~(c) He has the right to request a hearing within seven (7) days to show cause why he refused to submit to, or complete evidentiary testing;~~

~~(dc) If he does not request a hearing or does not prevail at the hearing, the court shall sustain the civil penalty and his driver's license will be suspended absolutely for one (1) year if this is his first refusal and two (2) years if this is his second refusal within ten (10) years;~~

~~(ed) Provided however, if he is enrolled in and is a participant in good standing in a drug court approved by the supreme court drug court and mental health court coordinating committee under the provisions~~

of chapter 56, title 19, Idaho Code, then he shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court, provided that he has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by him and that he has shown proof of financial responsibility; and

(fe) After submitting to evidentiary testing he may, when practicable, at his own expense, have additional tests made by a person of his own choosing.

(4) If the motorist refuses to submit to or complete evidentiary testing after the information has been given in accordance with subsection (3) above:

(a) He shall be fined a civil penalty of two hundred fifty dollars (\$250) and ~~his driver's license or permit shall be seized by the peace officer and forwarded to the court and a temporary permit shall be issued by the peace officer which allows him to operate a motor vehicle until the date of his hearing, if a hearing is requested, but in no event for more than thirty (30) days; provided however, that no peace officer shall issue a temporary permit pursuant to this section to a driver whose driver's license or permit has already been and is suspended or revoked because of previous violations and in no instance shall a temporary permit be issued to a driver of a commercial vehicle who refuses to submit to or fails to complete an evidentiary test;~~

(b) A written request may be made within seven (7) calendar days for a hearing before the court; if requested, the hearing must be held within thirty (30) days of the seizure date of service unless this period is, for good cause shown, extended by the court for one (1) additional thirty (30) day period. ~~The court, in granting such an extension, may, for good cause shown, extend the defendant's temporary driving privileges for one (1) additional thirty (30) day period.~~ The hearing shall be limited to the question of why the defendant did not submit to, or complete, evidentiary testing, and the burden of proof shall be upon the defendant; the court shall sustain a two hundred fifty dollar (\$250) civil penalty immediately and suspend all the defendant's driving privileges immediately for one (1) year for a first refusal and two (2) years for a second refusal within ten (10) years unless it finds that the peace officer did not have legal cause to stop and request him to take the test or that the request violated his civil rights;

(c) If a hearing is not requested by written notice to the court concerned within seven (7) calendar days, upon receipt of a sworn statement by the peace officer of the circumstances of the refusal, the court shall sustain a two hundred fifty dollar (\$250) civil penalty and suspend the defendant's driving privileges for one (1) year for a first refusal and two (2) years for a second refusal within ten (10) years, during which time he shall have absolutely no driving privileges of any kind;

(d) Notwithstanding the provisions of subsection (4) (b) and (c) of this section, if the defendant is enrolled in and is a participant in good standing in a drug court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, then the defendant shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court, provided that the defendant has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that an ignition interlock device is installed on each of the motor vehicles owned or operated, or

both, by the defendant and that the defendant has shown proof of financial responsibility as defined and in the amounts specified in section 49-117, Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the defendant successfully completes the drug court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court program; and

(e) After submitting to evidentiary testing at the request of the peace officer, he may, when practicable, at his own expense, have additional tests made by a person of his own choosing. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission of results of evidentiary testing for alcohol concentration or for the presence of drugs or other intoxicating substances taken at the direction of the peace officer unless the additional test was denied by the peace officer.

(5) Any sustained civil penalty or suspension of driving privileges under this section or section 18-8002A, Idaho Code, shall be a civil penalty separate and apart from any other suspension imposed for a violation of other Idaho motor vehicle codes or for a conviction of an offense pursuant to this chapter, and may be appealed to the district court.

(6) No hospital, hospital officer, agent, or employee, or health care professional licensed by the state of Idaho, whether or not such person has privileges to practice in the hospital in which a body fluid sample is obtained or an evidentiary test is made, shall incur any civil or criminal liability for any act arising out of administering an evidentiary test for alcohol concentration or for the presence of drugs or other intoxicating substances at the request or order of a peace officer in the manner described in this section and section 18-8002A, Idaho Code; provided that nothing in this section shall relieve any such person or legal entity from civil liability arising from the failure to exercise the community standard of care.

(a) This immunity extends to any person who assists any individual to withdraw a blood sample for evidentiary testing at the request or order of a peace officer, which individual is authorized to withdraw a blood sample under the provisions of section 18-8003, Idaho Code, regardless of the location where the blood sample is actually withdrawn.

(b) A peace officer is empowered to order an individual authorized in section 18-8003, Idaho Code, to withdraw a blood sample for evidentiary testing when the peace officer has probable cause to believe that the suspect has committed any of the following offenses:

(i) Aggravated driving under the influence of alcohol, drugs or other intoxicating substances as provided in section 18-8006, Idaho Code;

(ii) Vehicular manslaughter as provided in subsection (3) (a), (b) and (c) of section 18-4006, Idaho Code;

(iii) Aggravated operating of a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances as provided in section 67-7035, Idaho Code; or

(iv) Any criminal homicide involving a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances.

(c) Nothing herein shall limit the discretion of the hospital administration to designate the qualified hospital employee responsible to withdraw the blood sample.

(d) The law enforcement agency that requests or orders withdrawal of the blood sample shall pay the reasonable costs to withdraw such blood sample, perform laboratory analysis, preserve evidentiary test results, and testify in judicial proceedings. The court may order restitution pursuant to the provisions of section 18-8003(2), Idaho Code.

- (e) The withdrawal of the blood sample may be delayed or terminated if:
- (i) In the reasonable judgment of the hospital personnel withdrawal of the blood sample may result in serious bodily injury to hospital personnel or other patients; or
  - (ii) The licensed health care professional treating the suspect believes the withdrawal of the blood sample is contraindicated because of the medical condition of the suspect or other patients.

(7) "Actual physical control" as used in this section and section 18-8002A, Idaho Code, shall be defined as being in the driver's position of the motor vehicle with the motor running or with the motor vehicle moving.

(8) Any written notice required by this section shall be effective upon mailing.

(9) For the purposes of this section and section 18-8002A, Idaho Code, "evidentiary testing" shall mean a procedure or test or series of procedures or tests, including the additional test authorized in subsection (10) of this section, utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person.

(10) A person who submits to a breath test for alcohol concentration, as defined in subsection (4) of section 18-8004, Idaho Code, may also be requested to submit to a second evidentiary test of blood or urine for the purpose of determining the presence of drugs or other intoxicating substances if the peace officer has reasonable cause to believe that a person was driving under the influence of any drug or intoxicating substance or the combined influence of alcohol and any drug or intoxicating substance. The peace officer shall state in his or her report the facts upon which that belief is based.

(11) Notwithstanding any other provision of law to the contrary, the civil penalty imposed under the provisions of this section must be paid, as ordered by the court, to the county justice fund or the county current expense fund where the incident occurred. If a person does not pay the civil penalty imposed as provided in this section within thirty (30) days of the imposition, unless this period has been extended by the court for good cause shown, the prosecuting attorney representing the political subdivision where the incident occurred may petition the court in the jurisdiction where the incident occurred to file the order imposing the civil penalty as an order of the court. Once entered, the order may be enforced in the same manner as a final judgment of the court. In addition to the civil penalty, attorney's fees, costs and interest may be assessed against any person who fails to pay the civil penalty.

SECTION 2. That Section 18-8002A, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF TESTS. (1) Definitions. As used in this section:

- (a) "Actual physical control" means being in the driver's position of a motor vehicle with the motor running or with the vehicle moving.
- (b) "Administrative hearing" means a hearing conducted by a hearing officer to determine whether a suspension imposed by the provisions of this section should be vacated or sustained.
- (c) "Department" means the Idaho transportation department and, as the context requires, shall be construed to include any agent of the department designated by rule as hereinafter provided.
- (d) "Director" means the director of the Idaho transportation department.
- (e) "Evidentiary testing" means a procedure or test or series of procedures or tests utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person, includ-

ing additional testing authorized by subsection (6) of this section. An evidentiary test for alcohol concentration shall be based on a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath, or sixty-seven (67) milliliters of urine. Analysis of blood, breath or urine for the purpose of determining alcohol concentration shall be performed by a laboratory operated by the Idaho state police or by a laboratory approved by the Idaho state police under the provisions of approval and certification standards to be set by the Idaho state police, or by any other method approved by the Idaho state police. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated and approved by the Idaho state police or by any other method approved by the Idaho state police shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(f) "Hearing officer" means a person designated by the department to conduct administrative hearings. The hearing officer shall have authority to administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas, regulate the course and conduct of the hearing and make a final ruling on the issues before him.

(g) "Hearing request" means a request for an administrative hearing on the suspension imposed by the provisions of this section.

(2) Information to be given. At the time of evidentiary testing for concentration of alcohol, or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if the person refuses to submit to or fails to complete evidentiary testing, or if the person submits to and completes evidentiary testing and the test results indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, the person shall be informed substantially as follows (but need not be informed verbatim):

If you refuse to submit to or if you fail to complete and pass evidentiary testing for alcohol or other intoxicating substances:

(a) ~~The peace officer will seize your driver's license and issue a notice of suspension and a temporary driving permit to you, but no peace officer will issue you a temporary driving permit if your driver's license or permit has already been and is suspended or revoked. No peace officer shall issue a temporary driving permit to a driver of a commercial vehicle who refuses to submit to or fails to complete and pass an evidentiary test;~~

(b) You have the right to request a hearing within seven (7) days of the notice of suspension of your driver's license to show cause why you refused to submit to or to complete and pass evidentiary testing and why your driver's license should not be suspended;

(c) If you refused or failed to complete evidentiary testing and do not request a hearing before the court or do not prevail at the hearing, your driver's license will be suspended. The suspension will be for one (1) year if this is your first refusal. The suspension will be for two (2) years if this is your second refusal within ten (10) years. You will not be able to obtain a temporary restricted license during that period;

(d) If you complete evidentiary testing and fail the testing and do not request a hearing before the department or do not prevail at the hearing, your driver's license will be suspended. This suspension will be for ninety (90) days if this is your first failure of evidentiary testing, but you may request restricted noncommercial vehicle driving privileges after the first thirty (30) days. The suspension will be for one (1) year if this is your second failure of evidentiary testing within

five (5) years. You will not be able to obtain a temporary restricted license during that period;

(e) If you become enrolled in and are a participant in good standing in a drug court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, you shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court, provided that you have served a period of absolute suspension of driving privileges of at least forty-five (45) days, that an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by you and that you have shown proof of financial responsibility; and

(f) After submitting to evidentiary testing you may, when practicable, at your own expense, have additional tests made by a person of your own choosing.

(3) Rulemaking authority of the Idaho state police. The Idaho state police may, pursuant to chapter 52, title 67, Idaho Code, prescribe by rule:

(a) What testing is required to complete evidentiary testing under this section; and

(b) What calibration or checking of testing equipment must be performed to comply with the department's requirements. Any rules of the Idaho state police shall be in accordance with the following: a test for alcohol concentration in breath as defined in section 18-8004, Idaho Code, and subsection (1) (e) of this section will be valid for the purposes of this section if the breath alcohol testing instrument was approved for testing by the Idaho state police in accordance with section 18-8004, Idaho Code, at any time within ninety (90) days before the evidentiary testing. A test for alcohol concentration in blood or urine as defined in section 18-8004, Idaho Code, that is reported by the Idaho state police or by any laboratory approved by the Idaho state police to perform this test will be valid for the purposes of this section.

(4) Suspension.

(a) Upon receipt of the sworn statement of a peace officer that there existed legal cause to believe a person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances and that the person submitted to a test and the test results indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, the department shall suspend the person's driver's license, driver's permit, driving privileges or nonresident driving privileges:

(i) For a period of ninety (90) days for a first failure of evidentiary testing under the provisions of this section. The first thirty (30) days of the suspension shall be absolute and the person shall have absolutely no driving privileges of any kind. Restricted noncommercial vehicle driving privileges applicable during the remaining sixty (60) days of the suspension may be requested as provided in subsection (9) of this section.

(ii) For a period of one (1) year for a second and any subsequent failure of evidentiary testing under the provisions of this section within the immediately preceding five (5) years. No driving privileges of any kind shall be granted during the suspension imposed pursuant to this subsection.

The person may request an administrative hearing on the suspension as provided in subsection (7) of this section. Any right to contest the suspension shall be waived if a hearing is not requested as therein provided.

(b) The suspension shall become effective thirty (30) days after service upon the person of the notice of suspension. The notice shall be in a form provided by the department and shall state:

- (i) The reason and statutory grounds for the suspension;
- (ii) The effective date of the suspension;
- (iii) The suspension periods to which the person may be subject as provided in subsection (4) (a) of this section;
- (iv) The procedures for obtaining restricted noncommercial vehicle driving privileges;
- (v) The rights of the person to request an administrative hearing on the suspension and that if an administrative hearing is not requested within seven (7) days of service of the notice of suspension the right to contest the suspension shall be waived;
- (vi) The procedures for obtaining an administrative hearing on the suspension;
- (vii) The right to judicial review of the hearing officer's decision on the suspension and the procedures for seeking such review.

(c) Notwithstanding the provisions of subsection (4) (a) (i) and (ii) of this section, a person who is enrolled in and is a participant in good standing in a drug court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court, provided that the offender has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the offender and that the offender has shown proof of financial responsibility as defined and in the amounts specified in section 49-117, Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the offender successfully completes the drug court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court program.

(5) Service of suspension by peace officer or the department. If the driver submits to evidentiary testing after the information in subsection (2) of this section has been provided and the results of the test indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code:

(a) ~~The peace officer shall take possession of the person's driver's license, shall issue a temporary permit which shall be valid for a period not to exceed thirty (30) days from the date of issuance, and, acting on behalf of the department, will serve the person with a notice of suspension in the form and containing the information required under subsection (4) of this section. The department may serve the person with a notice of suspension if the peace officer failed to issue the notice of suspension or failed to include the date of service as provided in subsection (4) (b) of this section.~~

(b) Within five (5) business days following service of a notice of suspension the peace officer shall forward to the department a copy of the completed notice of suspension form upon which the date of service upon the driver shall be clearly indicated, ~~a copy of any completed temporary permit form along with any confiscated driver's license,~~ a certified copy or duplicate original of the results of all tests for alcohol concentration, as shown by analysis of breath administered at the direction of the peace officer, and a sworn statement of the officer,

which may incorporate any arrest or incident reports relevant to the arrest and evidentiary testing setting forth:

- (i) The identity of the person;
- (ii) Stating the officer's legal cause to stop the person;
- (iii) Stating the officer's legal cause to believe that the person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code;
- (iv) That the person was advised of the consequences of taking and failing the evidentiary test as provided in subsection (2) of this section;
- (v) That the person was lawfully arrested;
- (vi) That the person was tested for alcohol concentration, drugs or other intoxicating substances as provided in this chapter, and that the results of the test indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code.

If an evidentiary test of blood or urine was administered rather than a breath test, the peace officer or the department shall serve the notice of suspension once the results are received. The sworn statement required in this subsection shall be made on forms in accordance with rules adopted by the department.

(c) The department may serve the person with a notice of suspension if the peace officer failed to issue the notice of suspension or failed to include the date of service as provided in subsection (4) (b) of this section.

(6) Additional tests. After submitting to evidentiary testing at the request of the peace officer, the person may, when practicable, at his own expense, have additional tests for alcohol concentration or for the presence of drugs or other intoxicating substances made by a person of his own choosing. The person's failure or inability to obtain additional tests shall not preclude admission of the results of evidentiary tests administered at the direction of the peace officer unless additional testing was denied by the peace officer.

(7) Administrative hearing on suspension. A person who has been served with a notice of suspension after submitting to an evidentiary test may request an administrative hearing on the suspension before a hearing officer designated by the department. The request for hearing shall be in writing and must be received by the department within seven (7) calendar days of the date of service upon the person of the notice of suspension, and shall include what issue or issues shall be raised at the hearing. The date on which the hearing request was received shall be noted on the face of the request.

If a hearing is requested, the hearing shall be held within twenty (20) days of the date the hearing request was received by the department unless this period is, for good cause shown, extended by the hearing officer for one ten (10) day period. Such extension shall not operate as a stay of the suspension and ~~any temporary permit shall expire thirty (30) days after service of the notice of suspension,~~ notwithstanding an extension of the hearing date beyond such thirty (30) day period. Written notice of the date and time of the hearing shall be sent to the party requesting the hearing at least seven (7) days prior to the scheduled hearing date. The department may conduct all hearings by telephone if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

The hearing shall be recorded. The sworn statement of the arresting officer, and the copy of the notice of suspension and ~~any temporary permit~~ issued by the officer shall be admissible at the hearing without further evidentiary foundation. The results of any tests for alcohol concentration or

the presence of drugs or other intoxicating substances by analysis of blood, urine or breath administered at the direction of the peace officer and the records relating to calibration, certification, approval or quality control pertaining to equipment utilized to perform the tests shall be admissible as provided in section 18-8004(4), Idaho Code. The arresting officer shall not be required to participate unless directed to do so by a subpoena issued by the hearing officer.

The burden of proof shall be on the person requesting the hearing. The hearing officer shall not vacate the suspension unless he finds, by a preponderance of the evidence, that:

- (a) The peace officer did not have legal cause to stop the person; or
- (b) The officer did not have legal cause to believe the person had been driving or was in actual physical control of a vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
- (c) The test results did not show an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
- (d) The tests for alcohol concentration, drugs or other intoxicating substances administered at the direction of the peace officer were not conducted in accordance with the requirements of section 18-8004(4), Idaho Code, or the testing equipment was not functioning properly when the test was administered; or
- (e) The person was not informed of the consequences of submitting to evidentiary testing as required in subsection (2) of this section.

If the hearing officer finds that the person has not met his burden of proof, he shall sustain the suspension. The hearing officer shall make findings of fact and conclusions of law on each issue and shall enter an order vacating or sustaining the suspension. ~~If the suspension is vacated, the person's driver's license, unless unavailable by reason of an existing suspension, revocation, cancellation, disqualification or denial shall be returned to him.~~ The findings of fact, conclusions of law and order entered by the hearing officer shall be considered a final order pursuant to the provisions of chapter 52, title 67, Idaho Code, except that motions for reconsideration of such order shall be allowed and new evidence can be submitted.

The facts as found by the hearing officer shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension required to be imposed under the provisions of this section. If a license is suspended under this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, both the suspension under this section and the suspension imposed pursuant to the provisions of section 18-8005 or 18-8006, Idaho Code, shall be imposed, but the periods of suspension shall run concurrently, with the total period of suspension not to exceed the longer of the applicable suspension periods, unless the court ordering the suspension in the criminal case orders to the contrary.

(8) Judicial review. A party aggrieved by the decision of the hearing officer may seek judicial review of the decision in the manner provided for judicial review of final agency action provided in chapter 52, title 67, Idaho Code.

(9) Restricted noncommercial vehicle driving privileges. A person served with a notice of suspension for ninety (90) days pursuant to this section may apply to the department for restricted noncommercial vehicle driving privileges, to become effective after the thirty (30) day absolute suspension has been completed. The request may be made at any time after service of the notice of suspension. Restricted noncommercial vehicle driving

privileges will be issued for the person to travel to and from work and for work purposes not involving operation of a commercial vehicle, to attend an alternative high school, work on a GED, for postsecondary education, or to meet the medical needs of the person or his family if the person is eligible for restricted noncommercial vehicle driving privileges. Any person whose driving privileges are suspended under the provisions of this chapter may be granted privileges to drive a noncommercial vehicle but shall not be granted privileges to operate a commercial motor vehicle.

(10) Rules. The department may adopt rules under the provisions of chapter 52, title 67, Idaho Code, deemed necessary to implement the provisions of this section.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after May 1, 2011.

Approved February 23, 2011.

CHAPTER 16  
(H.B. No. 70)

AN ACT

RELATING TO ELECTRICAL APPRENTICES; AMENDING SECTION 54-1007, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CERTAIN RULES; AND AMENDING SECTION 54-1013, IDAHO CODE, TO PROVIDE FOR RENEWAL OF CERTAIN REGISTRATIONS AND TO PROVIDE REQUIREMENTS RELATING TO RENEWAL OF CERTAIN REGISTRATIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-1007, Idaho Code, be, and the same is hereby amended to read as follows:

54-1007. ISSUANCE OF LICENSES -- RECIPROCITY. (1) The administrator shall issue licenses to such persons as have by examination shown themselves to be fit, competent and qualified to engage in the trade of journeyman electrician, specialty electrician or master electrician as defined in section 54-1003A, Idaho Code, and to such persons, firms, partnerships, associations or corporations as have shown themselves to be fit, competent and qualified to engage in the business of electrical contracting or specialty electrical contracting as defined in section 54-1003A, Idaho Code.

(2) An apprentice electrician, as defined in section 54-1003A, Idaho Code, may take the journeyman's examination if he has completed the required related instruction for electrical apprentices as approved by the Idaho state board for professional-technical education, completion of which shall be evidenced by a certificate from an approved provider, and has worked the number of hours as prescribed by the Idaho electrical board, provided that for all the time he is claiming to have worked as an apprentice electrician, the apprentice shall have been registered with the division of building safety as an apprentice. The electrical board may, by rule, fix the apprentice registration fee, in an amount not to exceed the costs of issuing apprentice registration certificates and enforcing the apprentice registration provisions of this chapter, and may also by rule establish requirements relative to the manner of registration renewal, verification of employment, the number of instructional hours completed, continuation training and the number of hours worked.

(a) All verification of employment forms submitted by an apprentice shall be entered into and maintained in the apprentice's file by the division of building safety. The division of building safety shall provide the apprentice online access to this information.

(b) An apprentice who has completed the number of instructional hours and has not taken or passed the journeyman's examination within two (2) years of completion of the instructional training hours, shall provide proof of continuation training as set by rule of the electrical board.

(c) An apprentice who has not advanced in apprenticeship training for a period of two (2) years shall complete continuation training as set by rule of the electrical board.

(3) Any person who has worked as a licensed journeyman for a period of not less than four (4) years and who has worked the number of hours as prescribed by rule of the board as a licensed journeyman electrician shall be considered as qualified to apply for a master electrician's license in this state. The Idaho electrical board, in establishing by rule the requirements for a master electrician's license, shall also take into account the applicant's performance as a journeyman electrician.

(4) Any person with out-of-state experience who has worked as a journeyman electrician or as an apprentice electrician for a period of four (4) years, and who has met such other requirements as established by rule of the board, shall be considered as qualified to apply for a journeyman electrician's license in this state.

(5) To the extent that other states which provide for the licensing of electricians provide for similar action, the administrator, on the recommendation of the Idaho electrical board, may grant licenses to electricians licensed by such other states, upon payment by the applicant of the required fee and upon furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this subsection are not required to take a written examination.

SECTION 2. That Section 54-1013, Idaho Code, be, and the same is hereby amended to read as follows:

54-1013. RENEWAL OF LICENSES OR REGISTRATIONS -- INACTIVE LICENSES. (1) A license or registration once issued under this chapter, unless revoked or suspended as herein provided, may be renewed at any time during the final month of the licensing period on the payment of the renewal fee herein specified, proof of satisfaction of the applicable continuing education requirements as established by the electrical board, proof of satisfaction of applicable apprentice and specialty trainee instruction and work requirements as established by the electrical board, and provided that all outstanding civil penalties, and permit or other fees, have been paid in full, and all outstanding correction notices have been satisfactorily resolved. For electrical contractors and specialty electrical contractors, proof of liability insurance in the amount of three hundred thousand dollars (\$300,000) shall also be required, and proof of worker's compensation insurance shall be required if applicable.

(2) Any license which has expired may be revived at any time within one (1) year from the last day of the final month of the licensing period, by payment of the revival fee herein specified, together with all outstanding civil penalties, and permit or other fees and penalties, and upon proof that outstanding correction notices have been satisfactorily resolved. For electrical contractors and specialty electrical contractors, proof of liability insurance in the amount of three hundred thousand dollars (\$300,000) shall also be required, and proof of worker's compensation insurance shall be required if applicable.

(3) Certificates of competency issued prior to July 1, 1961, shall, for the purpose of this chapter, be considered as licenses and may be renewed or revived as herein provided.

(4) The administrator may renew, on an inactive basis, the license of an electrical contractor or specialty contractor who is not engaged in electrical contracting in this state. The board shall fix and collect an inactive license fee for such an inactive license renewal in an amount not to exceed one hundred fifty dollars (\$150). Each inactive license shall be issued for a period of one (1) year. An electrical contractor or specialty contractor holding an inactive license may not engage in the practice of electrical contracting or specialty contracting in this state. If an electrical contractor or specialty contractor wishes to convert his inactive license to an active license, he may do so by paying a processing fee of thirty dollars (\$30.00) and providing proof of the required liability insurance and applicable worker's compensation insurance.

Approved February 24, 2011.

CHAPTER 17  
(S.B. No. 1011)

AN ACT

RELATING TO THE RULES OF THE ROAD; AMENDING SECTION 49-624, IDAHO CODE, TO CLARIFY DRIVER DUTIES UPON APPROACHING A STATIONARY POLICE VEHICLE OR AN AUTHORIZED EMERGENCY VEHICLE DISPLAYING FLASHING LIGHTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-624, Idaho Code, be, and the same is hereby amended to read as follows:

49-624. DRIVER DUTY UPON APPROACHING A STATIONARY POLICE VEHICLE OR AN AUTHORIZED EMERGENCY VEHICLE DISPLAYING FLASHING LIGHTS. The driver of a motor vehicle, upon approaching a stationary police vehicle displaying flashing lights or an authorized emergency vehicle displaying flashing lights shall:

(1) If the driver is traveling on a highway with two (2) or more lanes carrying traffic in the same direction, immediately reduce the speed of his vehicle below the posted speed limit, proceed with due caution and, if traveling in a lane adjacent to the stationary police vehicle displaying flashing lights or the authorized emergency vehicle displaying flashing lights, change lanes into a lane that is not adjacent to such vehicle as soon as it is possible to do so in a manner that is reasonable and prudent under the conditions then existing, with regard to actual and potential hazards.

(2) If the driver is traveling on a highway with one (1) lane for each direction of travel, immediately reduce the speed of his vehicle below the posted speed limit, and maintain a safe speed for the road, weather and traffic conditions until completely past the stationary police vehicle or authorized emergency vehicle.

Approved February 25, 2011.

CHAPTER 18  
(S.B. No. 1052)

AN ACT

RELATING TO USE TAX; AMENDING SECTION 63-3621, IDAHO CODE, TO PROVIDE AN EXEMPTION FROM USE TAX FOR MILITARY PERSONNEL TEMPORARILY ASSIGNED IN THIS STATE AND SPOUSES WHO ACCOMPANY THEM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3621, Idaho Code, be, and the same is hereby amended to read as follows:

63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after October 1, 2006, for storage, use, or other consumption in this state at the rate of six percent (6%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property unless the property is wireless telecommunications equipment, in which case a recent sales price shall be conclusive evidence of the value of the property.

(a) Every person storing, using, or otherwise consuming, in this state, tangible personal property is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or engaged in business in this state given to the purchaser is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers. A retailer shall not be considered to have stored, used or consumed wireless telecommunications equipment by virtue of giving, selling or otherwise transferring such equipment at a discount as an inducement to a consumer to commence or continue a contract for telecommunications service.

(b) Every retailer engaged in business in this state, and making sales of tangible personal property for the storage, use, or other consumption in this state, not exempted under section 63-3622, Idaho Code, shall, at the time of making the sales or, if storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the state tax commission.

(c) The provisions of this section shall not apply when the retailer pays sales tax on the transaction and collects reimbursement for such sales tax from the customer.

(d) Every retailer engaged in business in this state or maintaining a place of business in this state shall register with the state tax commission and give the name and address of all agents operating in this state, the location of all distributions or sales houses or offices or other places of business in this state, and such other information as the state tax commission may require.

(e) For the purpose of the proper administration of this act and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state is sold for storage, use, or other consumption in this state. The burden of proving the sale is tax exempt is upon the person who makes the sale unless he obtains from the purchaser a resale certificate to the effect that the property is purchased for resale or rental. It shall be presumed that sales made to a person who has completed a resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property purchased is taxable to the pur-

chaser as a matter of law in the particular instance claimed on the resale certificate.

A seller may accept a resale certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. The resale certificate relieves the person selling the property from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds the permit provided for by section 63-3620, Idaho Code, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. Other than as provided elsewhere in this section, when a resale certificate, properly executed, is presented to the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter.

The resale certificate shall bear the name and address of the purchaser, shall be signed by the purchaser or his agent, shall indicate the number of the permit issued to the purchaser, or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the state tax commission may prescribe.

(f) If a purchaser who gives a resale certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used.

(g) Any person violating any provision of this section is guilty of a misdemeanor and punishable by a fine not in excess of one hundred dollars (\$100), and each violation shall constitute a separate offense.

(h) It shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer, for storage, use or other consumption in this state.

(i) It shall be presumed that tangible personal property delivered outside this state to a purchaser known by the retailer to be a resident of this state was purchased from a retailer for storage, use, or other consumption in this state. This presumption may be controverted by evidence satisfactory to the state tax commission that the property was not purchased for storage, use, or other consumption in this state.

(j) When the tangible personal property subject to use tax has been subjected to a general retail sales or use tax by another state of the United States in an amount equal to or greater than the amount of the Idaho tax, and evidence can be given of such payment, the property will not be subject to Idaho use tax. If the amount paid the other state was less, the property will be subject to use tax to the extent that the Idaho tax exceeds the tax paid to the other state. For the purposes of this subsection, a registration certificate or title issued by another state or subdivision thereof for a vehicle or trailer or a vessel as defined in section 67-7003, Idaho Code, shall be sufficient evidence of payment of a general retail sales or use tax.

(k) The use tax herein imposed shall not apply to the use by a nonresident of this state of a motor vehicle which is registered or licensed under the laws of the state of his residence and is not used in this state more than a cumulative period of time totaling ninety (90) days in any consecutive twelve (12) months, and which is not required to be registered or licensed under the laws of this state.

(1) The use tax herein imposed shall not apply to the use of household goods, personal effects and personally owned vehicles or personally owned aircraft by a resident of this state, or military personnel temporarily assigned in this state and spouses who accompany them, if such articles were acquired by such person in another state while a resident of that state and primarily for use outside this state and if such use was actual and substantial, but if an article was acquired less than three (3) months prior to the time he entered this state, it will be presumed that the article was acquired for use in this state and that its use outside this state was not actual and substantial. For purposes of this subsection, "resident" shall be as defined in section 63-3013 or 63-3013A, Idaho Code.

(m) The use tax herein imposed shall not apply to the storage, use or other consumption of tangible personal property which is or will be incorporated into real property and which has been donated to and has become the property of:

- (1) A nonprofit organization as defined in section 63-36220, Idaho Code; or
- (2) The state of Idaho; or
- (3) Any political subdivision of the state.

This exemption applies whether the tangible personal property is incorporated in real property by the donee, a contractor or subcontractor of the donee, or any other person.

Approved February 25, 2011.

CHAPTER 19  
(H.B. No. 89)

AN ACT

RELATING TO FIRE PROTECTION DISTRICTS; AMENDING SECTION 31-1423, IDAHO CODE, TO ELIMINATE THE REQUIREMENT THAT THE SECRETARY OF EACH FIRE PROTECTION DISTRICT TRANSMIT TO THE STATE BOARD OF EQUALIZATION A CERTIFIED COPY OF THE RESOLUTION PROVIDING FOR THE PROPERTY TAX LEVY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 31-1423, Idaho Code, be, and the same is hereby amended to read as follows:

31-1423. LEVY. (1) Each year, immediately prior to the annual county levy of taxes, the board of commissioners of each fire protection district, organized and existing under this chapter, may levy a tax upon all the taxable property within the boundaries of such district sufficient to defray the cost of equipping and maintaining the district of twenty-four hundredths percent (.24%) of market value for assessment purposes, to be used for the purposes of this chapter and for no other purpose. The levy shall be made by resolution entered upon the minutes of the board of commissioners of the fire protection district, and it shall be the duty of the secretary of the district, immediately after entry of the resolution in the minutes, to transmit to the county auditor, and the county assessor and state board of equalization certified copies of the resolution providing for such levy. Said taxes shall be collected as provided by section 63-812, Idaho Code.

(2) If two (2) or more fire protection districts consolidate into one (1) district, the provisions of section 63-802, Idaho Code, shall apply to the consolidated district's budget request as if the former district which, in the year of the consolidation, has the higher levy subject to the limitations of section 63-802, Idaho Code, had annexed the other district or districts. In addition, the consolidated district shall receive the bene-

fit of foregone increases accumulated by the former districts under section 63-802(1) (a), Idaho Code.

Approved February 25, 2011.

CHAPTER 20  
(H.B. No. 72)

AN ACT

RELATING TO THE HEATING, VENTILATION AND AIR CONDITIONING BOARD; AMENDING SECTION 54-5004, IDAHO CODE, TO REVISE PROVISIONS RELATING TO BOARD MEMBER TERMS, TO REVISE PROVISIONS RELATING TO COMPOSITION OF THE BOARD, TO REVISE PROVISIONS RELATING TO ELECTION OF A BOARD CHAIRMAN, TO PROVIDE FOR A BOARD VICE CHAIRMAN AND TO REVISE BOARD MEMBER COMPENSATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-5004, Idaho Code, be, and the same is hereby amended to read as follows:

54-5004. IDAHO HEATING, VENTILATION AND AIR CONDITIONING BOARD. (1) The Idaho heating, ventilation and air conditioning board, referred to as the board, is hereby created and made part of the division of building safety. It shall be the responsibility and duty of the administrator of the division of building safety to administer and enforce the provisions of this chapter, and the board shall make, promulgate and publish such rules as may be necessary to carry out the provisions of this chapter. Except as may be limited or prohibited by law, such rules so made and promulgated shall have the force of statute.

(2) The board shall consist of seven (7) members appointed by the governor, with power of removal for cause. Members appointed to fill positions that expire in 2011 and members appointed to fill the two (2) HVAC contractor positions that expire in 2012 shall be appointed for a term of two (2) years. All other members appointed to fill positions that expire in 2012 shall be appointed for a term of three (3) years. Thereafter, all board members shall be appointed for a term of three (3) years. Whenever a vacancy occurs, the governor shall forthwith appoint a qualified person to fill the vacancy for the unexpired portion of the term. All members of the board shall be United States citizens, residents of this state for not less than two (2) years, and qualified by knowledge, integrity and experience to properly perform the functions of the board. All members of the board shall take, subscribe and file with the secretary of state an oath of office in the form, manner and time as prescribed by chapter 4, title 59, Idaho Code.

(3) Of the seven (7) board members, ~~two~~ three (23) members shall be active HVAC contractors with not less than five (5) years' experience in the HVAC contracting business; one (1) member shall be a city official; one (1) member shall be a county official; one (1) member shall be a private sector mechanical engineer with experience in mechanical system design; and one (1) member of the initial board shall be a contractor member of the Idaho electrical board who shall serve a two (2) year term and thereafter the sixth board member shall be an HVAC specialty contractor who shall serve a three (3) year term; and one (1) member of the initial board shall be a contractor member of the Idaho plumbing board who shall serve a two (2) year term and thereafter the seventh board member shall be an HVAC contractor with not less than five (5) years' experience in the HVAC contracting business who shall serve a three (3) year term.

(4) The board shall meet within thirty (30) days after the appointment of all its members and thereafter at such other times as may be expedient and necessary for the proper performance of its duties. At the board's first meeting, and every two (2) years thereafter, the members shall elect one (1) of their number to be chairman and one (1) of their number to be vice chairman. A majority of the board shall constitute a quorum for the transaction of business and not less than two (2) quorum meetings shall be held each year. The board may delegate to any member, or its chairman or other employees, the power to make investigations and hold hearings at any place it may deem proper, and to report findings to it; and may delegate to its chairman and employees the performance of ministerial functions.

(5) Each member of the board shall be compensated as provided in section 59-509(hn), Idaho Code.

Approved February 25, 2011.

CHAPTER 21  
(H.B. No. 90)

AN ACT

RELATING TO INDEPENDENT FINANCIAL AUDITS OF LOCAL GOVERNMENTAL ENTITIES; AMENDING SECTION 67-450B, IDAHO CODE, TO REVISE REQUIREMENTS FOR INDEPENDENT FINANCIAL AUDITS OF LOCAL GOVERNMENTAL ENTITIES AND FILING REQUIREMENTS; AND AMENDING SECTION 67-450D, IDAHO CODE, TO REVISE AUDIT REQUIREMENTS FOR INDEPENDENT FINANCIAL AUDITS OF DESIGNATED ENTITIES AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-450B, Idaho Code, be, and the same is hereby amended to read as follows:

67-450B. INDEPENDENT FINANCIAL AUDITS BY OF LOCAL 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) in the current year shall have an annual audit or may elect to have its financial statements audited on a biennial basis and. The first year that expenditures exceed one hundred thousand dollars (\$100,000) is the first year of the biennial audit period. The local government entity may continue the biennial auditing cycles in subsequent years as long as the entity's annual expenditures during the first year of the biennial audit period 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. In the event that annual expenditures exceed two hundred fifty thousand dollars (\$250,000) in the current year following a year in which a biennial audit was completed, the local government entity shall complete an annual audit. In the event that annual expenditures in the current year do not exceed one hundred thousand dollars (\$100,000) following a year in which an annual or biennial audit was completed, the local government entity has no minimum audit requirement.

(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.

SECTION 2. That Section 67-450D, Idaho Code, be, and the same is hereby amended to read as follows:

67-450D. INDEPENDENT FINANCIAL AUDITS -- DESIGNATED ENTITIES. (1) Notwithstanding any other provisions of the Idaho Code relating to audit requirements regarding the entities hereinafter designated, beginning on July 1, 2010, the requirements set forth in this section shall constitute the minimum audit requirements for the following entities:

Alfalfa and clover seed commission;  
 Idaho apple commission;  
 Idaho aquaculture commission;  
 Idaho barley commission;  
 Idaho bean commission;  
 Idaho beef council;  
 Idaho cherry commission;  
 Idaho dairy products commission;  
 Idaho food quality assurance institute;  
 Idaho forest products commission;  
 Idaho grape growers and wine producers commission;  
 Idaho honey advertising commission;  
 Idaho hop grower's commission;  
 Idaho mint commission;  
 Idaho oilseed commission;  
 Idaho pea and lentil commission;  
 Commission on pesticide management;  
 Idaho potato commission;  
 Idaho rangeland resources commission;  
 Soil and water conservation commission;  
 Idaho wheat commission.

(2) The minimum requirements for any audit performed under the provisions of this section are:

(a) Any 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) Any 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), in the current year shall have an annual audit or may elect to have its financial statements audited on a biennial basis and. The first year that expenditures exceed one hundred thousand dollars (\$100,000) is the first year of the biennial audit period. The designated entity may continue the biennial auditing cycles in subsequent years as long as the entity's annual expenditures during the first year of the biennial audit period 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. In the event that annual expenditures exceed two hundred fifty thousand dollars (\$250,000) in the current year following a year in which a biennial audit was completed, the designated entity shall complete an annual audit. In the event that annual expenditures in the current year do not exceed one hundred thousand dollars (\$100,000) following a year in which an annual or biennial audit was completed, the designated entity has no minimum audit requirement.

(c) Any entity whose annual expenditures (from all sources) do not exceed one hundred thousand dollars (\$100,000) has no minimum audit requirements under the provisions of this section.

(d) Federal audit requirements applicable because of expenditure of federal assistance supersede the minimum audit requirements provided in this section.

(3) All moneys received or expended by the entities identified in subsection (1) of this section shall be audited as specified in subsection (2) of this section by a certified public accountant designated by the entity, who shall furnish a copy of such audit to the director of the legislative services office and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the commission's fiscal year.

(4) Any entity identified in subsection (1) of this section that is not audited pursuant to the provisions of this section shall submit an unaudited annual statement of revenues, expenditures and fund balances to the director of the legislative services office, to the senate agricultural affairs committee and the house agricultural affairs committee, to the state controller and to the division of financial management.

(5) The right is reserved to the state of Idaho to audit the funds of the entities identified in this section at any time.

Approved February 25, 2011.

CHAPTER 22  
(H.B. No. 45)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATES; AMENDING SECTION 49-402, IDAHO CODE, TO PROVIDE A CODE REFERENCE; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-420K, IDAHO CODE, TO ESTABLISH THE IDAHO AVIATION FOUNDATION SPECIAL LICENSE PLATE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-402, Idaho Code, be, and the same is hereby amended to read as follows:

49-402. ANNUAL REGISTRATION. (1) The annual fee for operating each pickup truck, each neighborhood electric vehicle and each other motor vehicle having a maximum gross weight not in excess of eight thousand (8,000) pounds and that complies with the federal motor vehicle safety standards as defined in section 49-107, Idaho Code, shall be:

Vehicles one (1) and two (2) years old .....	\$48.00
Vehicles three (3) and four (4) years old .....	\$36.00
Vehicles five (5) and six (6) years old .....	\$36.00
Vehicles seven (7) and eight (8) years old .....	\$24.00
Vehicles over eight (8) years old .....	\$24.00

There shall be twelve (12) registration periods, starting in January for holders of validation registration stickers numbered 1, and proceeding consecutively through December for holders of validation registration stickers numbered 12, each of which shall start on the first day of a calendar month and end on the last day of the twelfth month from the first day of the beginning month. Registration periods shall expire midnight on the last day of the registration period in the year designated by the validation registration sticker. The numeral digit on the validation registration stickers shall, as does the registration card, fix the registration period under the staggered plate system of Idaho for the purpose of reregistration and notice of expiration.

A vehicle that has once been registered for any of the above designated periods shall, upon reregistration, be registered for the period bearing the same number, and the registration card shall show and be the exclusive proof of the expiration date of registration and licensing. Vehicles may be initially registered for less than a twelve (12) month period, or for more than a twelve (12) month period, and the fee prorated on a monthly basis if the fractional registration tends to fulfill the purpose of the monthly series registration system.

(2) For all school buses operated either by a nonprofit, nonpublic school or operated pursuant to a service contract with a school district for transporting children to or from school or in connection with school approved activities, the annual fee shall be twenty-four dollars (\$24.00).

(3) For all motorcycles and motor-driven cycles which comply with the federal motor vehicle safety standards, operated upon the public highways the annual fee shall be nine dollars (\$9.00).

(4) For operation of an all-terrain vehicle, utility type vehicle or motorbike, excluding a motorbike with an engine displacement of fifty (50) cubic centimeters or less, on city, county or highway district roads or highways open to such use, a restricted vehicle license plate fee pursuant to section 49-450, Idaho Code, shall be paid. In addition, the registration fee specified in section 67-7122, Idaho Code, shall be paid as provided in section 67-7122, Idaho Code. The registration and restricted vehicle license plate exemption provided in section 49-426(2), Idaho Code, applies to all-terrain vehicles, utility type vehicles, motorbikes and motorcycles used for the purposes described in subsection (2) of section 49-426, Idaho Code. Nonresidents shall be allowed to purchase a restricted vehicle license plate and sticker for an all-terrain vehicle, utility type vehicle or motorbike.

(5) For all motor homes the fee shall be as specified in subsection (1) of this section and shall be in addition to the fees provided for in section 49-445, Idaho Code.

(6) Registration fees shall not be subject to refund.

(7) A financial institution or repossession service contracted to a financial institution repossessing vehicles under the terms of a security agreement shall move the vehicle from the place of repossession to the financial institution's place of business on a repossession plate. The repossession plate shall also be used for demonstrating the vehicle to a prospective purchaser for a period not to exceed ninety-six (96) hours. The

registration fees for repossession plates shall be as required in subsection (1) of this section for a vehicle one (1) and two (2) years old. All other fees required under chapter 4, title 49, Idaho Code, shall be in addition to the registration fee. The repossession plate shall be issued on an annual basis by the department.

(8) A wrecker or towing business engaged in the process of towing motorized vehicles, which have been wrecked, abandoned, salvaged or may be disabled, may apply for a wrecker plate to be displayed on those vehicles being towed, provided the power unit is properly registered under this chapter. The registration fees for wrecker plates shall be as required in subsection (1) of this section for a vehicle one (1) and two (2) years old. All other fees required under chapter 4, title 49, Idaho Code, shall be in addition to the registration fee. The wrecker plate shall be issued on an annual basis by the department.

(9) In addition to the annual registration fee in this section, there shall be an initial program fee of twenty-five dollars (\$25.00) and an annual program fee of fifteen dollars (\$15.00) for all special license plate programs for those license plates issued pursuant to sections 49-404A, 49-407, 49-408, 49-409, 49-414, 49-416, 49-418 and 49-418D, Idaho Code. For special plates issued pursuant to sections 49-406 and 49-406A, Idaho Code, there shall be an initial program fee of twenty-five dollars (\$25.00) but there shall be no annual renewal fee. For special plates issued pursuant to sections 49-415C, 49-415D, 49-415E, 49-416A, 49-416B, 49-416C, 49-416D, 49-416E, 49-417, 49-417A, 49-417B, 49-417C, 49-417D, 49-417E, 49-418A, 49-418B, 49-418C, 49-418E, 49-419, 49-419A, 49-419B, 49-419C, 49-419D, 49-419E, 49-420, 49-420A, 49-420B, 49-420C, 49-420D, 49-420E, 49-420G, 49-420H, and 49-420I and, 49-420J and 49-420K, Idaho Code, there shall be an initial program fee of thirty-five dollars (\$35.00) and an annual program fee of twenty-five dollars (\$25.00). The fees contained in this subsection shall be applicable to all new special plate programs. The initial program fee and the annual program fee shall be deposited in the state highway account and shall be used to fund the cost of administration of special license plate programs, unless otherwise specified by law.

(10) Any vehicle that does not meet federal motor vehicle safety standards shall not be registered and shall not be permitted to operate on public highways of the state, as defined in section 40-117, Idaho Code, unless otherwise specifically authorized.

SECTION 2. That Chapter 4, Title 49, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 49-420K, Idaho Code, and to read as follows:

49-420K. IDAHO AVIATION FOUNDATION PLATES. (1) Any person who is the owner of a vehicle registered under the provisions of section 49-402, Idaho Code, may apply for and upon department approval receive special Idaho aviation foundation license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of Idaho aviation foundation plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) In addition to the regular registration fee required in chapter 4, title 49, Idaho Code, the applicant shall be charged a fee of thirty-five dollars (\$35.00) for the initial issuance of plates and twenty-five dollars (\$25.00) upon each succeeding annual registration. Thirteen dollars (\$13.00) of the initial fee and thirteen dollars (\$13.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Twenty-two dollars (\$22.00) of each initial fee and twelve dollars (\$12.00) of each renewal fee shall be transferred by the state treasurer to the Idaho aviation

foundation and shall be used by the foundation for grants relating to the maintenance, upgrade and development of airstrips and for improving access and promoting safety at backcountry and recreational airports in Idaho.

(3) Whenever title or interest in a vehicle registered under the provisions of this section is transferred or assigned, the owner may transfer the special plates to another vehicle upon payment of the required transfer fees. The owner may display the plates on another vehicle only upon receipt of the new registration from the department.

(4) The license plate design shall be of a color and design in accordance with the provisions of section 49-402C, Idaho Code. The design and any slogan on the plate shall be acceptable to the Idaho aviation foundation and shall be approved by the department and shall use a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the Idaho aviation foundation.

(5) Sample Idaho aviation foundation license plates may be purchased for a fee of thirty dollars (\$30.00), thirteen dollars (\$13.00) of which shall be deposited in the state highway account and seventeen dollars (\$17.00) of which shall be transferred to the Idaho aviation foundation.

SECTION 3. This act shall be in full force and effect on and after January 1, 2012.

Approved February 25, 2011.

CHAPTER 23  
(H.B. No. 74)

AN ACT

RELATING TO THE ELECTRICAL BOARD; AMENDING SECTION 54-1006, IDAHO CODE, TO REVISE BOARD MEMBERS' COMPENSATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-1006, Idaho Code, be, and the same is hereby amended to read as follows:

54-1006. IDAHO ELECTRICAL BOARD. (1) The Idaho electrical board, hereinafter known as the board, is hereby created and made a part of the division of building safety. It shall be the responsibility and duty of the administrator of the division of building safety to administer and enforce the provisions of this act, and to serve as secretary to the Idaho electrical board.

(2) The board shall consist of nine (9) members to be appointed by the governor with power of removal for cause. Two (2) members shall be licensed journeymen or master electricians; two (2) members shall be employees or officers of licensed electrical contractors; one (1) member shall be a licensed specialty journeyman or contractor; one (1) member shall be an employee or officer of an electrical power provider; one (1) member shall be an employee or officer of a manufacturing plant or other large power user; one (1) member shall be an employee or director of a manufacturer or distributor of electrical supplies or materials; and one (1) member shall be from the public at large not directly associated with the electrical industry. Board members shall be appointed for a term of four (4) years. Members of the board shall hold office until expiration of the term to which the member was appointed and until his successor has been duly appointed and qualified. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(3) All members of the board shall be citizens of the United States, residents of this state for not less than two (2) years and shall be qualified by experience, knowledge and integrity in formulating rules for examinations, in passing on the fitness and qualifications of applicants for electrical contractor and journeyman electrician licenses and in establishing standards for electrical products to be used in electrical installations coming under the provisions of this act.

(4) The members of the board shall, at their first regular meeting following the effective date of this act and every two (2) years thereafter, elect by majority vote of the members of the board, a chairman who shall preside at meetings of the board. In the event the chairman is not present at any board meeting, the board may by majority vote of the members present appoint a temporary chairman. A majority of the members of the board shall constitute a quorum.

(5) The board is authorized and directed to prescribe and amend rules consistent with this act for the administration of this chapter and to effectuate the purpose thereof, and for the examination and licensing of electrical contractors, journeyman electricians, master electricians, specialty electricians, specialty electrical contractors, specialty electrical trainees and apprentice electricians. The board shall also establish the classifications for specialty electrician and specialty electrical contractor licensing and the fees to be charged for permits and inspections of electrical systems. The board shall establish by administrative rule the fines to be paid for citations issued and shall hear appeals regarding the imposition of civil penalties for violations of this chapter and the rules of the Idaho electrical board. The board is authorized to affirm, reject, decrease or increase the penalty imposed by the administrator. However, in no case shall the penalty exceed one thousand dollars (\$1,000) for each offense.

(6) Each member of the board not otherwise compensated by public moneys shall be compensated as provided by section 59-509 (hn), Idaho Code.

Approved February 25, 2011.

CHAPTER 24  
(H.B. No. 71)

AN ACT

RELATING TO THE IDAHO ELEVATOR SAFETY CODE ACT; AMENDING SECTION 39-8610, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CERTAIN TEMPORARY CERTIFICATES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-8610, Idaho Code, be, and the same is hereby amended to read as follows:

39-8610. TEMPORARY CERTIFICATE TO OPERATE. A temporary certificate to operate may be issued by the administrator and shall be effective for not more than sixty (60) days. No temporary certificate shall be issued when life-safety nonconformances are present. Before the expiration of sixty (60) days the temporary certificate, the conveyance shall be reinspected and a permanent five (5) year certificate to operate shall be issued or the conveyance shall be put out of service.

Approved February 25, 2011.

CHAPTER 25  
(S.B. No. 1008)

AN ACT

RELATING TO THE ADMINISTRATIVE DIRECTOR OF COURTS; AMENDING SECTION 1-612, IDAHO CODE, TO REVISE THE TIMING REQUIREMENT FOR CERTAIN REPORTING DUTIES AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 1-612, Idaho Code, be, and the same is hereby amended to read as follows:

1-612. DUTIES OF ADMINISTRATIVE DIRECTOR. The administrative director, acting under the supervision and direction of the Ssupreme Ccourt, shall:

(a) Procure data from time to time and as of the close of each ealendar fiscal year with respect to these matters: the business transacted by the various courts of Idaho; the state of their dockets; the needs, if any, for assistance to expedite the handling of judicial business pending in the courts; and such other matters as, in the judgment of the Ssupreme Ccourt, bear on the work and the administration of the judicial system of the state.

(b) Report to the Ssupreme Ccourt from time to time concerning the need for assistance in the handling of pending business in any court of Idaho, and recommended means for meeting the need.

(c) Report to the Ssupreme Ccourt and the governor for each ealendar fiscal year, as of the close of the year, concerning the data procured as provided in subsection(a) above of this section and as to the work of the administrative director's office, one (1) copy of each report to be made public by filing with the clerk of the Ssupreme Ccourt, one (1) to be furnished to the board of commissioners of the Idaho state bar, and one (1) to the legislative counsel; and report to the Ssupreme Ccourt on these data at such other times as may be requested by the chief justice.

(d) Examine the administrative and business methods and systems employed in the offices of the judges, clerks and other officers of the courts related to and serving the courts, and make recommendations to the Ssupreme Ccourt for improvement.

(e) Formulate and submit to the Ssupreme Ccourt recommendations for the improvement of the judicial system.

Approved March 3, 2011.

CHAPTER 26  
(S.B. No. 1009)

AN ACT

RELATING TO THE COMMENCEMENT OF ACTIONS; AMENDING SECTION 5-508, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SERVICE UPON CERTAIN PERSONS OUTSIDE OF THIS STATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 5-508, Idaho Code, be, and the same is hereby amended to read as follows:

5-508. SERVICE BY PUBLICATION -- AFFIDAVIT. When the person on whom the service is to be made resides outside of the state, or has departed from

the state, or cannot after due diligence be found within the state, or conceals himself therein to avoid the service of summons, or is a foreign corporation having no managing or business agent, cashier or secretary within this state, or where any persons are made defendant by the style and description of unknown owners, or unknown heirs or unknown devisees of any deceased person and the names of such unknown owners or heirs or devisees are unknown to the complainant in the action, and such facts appear by affidavit to the satisfaction of the court in which the suit is pending, and it also appears by the verified complaint on file that a cause of action exists against defendant in respect to whom the service is to be made, and that he is a necessary or proper party to the action, the court may make an order for the publication of the summons, ~~or, if the address of the defendant outside of the state is known, may make an order that personal service of the summons may be made outside of the state in lieu of such publication;~~ and an affidavit setting forth in ordinary and concise language any of the grounds as above set forth, upon which the publication of the summons is sought, shall be sufficient without setting forth or showing what efforts have been made or what diligence has been exerted in attempting to find the defendant. Service upon any person, firm, company, association or corporation who is subject to the jurisdiction of the courts of this state pursuant to the provisions of section 5-514, Idaho Code, may be made in the manner provided in section 5-515, Idaho Code.

Approved March 3, 2011.

CHAPTER 27  
(S.B. No. 1014)

AN ACT

RELATING TO RAPE; AMENDING SECTION 18-6101, IDAHO CODE, TO PROVIDE ADDITIONAL PROVISIONS RELATING TO THE DEFINITION OF RAPE; AMENDING SECTION 18-8304, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND AMENDING SECTION 19-401, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-6101, Idaho Code, be, and the same is hereby amended to read as follows:

18-6101. RAPE DEFINED. Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with the perpetrator's penis accomplished with a female under any one (1) of the following circumstances:

- (1) Where the female is under the age of sixteen (16) years and the perpetrator is eighteen (18) years of age or older.
- (2) Where the female is sixteen (16) or seventeen (17) years of age and the perpetrator is three (3) years or more older than the female.
- (3) Where she is incapable, through any unsoundness of mind, due to any cause including, but not limited to, mental illness, mental disability or developmental disability, whether temporary or permanent, of giving legal consent.
- (4) Where she resists but her resistance is overcome by force or violence.
- (5) Where she is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution; or is unable to resist due to any intoxicating, narcotic, or anaesthetic substance.
- (6) Where she is at the time unconscious of the nature of the act. As used in this section, "unconscious of the nature of the act" means incapable of resisting because the victim meets one (1) of the following conditions:
  - (a) Was unconscious or asleep;

(b) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(7) Where she submits under the belief that the person committing the act is her husband, and the belief is induced by artifice, pretense or concealment practiced by the accused, with intent to induce such belief.

(8) Where she submits under the belief that the person committing the act is someone other than the accused, and the belief is induced by artifice, pretense or concealment practiced by the accused, with the intent to induce such belief.

(9) Where she submits under the belief, instilled by the actor, that if she does not submit, the actor will cause physical harm to some person in the future; or cause damage to property; or engage in other conduct constituting a crime; or accuse any person of a crime or cause criminal charges to be instituted against her; or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule.

The provisions of subsections (1) and (2) of this section shall not affect the age requirements in any other provision of law, unless otherwise provided in any such law. Further, for the purposes of subsection (2) of this section, in determining whether the perpetrator is three (3) years or more older than the female, the difference in age shall be measured from the date of birth of the perpetrator to the date of birth of the female.

SECTION 2. That Section 18-8304, Idaho Code, be, and the same is hereby amended to read as follows:

18-8304. APPLICATION OF CHAPTER. (1) The provisions of this chapter shall apply to any person who:

(a) On or after July 1, 1993, is convicted of the crime, or an attempt, a solicitation, or a conspiracy to commit a crime provided for in section 18-909 (assault with attempt to commit rape, infamous crime against nature, or lewd and lascivious conduct with a minor, but excluding mayhem, murder or robbery), 18-911 (battery with attempt to commit rape, infamous crime against nature, or lewd and lascivious conduct with a minor, but excluding mayhem, murder or robbery), 18-919 (sexual exploitation by a medical care provider), 18-1505B (sexual abuse and exploitation of a vulnerable adult), 18-1506 (sexual abuse of a child under sixteen years of age), 18-1506A (ritualized abuse of a child), 18-1507 (sexual exploitation of a child), 18-1507A (possession of sexually exploitative material for other than a commercial purpose), 18-1508 (lewd conduct with a minor child), 18-1508A (sexual battery of a minor child sixteen or seventeen years of age), 18-1509A (enticing a child over the internet), 18-4003(d) (murder committed in perpetration of rape), 18-4116 (indecent exposure, but excluding a misdemeanor conviction), 18-4502 (first degree kidnapping committed for the purpose of rape, committing the infamous crime against nature or for committing any lewd and lascivious act upon any child under the age of sixteen, or for purposes of sexual gratification or arousal), 18-4503 (second degree kidnapping where the victim is an unrelated minor child), 18-5609 (inducing person under eighteen years of age into prostitution), 18-6101 (rape, but excluding 18-6101(1) where the defendant is eighteen years of age or where the defendant is exempted under subsection (4) of this section), 18-6108 (male rape, but excluding 18-6108(1) where the defendant is eighteen years of age or where the defendant is exempted under subsection (4) of this section), 18-6110 (sexual contact with a prisoner), 18-6602 (incest), 18-6605 (crime against nature), 18-6608 (forcible sexual penetration by use of a foreign object), upon a second or subsequent conviction under 18-6609 (video voyeurism) or 18-8602(1), Idaho Code, (sex trafficking).

(b) On or after July 1, 1993, has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another state, territory, commonwealth, or other jurisdiction of the United States, including tribal courts and military courts, that is substantially equivalent to the offenses listed in subsection (1) (a) of this section and enters the state to establish permanent or temporary residence.

(c) Has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another state, territory, commonwealth, or other jurisdiction of the United States, including tribal courts and military courts, that is substantially equivalent to the offenses listed in subsection (1) (a) of this section and was required to register as a sex offender in any other state or jurisdiction when he established permanent or temporary residency in Idaho.

(d) Pleads guilty to or has been found guilty of a crime covered in this chapter prior to July 1, 1993, and the person, as a result of the offense, is incarcerated in a county jail facility or a penal facility or is under probation or parole supervision, on or after July 1, 1993.

(e) Is a nonresident regularly employed or working in Idaho or is a student in the state of Idaho and was convicted, found guilty or pleaded guilty to a crime covered by this chapter and, as a result of such conviction, finding or plea, is required to register in his state of residence.

(2) An offender shall not be required to comply with the registration provisions of this chapter while incarcerated in a correctional institution of the department of correction, a county jail facility, committed to the department of juvenile corrections or committed to a mental health institution of the department of health and welfare.

(3) A conviction for purposes of this chapter means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

(4) When a defendant is convicted of rape under section 18-6101(2) or 18-6108(2), Idaho Code, and at the time of the offense the defendant is nineteen (19) or twenty (20) years of age and not more than three (3) years older than the victim of the rape, the court may order that the defendant is exempt from the requirements of this chapter upon a finding by the court that:

(a) All parties have stipulated to the exemption; or

(b) The defendant has demonstrated by clear and convincing evidence that he is not a risk to commit another crime identified in subsection (1) of this section and in the case there were no allegations by the victim of any violation of section 18-6101(3) through (89) or 18-6108(3) through (7), Idaho Code.

SECTION 3. That Section 19-401, Idaho Code, be, and the same is hereby amended to read as follows:

19-401. NO STATUTE OF LIMITATIONS FOR CERTAIN FELONIES. Notwithstanding any other provision of law, there is no limitation of time within which a prosecution for the following crimes must be commenced:

(1) Murder;

(2) Voluntary manslaughter;

(3) Rape pursuant to section 18-6101(3) through (89), or section 18-6108(3) through (7), Idaho Code;

(4) Sexual abuse of a child or lewd conduct with a child as set forth in sections 18-1506 and 18-1508, Idaho Code; or

(5) An act of terrorism as set forth in sections 18-8102, 18-8103, 18-3322, 18-3323 and 18-3324, Idaho Code.

CHAPTER 28  
(S.B. No. 1029)

AN ACT

RELATING TO THE STATE BOARD OF CORRECTION; AMENDING SECTION 19-510A, IDAHO CODE, TO PROVIDE CERTAIN EMPLOYEES DESIGNATED BY THE BOARD OF CORRECTION WITH ADDITIONAL AUTHORITY; AND AMENDING SECTION 20-209C, IDAHO CODE, TO PROVIDE THE STATE BOARD OF CORRECTION WITH ADDITIONAL AUTHORITY IN DESIGNATING EMPLOYEES TO ACT AS PEACE OFFICERS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-510A, Idaho Code, be, and the same is hereby amended to read as follows:

19-510A. PEACE OFFICERS' POWERS TO EMPLOYEES OF THE STATE BOARD OF CORRECTION. All employees of the state board of correction who receive peace officer certification from the Idaho peace officer standards and training council shall have all the authority given by statute to peace officers of the state of Idaho. All other ~~classified~~ employees designated by the board of correction pursuant to section 20-209C, Idaho Code, shall be empowered with the rights and duties of peace officers when engaged in transportation of prisoners or apprehension of prisoners or wards who have escaped, or apprehension and arrest of persons who are suspected of having violated the terms and conditions of their probation or parole, or when present with and at the request of a local, state or federal law enforcement officer.

SECTION 2. That Section 20-209C, Idaho Code, be, and the same is hereby amended to read as follows:

20-209C. AUTHORITY TO DESIGNATE EMPLOYEES AS PEACE OFFICERS. All employees of the state board of correction who receive peace officer certification from the Idaho peace officer standards and training council shall have the authority given by statute to peace officers of the state of Idaho in accordance with the provisions of section 19-5109, Idaho Code. The state board of correction shall have the additional authority to designate other ~~classified~~ employees to act as peace officers when engaged in transportation of prisoners or apprehension of prisoners or wards who have escaped, or apprehension and arrest of persons who are suspected of having violated the terms and conditions of their probation or parole, or when present with and at the request of a local, state or federal law enforcement officer.

Approved March 3, 2011.

CHAPTER 29  
(S.B. No. 1030)

AN ACT

RELATING TO THE STATE BOARD OF CORRECTION; AMENDING SECTION 20-209, IDAHO CODE, TO GRANT THE STATE BOARD OF CORRECTION THE AUTHORITY TO PROVIDE OR FACILITATE CERTAIN RESEARCH-BASED REHABILITATIVE SERVICES FOR INCARCERATED AND COMMUNITY-BASED OFFENDERS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 20-209, Idaho Code, be, and the same is hereby amended to read as follows:

20-209. CONTROL AND MANAGEMENT OF CORRECTIONAL FACILITIES AND PRISONERS -- REHABILITATIVE SERVICES -- RULES. (1) The state board of correction shall have the control, direction and management of such correctional facilities as may be acquired for use by the state board of correction and all property owned or used in connection therewith, and shall provide for the care, maintenance and employment of all prisoners now or hereinafter committed to its custody.

(2) The state board of correction may provide or facilitate research-based rehabilitative services at the discretion of the Idaho department of correction and as resources permit for incarcerated and community-based offenders. The rehabilitative services may include programs for behavioral modification, education, vocational education, sexual offenders, substance abuse, gender responsive programs and other programs that correctional research supports reduction of risk for offender populations. Nothing contained in this subsection shall create any right to rehabilitative services.

(3) The state board of correction shall have the authority to enter into contracts with private prison contractors for the site selection, design, design/building, acquisition, construction, construction management, maintenance, leasing, leasing/purchasing, management or operation of private prison facilities or any combination of those services subject to the requirements and limitations set forth in section 20-241A, Idaho Code.

(34) The state board of correction shall have the authority to promulgate rules required by law or necessary or desirable to carry out all duties assigned to the department of correction pursuant to the provisions of chapter 8, title 20, Idaho Code, which authority shall include the power and duties to prescribe standards, rules and procedures for licensure of private prison contractors, to develop and provide, in conjunction with the department of administration, a uniform contract for use by local contracting authorities in contracting with private prison contractors, to review records and historical information of all prisoners proposed to be housed in private prison facilities and to approve or reject the housing of all prisoners, to monitor the status of insurance of private prison contractors, to approve suitable training programs for firearm certification for employees of private prison contractors and to approve suitable drug testing programs for prisoners housed with private prison contractors. All final decisions by the board shall be subject to review pursuant to the provisions and procedures of the administrative procedure act, chapter 52, title 67, Idaho Code.

(45) The state board of correction is authorized to provide medical and counseling services to those prisoners who have been exposed to the HIV (human immunodeficiency virus) which causes acquired immunodeficiency syndrome (AIDS) or who have been diagnosed as having contracted a human immunodeficiency viral disease.

(56) The state board of correction should provide educational and informational services to prisoners housed in Idaho and to its department em-

ployees in order to assure that the transmission of HIV within correctional facilities is diminished.

Approved March 3, 2011.

CHAPTER 30  
(S.B. No. 1031)

AN ACT

RELATING TO THE PERSONNEL SYSTEM AND THE IDAHO DEPARTMENT OF CORRECTION;  
AMENDING SECTION 67-5303, IDAHO CODE, TO REVISE THE DEFINITION OF  
DEPUTY ADMINISTRATORS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5303, Idaho Code, be, and the same is hereby amended to read as follows:

67-5303. APPLICATION TO STATE EMPLOYEES. All departments of the state of Idaho and all employees in such departments, except those employees specifically defined as nonclassified, shall be classified employees, who are subject to this chapter and to the system of personnel administration which it prescribes. Nonclassified employees shall be:

(a) Members of the state legislature and all other officers of the state of Idaho elected by popular vote, and persons appointed to fill vacancies in elective offices, and employees of the state legislature.

(b) Members of statutory boards and commissions and heads of departments appointed by and serving at the pleasure of the governor, deputy directors appointed by the director and members of advisory boards and councils appointed by the departments.

(c) All employees and officers in the office, and at the residence, of the governor; and all employees and officers in the offices of the lieutenant governor, secretary of state, attorney general, state treasurer, state controller, and state superintendent of public instruction who are appointed on and after the effective date of this chapter.

(d) Except as otherwise provided by law, not more than one (1) declared position for each board or commission and/or head of a participating department in addition to those declared to be nonclassified by other provisions of law.

(e) Part-time professional consultants who are paid on a fee basis for any form of legal, medical or other professional service, and who are not engaged in the performance of administrative duties for the state.

(f) Judges, temporary referees, receivers and jurors.

(g) All employees of the Idaho supreme court, Idaho court of appeals and district courts.

(h) All employees of the Idaho state bar.

(i) Assistant attorneys general attached to the office of the attorney general.

(j) Officers, members of the teaching staffs of state educational institutions, the professional staff of the Idaho department of education administered by the board of regents and the board of education, and the professional staffs of the Idaho division of professional-technical education and vocational rehabilitation administered by the state board for professional-technical education. "Teaching staff" includes teachers, coaches, resident directors, librarians and those principally engaged in academic research. The word "officer" means presidents, vice presidents, deans, directors, or employees in positions designated by the state board who receive an annual salary of not less than step "A" of the pay grade equiv-

alent to three hundred fifty-five (355) Hay points in the state compensation schedule. A nonclassified employee who is designated as an "officer" on July 5, 1991, but does not meet the requirements of this subsection, may make a one (1) time irrevocable election to remain nonclassified. Such an election must be made not later than August 2, 1991. When such positions become vacant, these positions will be reviewed and designated as either classified or nonclassified in accordance with this subsection.

(k) Employees of the military division.

(l) Patients, inmates or students employed in a state institution.

(m) Persons employed in positions established under federal grants, which, by law, restrict employment eligibility to specific individuals or groups on the basis of nonmerit selection requirements. Such employees shall be termed "project exempt" and the tenure of their employment shall be limited to the length of the project grant, or twenty-four (24) months, or four thousand one hundred sixty (4,160) hours of credited state service, whichever is of the shortest duration. No person hired on a project-exempt appointment shall be employed in any position allocated to the classified service.

(n) Temporary employees.

(o) All employees and officers of the following named commodity commissions, and all employees and officers of any commodity commission created hereafter: the Idaho potato commission, as provided in chapter 12, title 22, Idaho Code; the Idaho honey advertising commission, as provided in chapter 28, title 22, Idaho Code; the Idaho bean commission, as provided in chapter 29, title 22, Idaho Code; the Idaho hop grower's commission, as provided in chapter 31, title 22, Idaho Code; the Idaho wheat commission, as provided in chapter 33, title 22, Idaho Code; the Idaho pea and lentil commission, as provided in chapter 35, title 22, Idaho Code; the Idaho apple commission, as provided in chapter 36, title 22, Idaho Code; the Idaho cherry commission, as provided in chapter 37, title 22, Idaho Code; the Idaho mint grower's commission, as provided in chapter 38, title 22, Idaho Code; the state board of sheep commissioners, as provided in chapter 1, title 25, Idaho Code; the state brand inspector, and all district supervisors, as provided in chapter 11, title 25, Idaho Code; the Idaho beef council, as provided in chapter 29, title 25, Idaho Code; and the Idaho dairy products commission, as provided in chapter 31, title 25, Idaho Code.

(p) All inspectors of the fresh fruit and vegetable inspection service of the Idaho department of agriculture, except those positions involved in the management of the program.

(q) All employees of correctional industries within the department of correction.

(r) All deputy administrators and wardens employed by the department of correction. Deputy administrators are defined as only the ~~six~~(6) deputy administrators working directly for the ~~two~~(2) nonclassified division administrators under the director of the department of correction.

(s) All public information positions with the exception of secretarial positions, in any department.

(t) Any division administrator.

(u) Any regional administrator or division administrator in the department of environmental quality.

(v) All employees of the division of financial management.

(w) All employees of the Idaho food quality assurance institute.

(x) The state appellate public defender, deputy state appellate public defenders and all other employees of the office of the state appellate public defender.

(y) All quality assurance specialists or medical investigators of the Idaho board of medicine.

(z) All pest survey and detection employees and their supervisors hired specifically to carry out activities under the Idaho plant pest act, chapter

20, title 22, Idaho Code, including but not limited to pest survey, detection and eradication, except those positions involved in the management of the program.

Approved March 3, 2011.

CHAPTER 31  
(S.B. No. 1006)

AN ACT

RELATING TO RIGHT TO WORK; PROVIDING LEGISLATIVE INTENT; AMENDING CHAPTER 20, TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 44-2013, IDAHO CODE, TO PROVIDE DEFINITIONS, TO PROVIDE THAT IN REGARD TO CONTRACTS FOR CERTAIN PUBLIC WORKS THE STATE OR ANY POLITICAL SUBDIVISION SHALL NOT REQUIRE CERTAIN PAYMENT TO CERTAIN EMPLOYEES, TO PROVIDE FOR EXCEPTIONS, TO PROVIDE THAT IN REGARD TO CONTRACTS FOR CERTAIN PUBLIC WORKS THE STATE OR ANY POLITICAL SUBDIVISION SHALL NOT REQUIRE THAT A CONTRACTOR, SUBCONTRACTOR, MATERIAL SUPPLIER OR CARRIER ENGAGED IN PUBLIC WORKS BECOMES A PARTY TO CERTAIN AGREEMENTS, TO PROVIDE FOR STANDING AND TO PROVIDE FOR APPLICATION OF LAWS; AND PROVIDING SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature to maintain and strengthen state law to protect open access to work for all Idahoans.

SECTION 2. That Chapter 20, Title 44, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 44-2013, Idaho Code, and to read as follows:

44-2013. PUBLIC WORKS -- WAGES. Notwithstanding any other provision found in chapter 10, title 44, Idaho Code, and chapter 57, title 67, Idaho Code, the following shall apply:

(1) This act shall be known as the "Open Access to Work Act."  
(2) For purposes of this section, the following terms have the following meanings:

(a) "Political subdivision" means the state of Idaho, or any county, city, school district, sewer district, fire district, or any other taxing subdivision or district of any public or quasi-public corporation of the state, or any agency thereof, or with any other public board, body, commission, department or agency, or officer or representative thereof.

(b) "Public works" shall have the same meaning as that provided for "public works construction" in section 54-1901, Idaho Code.

(3) (a) Except as provided in subsection (3) (b) of this section or as required by federal or state law, the state or any political subdivision that contracts for the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works shall not require that a contractor, subcontractor, material supplier or carrier engaged in the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works pay its employees:

(i) A predetermined amount of wages or wage rate; or

(ii) A type, amount or rate of employee benefits.

(b) Subsection (3) (a) of this section shall not apply when federal law requires the payment of prevailing or minimum wages to persons working on projects funded in whole or in part by federal funds.

(4) The state or any political subdivision that contracts for the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works shall not require that a contractor, subcontractor, material supplier or carrier engaged in the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works executes or otherwise becomes a party to any project labor agreement, collective bargaining agreement, prehire agreement or any other agreement with employees, their representatives or any labor organization as a condition of bidding, negotiating, being awarded or performing work on a public works project.

(5) Any interested party, which shall include a bidder, offeror, contractor, subcontractor or taxpayer, shall have standing to challenge any bid award, specification, project agreement, controlling document, grant or cooperative agreement that violated the provisions of this section, and such interested party shall be awarded costs and attorney's fees in the event that such challenge prevails.

(6) The provisions of this section apply to any contract executed after July 1, 2011.

SECTION 3. 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 the remaining portions of this act.

Approved March 3, 2011.

CHAPTER 32  
(S.B. No. 1007)

AN ACT

RELATING TO LABOR ORGANIZATIONS; AMENDING CHAPTER 20, TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 44-2012, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE FOR INTENT, TO PROHIBIT CERTAIN ACTIVITIES RELATING TO LABOR ORGANIZATIONS, TO PROVIDE FOR VIOLATIONS AND PENALTIES AND TO PROVIDE FOR CHALLENGES BY INTERESTED PARTIES; AND AMENDING SECTION 44-2012, IDAHO CODE, TO REDESIGNATE THE SECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 20, Title 44, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 44-2012, Idaho Code, and to read as follows:

44-2012. PROHIBITED ACTIVITY. (1) The provisions of this act shall be known as the "Fairness in Contracting Act." The intent of this act is to promote fairness in bidding and contracting.

(2) No contractor or subcontractor may directly or indirectly receive a wage subsidy, bid supplement or rebate on behalf of its employees, or provide the same to its employees, the source of which is wages, dues or assessments collected by or on behalf of any labor organization(s), whether or not labeled as dues or assessments.

(3) No labor organization may directly or indirectly pay a wage subsidy or wage rebate to its members in order to directly or indirectly subsidize a contractor or subcontractor, the source of which is wages, dues or assessments collected by or on behalf of its members, whether or not labeled as dues or assessments.

(4) It is illegal to use any fund financed by wages collected by or on behalf of any labor organization(s), whether or not labeled as dues or assessments, to subsidize a contractor or subcontractor doing business in the state of Idaho.

(5) Any contractor, subcontractor or labor organization that violates the provisions of this section shall be guilty of a misdemeanor and fined an amount not to exceed ten thousand dollars (\$10,000) for a first offense, twenty-five thousand dollars (\$25,000) for a second offense, and one hundred thousand dollars (\$100,000) for each and every additional offense.

(6) Any interested party, which shall include a bidder, offeror, contractor, subcontractor or taxpayer, shall have standing to challenge any bid award, specification, project agreement, controlling document, grant or cooperative agreement in violation of the provisions of this section, and such interested party shall be awarded costs and attorney's fees in the event that such challenge prevails.

SECTION 2. That Section 44-2012, Idaho Code, be, and the same is hereby amended to read as follows:

44-2012<sup>3</sup>. SEVERABILITY. The provisions of this chapter are hereby declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, such declaration shall not affect the remaining provisions of this chapter.

Approved March 3, 2011.

CHAPTER 33  
(S.B. No. 1010)

AN ACT

RELATING TO THE PARENT RESPONSIBILITY ACT; AMENDING SECTION 32-1215, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE TIME AND MANNER IN WHICH A CERTAIN MOTION AND NOTICE SHALL BE SERVED.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 32-1215, Idaho Code, be, and the same is hereby amended to read as follows:

32-1215. TERMINATION OF INCOME WITHHOLDING UPON OBLIGOR'S REQUEST. (1) An obligor whose income is subject to withholding under this chapter may request a hearing to quash, modify, or terminate the withholding, by filing a motion requesting such relief before the court which issued the income withholding order. A copy of the motion and a notice of hearing shall be served upon the obligee at least five (5) days before the date set for the hearing, by personal service or certified mail, pursuant to in the time and in the manner provided by the Idaho rules of civil procedure.

(2) In a hearing to quash, modify, or terminate the income withholding order, the court may grant relief only upon a showing by the obligor that there is a substantial probability that the obligor would suffer irreparable injury and that the obligee would not suffer irreparable injury. Satisfaction by the obligor of any delinquency subsequent to the issuance of the income withholding order is not grounds to quash, modify, or terminate the income withholding order.

(3) If an income withholding order has been in operation for twelve (12) consecutive months and the obligor's support obligation is current, the court may terminate the order upon motion of the obligor, unless the obligee

can show good cause as to why the income withholding order should remain in effect.

(4) No order to quash, modify, or terminate an income withholding order shall be issued unless the obligor provides proof to the court that the obligee has been served with a copy of the motion and notice for hearing ~~five (5) days prior to the hearing~~ in the time and in the manner provided by the Idaho rules of civil procedure, or that service is impossible because the obligee has moved and failed to provide the court with a current address, as required by section 32-1212, Idaho Code.

Approved March 3, 2011.

CHAPTER 34  
(S.B. No. 1012)

AN ACT

RELATING TO THE SUPREME COURT REPORTER; AMENDING SECTION 1-505, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE DUTY OF THE STATE LAW LIBRARIAN TO DISTRIBUTE CERTAIN PRINTED VOLUMES AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 1-505, Idaho Code, be, and the same is hereby amended to read as follows:

1-505. DISTRIBUTION OF REPORTS. The reporter shall have no pecuniary interest in the reports. The decisions of the said Supreme Ccourt shall be prepared for publication, by the reporter, as rapidly as possible, and as soon as a sufficient number of decisions are prepared to fill a volume, such a volume shall be printed, and as many copies thereof as directed by the administrative director of the courts, shall be delivered to the state law librarian, who shall distribute them as follows: ~~T~~o the Librarian of Congress, three (3) copies; to the Idaho State Law Library, five (5) copies; to the University of Idaho, general library, two (2) copies; to the Idaho State University Library, one (1) copy; to Boise State University Library, one (1) copy; to the College of Law of the University of Idaho, twelve (12) copies; to the Lewis-Clark State College, one (1) copy; to the library at the state penitentiary, one (1) copy; to each county prosecuting attorney, one (1) copy; to each magistrate, one (1) copy; to each district judge, one (1) copy; to each justice of the Supreme Ccourt, one (1) copy; to the clerk of the Supreme Ccourt, one (1) copy; to the attorney general, five (5) copies; one (1) copy to the Department of Lands of Idaho; one (1) copy to the Public Utilities Commission of Idaho; one (1) copy to the Industrial Commission; one (1) copy to the Division of Public Works; one (1) copy to the Department of Insurance; one (1) copy to the Judiciary Committee of the Senate during sessions of the Legislature; one (1) copy to the Judiciary Committee of the House of Representatives during sessions of the Legislature; to each state and territory in the United States sending to this state copies of its printed court reports, one (1) copy for the use of the state library or law library thereof; to each foreign state or country, sending to this state copies of its printed court reports, one (1) copy; to the governor, secretary of state, state treasurer, state controller, superintendent of public instruction, each one (1) copy; and to other officers and institutions as directed by the administrative director of the courts; provided, that each public officer receiving a copy of any volume or volumes of said reports under the provisions of this section, shall take good care of the same, and shall upon retiring from office, turn the same over to his successor in office, provided further, that copies of any volume

of such reports may be again issued to any of said officers, institutions, states or territories upon good and sufficient proof of loss of the copies sought to be replaced, presented to the administrative director of the courts, who may direct the librarian to furnish another copy of the volume so lost, in place thereof. Any of the said officers, institutions, states or territories may inform the administrative director that they do not wish to receive these volumes or wish to receive a lesser number of volumes than specified in this section. The state law librarian shall then cease distributing volumes to those recipients who no longer wish to receive them, and shall distribute the number of volumes requested to those recipients who wish to receive a lesser number of volumes than specified in this section. Recipients may also inform the administrative director that they wish to resume receiving the volumes, or wish to resume receiving the full number of volumes specified in this section, and the state law librarian shall then distribute to those recipients the volumes published thereafter in the number specified in this section.

Approved March 3, 2011.

CHAPTER 35  
(S.B. No. 1045)

AN ACT

RELATING TO TRUSTS AND FIDUCIARIES; AMENDING CHAPTER 1, TITLE 68, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 68-106A, IDAHO CODE, TO PROVIDE FOR THE FIDUCIARY DUTY OF TRUSTEES TO DETERMINE EQUIVALENT VALUE OF SUBSTITUTED PROPERTY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 1, Title 68, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 68-106A, Idaho Code, and to read as follows:

68-106A. FIDUCIARY DUTY TO DETERMINE EQUIVALENT VALUE OF SUBSTITUTED PROPERTY. Notwithstanding the terms of a trust instrument, if a grantor has the power to substitute property of equivalent value, a trustee has a fiduciary duty to determine that the substitute property is of equivalent value, prior to allowing the substitution.

Approved March 3, 2011.

CHAPTER 36  
(S.B. No. 1056)

AN ACT

RELATING TO THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT; AMENDING TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 13, TITLE 15, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR INTERNATIONAL APPLICATION OF THE CHAPTER, TO PROVIDE FOR COMMUNICATIONS BETWEEN COURTS, TO PROVIDE FOR COOPERATION BETWEEN COURTS, TO PROVIDE FOR TAKING TESTIMONY IN ANOTHER STATE, TO DEFINE TERMS, TO PROVIDE FOR SIGNIFICANT-CONNECTION FACTORS REGARDING JURISDICTION, TO PROVIDE FOR EXCLUSIVE JURISDICTIONAL BASIS, TO PROVIDE FOR JURISDICTION, TO PROVIDE FOR SPECIAL JURISDICTION, TO PROVIDE FOR EXCLUSIVE AND CONTINUING JURISDICTION, TO PROVIDE FOR AN APPROPRI-

ATE FORUM, TO PROVIDE FOR JURISDICTION DECLINED BY REASON OF CONDUCT, TO PROVIDE FOR NOTICE OF PROCEEDING, TO PROVIDE FOR PROCEEDINGS IN MORE THAN ONE STATE, TO PROVIDE FOR TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE, TO PROVIDE FOR ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE, TO PROVIDE FOR THE REGISTRATION OF GUARDIANSHIP ORDERS, TO PROVIDE FOR THE REGISTRATION OF PROTECTIVE ORDERS, TO PROVIDE FOR THE EFFECT OF REGISTRATION, TO PROVIDE FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION OF THE ACT, TO PROVIDE FOR THE RELATION TO THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT AND TO PROVIDE TRANSITIONAL PROVISIONS; AND REPEALING CHAPTERS 9, 10 AND 11, TITLE 15, IDAHO CODE, REGARDING FOREIGN GUARDIANSHIPS AND CONSERVATORSHIPS, TRANSFERS OF GUARDIANSHIPS AND CONSERVATORSHIPS TO A FOREIGN JURISDICTION AND TEMPORARY RECOGNITION OF FOREIGN GUARDIANSHIPS AND CONSERVATORSHIPS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 13, Title 15, Idaho Code, and to read as follows:

#### CHAPTER 13

#### UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

#### PART 1

#### GENERAL PROVISIONS

15-13-101. SHORT TITLE. This chapter may be cited as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act."

15-13-102. DEFINITIONS. In this chapter:

(1) "Adult" means an individual who has attained eighteen (18) years of age.

(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed pursuant to chapter 5, title 15, Idaho Code.

(3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed pursuant to chapter 5, title 15, Idaho Code.

(4) "Guardianship order" means an order appointing a guardian.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) "Incapacitated person" means an adult for whom a guardian has been appointed.

(7) "Party" means the respondent, petitioner, guardian, conservator or any other person allowed by the court to participate in a guardianship or protective proceeding.

(8) "Person," except in the term "incapacitated person" or "protected person," means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(9) "Protected person" means an adult for whom a protective order has been issued.

(10) "Protective order" means an order appointing a conservator or other order related to management of an adult's property.

(11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe or any territory or insular possession subject to the jurisdiction of the United States.

15-13-103. INTERNATIONAL APPLICATION OF CHAPTER. A court of this state may treat a foreign country as if it were a state for the purpose of applying part 1 of this chapter and parts 2, 3 and 5 of this chapter.

15-13-104. COMMUNICATIONS BETWEEN COURTS. (1) A court of this state may communicate with a court in another state concerning a proceeding arising pursuant to this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (2) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records and other administrative matters without making a record.

15-13-105. COOPERATION BETWEEN COURTS. (1) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(a) Hold an evidentiary hearing;

(b) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(c) Order that an evaluation or assessment be made of the respondent;

(d) Order any appropriate investigation of a person involved in a proceeding;

(e) Forward to the court of this state a certified copy of the transcript or other record of a hearing pursuant to paragraph (a) of this subsection or any other proceeding, any evidence otherwise produced pursuant to paragraph (b) of this subsection, and any evaluation or assessment prepared in compliance with an order pursuant to paragraph (c) or (d) of this subsection;

(f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;

(g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 CFR 160.103, as amended.

(2) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (1) of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

15-13-106. TAKING TESTIMONY IN ANOTHER STATE. (1) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone, audio-visual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

## PART 2 JURISDICTION

15-13-201. DEFINITIONS -- SIGNIFICANT-CONNECTION FACTORS. (1) In this part:

(a) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety or welfare, including finances, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

(b) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months ending within the six (6) months prior to the filing of the petition.

(c) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(2) In determining whether a respondent has a significant connection with a particular state pursuant to sections 15-13-203 and 15-13-301(5), Idaho Code, the court shall consider:

(a) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(b) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(c) The location of the respondent's property; and

(d) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship and receipt of services.

15-13-202. EXCLUSIVE BASIS. This part provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

15-13-203. JURISDICTION. A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) This state is the respondent's home state;

(2) On the date the petition is filed, this state is a significant-connection state and:

(a) The respondent does not have a home state, or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(b) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(i) A petition for an appointment or order is not filed in the respondent's home state;

(ii) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) The court in this state concludes that it is an appropriate forum under the factors set forth in section 15-13-206, Idaho Code;

(3) This state does not have jurisdiction under either subsection (1) or (2) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) The requirements for special jurisdiction under section 15-13-204, Idaho Code, are met.

15-13-204. SPECIAL JURISDICTION. (1) A court of this state lacking jurisdiction pursuant to section 15-13-203(1) through (3), Idaho Code, has special jurisdiction to do any of the following:

(a) Appoint a guardian in an emergency for a term not exceeding ninety (90) days for a respondent who is physically present in this state;

(b) Issue a protective order with respect to real or tangible personal property located in this state;

(c) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 15-13-301, Idaho Code.

(2) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

15-13-205. EXCLUSIVE AND CONTINUING JURISDICTION. Except as otherwise provided in section 15-13-204, Idaho Code, a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

15-13-206. APPROPRIATE FORUM. (1) A court of this state having jurisdiction pursuant to section 15-13-203, Idaho Code, to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction pursuant to subsection (1) of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(a) Any expressed preference of the respondent;

(b) Whether there is reason to suspect that abuse, neglect or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect or exploitation;

(c) The length of time the respondent was physically present in or was a legal resident of this or another state;

(d) The distance of the respondent from the court in each state;

- (e) The financial circumstances of the respondent's estate;
- (f) The nature and location of the evidence;
- (g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- (h) The familiarity of the court of each state with the facts and issues in the proceeding; and
- (i) If an appointment was made, the court's ability to monitor the conduct of the guardian or conservator.

15-13-207. JURISDICTION DECLINED BY REASON OF CONDUCT. (1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

- (a) Decline to exercise jurisdiction;
- (b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or
- (c) Continue to exercise jurisdiction after considering:
  - (i) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;
  - (ii) Whether it is a more appropriate forum than the court of any other state under the factors set forth in section 15-13-206(c), Idaho Code; and
  - (iii) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 15-13-203, Idaho Code.

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses and travel expenses. The court may not assess fees, costs or expenses of any kind against this state or a governmental subdivision, agency or instrumentality of this state unless authorized by law other than this chapter.

15-13-208. NOTICE OF PROCEEDING. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding was brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

15-13-209. PROCEEDINGS IN MORE THAN ONE STATE. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state pursuant to section 15-13-204(1)(a) or (1)(b), Idaho Code, if a petition for the appointment of a guardian or issuance of a conservatorship or other protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction pursuant to section 15-13-203, Idaho Code, it may proceed with the case unless a court in another

state acquires jurisdiction pursuant to provisions similar to section 15-13-203, Idaho Code, before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction pursuant to section 15-13-203, Idaho Code, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

### PART 3

#### TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE

15-13-301. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE. (1) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

(2) Notice of a petition pursuant to subsection (1) of this section must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

- (a) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;
- (b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and
- (c) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(5) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

- (a) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in section 15-13-201(b), Idaho Code;
- (b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and
- (c) Adequate arrangements will be made for management of the protected person's property.

(6) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

- (a) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred that is issued under provisions similar to section 15-13-302, Idaho Code; and
- (b) The documents required to terminate a guardianship or conservatorship in this state.

15-13-302. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE. (1) To confirm transfer of a guardianship or conser-

vatorship transferred to this state under provisions similar to section 15-13-301, Idaho Code, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(2) Notice of a petition pursuant to subsection (1) of this section must be given to those persons that would be entitled to notice if the petition was a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition filed pursuant to subsection (1) of this section unless:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(b) The guardian or conservator is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing a guardian or conservator as guardian or conservator in this state upon its receipt, from the court from which the proceeding is being transferred, of a final order issued under provisions similar to section 15-13-301, Idaho Code, transferring the proceeding to this state.

(6) Not later than ninety (90) days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(7) In granting a petition pursuant to this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of a guardian or conservator.

(8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state pursuant to chapter 5, title 15, Idaho Code, if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

#### PART 4

#### REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

15-13-401. REGISTRATION OF GUARDIANSHIP ORDERS. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

15-13-402. REGISTRATION OF PROTECTIVE ORDERS. If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected

person is located, certified copies of the order and letters of office and of any bond.

15-13-403. EFFECT OF REGISTRATION. (1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(2) A court of this state may grant any relief available pursuant to this chapter and other law of this state to enforce a registered order.

PART 5  
MISCELLANEOUS PROVISIONS

15-13-501. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

15-13-502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. section 7001, et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

15-13-503. [RESERVED.]

15-13-504. TRANSITIONAL PROVISION. (1) This chapter applies to guardianship and protective proceedings begun on or after July 1, 2011.

(2) Parts 1, 3 and 4 of this chapter and sections 15-13-501 and 15-13-502, Idaho Code, apply to proceedings begun before July 1, 2011, regardless of whether a guardianship or protective order has been issued.

SECTION 2. That Chapter 9, Title 15, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Chapter 10, Title 15, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Chapter 11, Title 15, Idaho Code, be, and the same is hereby repealed.

Approved March 3, 2011.

CHAPTER 37  
(S.B. No. 1060)

AN ACT

RELATING TO INTERMODAL COMMERCE AUTHORITIES; AMENDING THE HEADING FOR CHAPTER 22, TITLE 70, IDAHO CODE, TO READ "COUNTY-BASED OR CITY-BASED INTERMODAL COMMERCE AUTHORITY"; AMENDING SECTION 70-2201, IDAHO CODE, TO PROVIDE FOR AUTHORITY OF A CITY-BASED INTERMODAL COMMERCE AUTHORITY AND TO PROVIDE THAT AN INTERMODAL AUTHORITY MAY BE ESTABLISHED IN ANY

INCORPORATED CITY; AMENDING SECTION 70-2202, IDAHO CODE, TO PROVIDE FOR PURPOSES OF A CITY-BASED INTERMODAL AUTHORITY AND TO REVISE A PROVISION RELATING TO A PURPOSE OF A COUNTY-BASED INTERMODAL COMMERCE AUTHORITY; AMENDING SECTION 70-2203, IDAHO CODE, TO CREATE IN EACH COUNTY AND IN EACH INCORPORATED CITY AN INTERMODAL COMMERCE AUTHORITY, TO PROVIDE THAT NO CITY SHALL EXERCISE CERTAIN AUTHORITY UNTIL AFTER CITY COUNCIL MEMBERS HAVE ADOPTED A RESOLUTION WITH CERTAIN FINDINGS, TO PROVIDE THAT UPON A CITY MAKING SUCH FINDINGS THE INTERMODAL COMMERCE AUTHORITY IS AUTHORIZED TO TRANSACT CERTAIN BUSINESS AND EXERCISE CERTAIN POWERS, TO PROVIDE THAT AN INTERMODAL AUTHORITY MAY BE ABOLISHED AND TO PROVIDE THAT ANY INTERMODAL AUTHORITY EXISTING AS OF A CERTAIN DATE IS VALIDATED; AMENDING SECTION 70-2204, IDAHO CODE, TO PROVIDE THAT THE POWERS OF EACH INTERMODAL AUTHORITY ARE VESTED IN COMMISSIONERS, TO PROVIDE THAT EACH INTERMODAL AUTHORITY MUST ELECT A CHAIRMAN AND VICE-CHAIRMAN AND TO REVISE PROVISIONS RELATING TO A CERTAIN FILING; AMENDING SECTION 70-2205, IDAHO CODE, TO PROVIDE THAT A CITY FOR WHICH AN INTERMODAL AUTHORITY HAS BEEN CREATED MAY DEDICATE, SELL, CONVEY OR LEASE CERTAIN INTERESTS OR GRANT EASEMENTS, LICENSES OR OTHER RIGHTS OR PRIVILEGES TO THE INTERMODAL AUTHORITY, MAY COOPERATE WITH THE INTERMODAL AUTHORITY IN CERTAIN PLANNING AND MAY ENTER INTO CERTAIN AGREEMENTS WITH THE INTERMODAL AUTHORITY; AMENDING SECTION 70-2206, IDAHO CODE, TO PROVIDE THAT AN INTERMODAL AUTHORITY SHALL HAVE THE POWERS PROVIDED TO IT BY A LOCAL COUNTY OR CITY GOVERNING BODY AND TO REVISE A PROVISION RELATING TO SUCH POWERS; AMENDING SECTION 70-2210, IDAHO CODE, TO PROVIDE THAT A CERTAIN NOTICE BE POSTED IN A CITY AND PUBLISHED IN A NEWSPAPER WITHIN SUCH CITY; AMENDING SECTION 70-2211, IDAHO CODE, TO PROVIDE THAT THE INTERMODAL AUTHORITY MAY EXERCISE CERTAIN POWERS AUTHORIZED BY A CITY FOR THE SECURITY OF CERTAIN BONDS, TO PROVIDE THAT THE INTERMODAL AUTHORITY WITH THE APPROVAL OF THE GOVERNING BODY OF THE CITY THAT CREATED THE AUTHORITY MAY PLEDGE, LEASE, SELL, MORTGAGE OR GRANT A SECURITY INTEREST IN ALL OR ANY PORTION OF ITS INTERMODAL AUTHORITY; AND AMENDING SECTION 70-2213, IDAHO CODE, TO PROVIDE THAT CERTAIN CITY MONEY ACCEPTED BY AN INTERMODAL AUTHORITY MUST BE ACCEPTED AND SPENT BY THE INTERMODAL AUTHORITY UPON TERMS AND CONDITIONS PRESCRIBED BY THE GOVERNING CITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That the Heading for Chapter 22, Title 70, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 22  
COUNTY-BASED OR CITY-BASED INTERMODAL COMMERCE AUTHORITY

SECTION 2. That Section 70-2201, Idaho Code, be, and the same is hereby amended to read as follows:

70-2201. COUNTY-BASED OR CITY-BASED INTERMODAL COMMERCE AUTHORITY AUTHORIZED. The A county-based or city-based intermodal commerce authority, hereinafter referred to as the intermodal authority, is hereby authorized to acquire, construct, maintain, operate, develop and regulate rail, truck, and other on-land transfer and terminal facilities, buildings, warehouses and storage facilities, manufacturing, industrial and economic development facilities and services, reasonably incident to a modern, efficient and competitive land-based port, and may be established according to this chapter in any county or incorporated city.

SECTION 3. That Section 70-2202, Idaho Code, be, and the same is hereby amended to read as follows:

70-2202. PURPOSE -- PUBLIC AND GOVERNMENT FUNCTIONS. The purposes of a county-based or city-based intermodal authority are to:

(1) Promote, stimulate and advance the commerce, economic development, and prosperity of its jurisdiction and of the state;

(2) Endeavor to increase the volume of commerce within the jurisdiction of the ~~county-based intermodal commerce authority~~ or city through planning, advertising, acquisition, establishment, development, construction, improvement, maintenance, operation, regulation, and protection of transportation, storage, and other facilities that promote economic handling of commerce;

(3) Cooperate and act in conjunction with other organizations, either public or private, in the development of commerce, industry, manufacturing, services, natural resources, agriculture, livestock, recreation, and other economic activity in the state; and

(4) Support the creation, expansion, modernization, retention, and relocation of new and existing businesses and industries, and assist in and support the growth of all kinds of economic activity that will tend to promote commerce and business development, maintain the economic stability and prosperity of its jurisdiction and of the state.

SECTION 4. That Section 70-2203, Idaho Code, be, and the same is hereby amended to read as follows:

70-2203. ESTABLISHMENT AND ABOLISHMENT. (1) There is hereby created in each county and incorporated city an independent public body, corporate and politic, to be known as an local ~~county-based~~ intermodal commerce authority.

(2) No intermodal commerce authority and no county or city shall exercise the authority hereafter conferred by this chapter until after the county commissioners or city council members, after a public hearing, have adopted a resolution finding that:

(a) There are conditions in the county or city which will be benefited by the intermodal commerce authority to further the purposes set forth in section 70-2202, Idaho Code; and

(b) The county commissioners or city council members have reason to believe that the citizens of the county or city are supportive of the intermodal commerce authority.

(3) Upon the county or city making the findings set forth in subsection (2) of this section, the intermodal commerce authority is authorized to transact the business and exercise the powers hereunder by a board of commissioners to be appointed or designated as provided in section 70-2204, Idaho Code.

(4) After the establishment of an intermodal authority, any county or city may by resolution or ordinance, after a public hearing, abolish the ~~county-based intermodal commerce~~ authority provided that the payment of any bonds or other obligations of the intermodal authority shall not be adversely affected by such action.

(5) Notwithstanding any other provision of this section to the contrary, any ~~county-based~~ intermodal authority existing as of July 1, 2006, is hereby validated.

SECTION 5. That Section 70-2204, Idaho Code, be, and the same is hereby amended to read as follows:

70-2204. COMMISSIONERS. (1) The powers of each intermodal authority are vested in the commissioners thereof. The resolution or ordinance setting forth the findings as provided in section 70-2203(2), Idaho Code, shall create the authority and shall include provisions for appointing a board of not fewer than three (3) commissioners for the authority to staggered terms

and requiring bylaws for governance of the authority. A majority of the commissioners of an authority constitutes a quorum for the purpose of conducting business of the authority and exercising its powers for all other purposes. Action may be taken by the intermodal authority upon a vote of not less than a majority of the commissioners present for a meeting of the authority.

(2) Each ~~local county-based~~ intermodal ~~commerce~~ authority must elect a chairman and vice-chairman from among the commissioners at a time and for terms as set out in the respective resolution or ordinance.

(3) An intermodal authority may employ such other officers, agents, and employees, permanent or temporary, as it may require. Commissioners shall determine necessary qualifications, duties and compensation for officers, agents and employees. An intermodal authority may delegate to one (1) or more of its agents or employees such powers or duties as it considers proper.

(4) A commissioner of an intermodal authority is entitled to receive reimbursement for expenses for travel and the discharge of his or her duties according to the policies of the governing body.

(5) For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed only after a hearing and after such commissioner has been given a copy of the charges at least ten (10) days prior to such hearing and has had the opportunity to be heard in person or by counsel.

(6) Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the county or the city clerk, as appropriate, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

SECTION 6. That Section 70-2205, Idaho Code, be, and the same is hereby amended to read as follows:

70-2205. COOPERATION OF COUNTY OR CITY. (1) For the purpose of cooperating in the planning, establishment, construction or operation of an intermodal authority or any of its facilities, any governing body of the respective county or city for which an intermodal authority has been created may, upon such terms, with or without consideration, as it may determine:

(a) Dedicate, sell, convey or lease any of its interest in any property or facility or grant easements, licenses, or any other rights or privileges therein to the intermodal authority;

(b) Cooperate with the intermodal authority in the planning of an intermodal authority and its facilities; and

(c) Enter into agreements with the intermodal authority respecting action to be taken by the county or city pursuant to the provisions of this section.

(2) After a public hearing, any sale, conveyance, lease or agreement provided for in this section may be made by a public body.

SECTION 7. That Section 70-2206, Idaho Code, be, and the same is hereby amended to read as follows:

70-2206. GENERAL POWERS OF A COUNTY-BASED OR CITY-BASED INTERMODAL COMMERCE AUTHORITY. An intermodal authority shall have the powers provided to it by a local county or city governing body including:

(1) Have perpetual succession unless abolished as provided in this chapter;

(2) Sue and be sued;

(3) Have a seal;

(4) Execute contracts and other instruments and take other action that may be necessary or convenient to carry out the purposes of this chapter;

(5) Plan, establish, acquire, develop, construct, purchase, enlarge, improve, modify, maintain, equip, operate, regulate and protect transportation, storage, or other facilities or other personal property necessary or convenient to carry out the purposes of this chapter;

(6) Acquire any land or interest in land. All land and other property and privileges acquired and used by or on behalf of any intermodal authority must be used for intermodal authority purposes. The property of an intermodal authority acquired or held for the purposes of this chapter is declared to be public property used for essential public and governmental purposes and, effective the date an intermodal authority acquires title to such property, it shall be exempt from all taxes of the municipality, the county, the state or any political subdivision thereof; provided, that such tax exemption shall terminate when the authority sells or otherwise disposes of such property for development to a purchaser that is not a public body entitled to tax exemption with respect to such property. As specified in this chapter, a port authority may pledge, lease, sell, or mortgage all or any part of its facilities to secure bonds or for other financing purposes;

(7) Recommend to the county or city that created it, comprehensive county-based or city intermodal commerce authority zoning regulations in accordance with the laws of this state and the county or city governing body; and

(8) Provide financial and other support to corporations or other business entities or organizations under the provisions of Idaho law, whose purpose is to promote, stimulate, develop and advance the economic development and prosperity of its jurisdiction and of the state and its citizens by stimulating, assisting in, and supporting the growth of all kinds of economic activity, including the creation, expansion, modernization, retention, and relocation of new and existing businesses and industry in the state, all of which will tend to promote business development, maintain the economic stability and prosperity of the state, and thus provide maximum opportunities for employment and improvement in the standards of living of citizens of the state.

SECTION 8. That Section 70-2210, Idaho Code, be, and the same is hereby amended to read as follows:

70-2210. PROPERTY -- DISPOSAL. (1) Except as may be limited by the terms and conditions of any grant, loan or agreement entered into by the intermodal authority, notwithstanding the provisions in title 31, Idaho Code, an intermodal authority may, after a public hearing, sell, lease with a provision containing the right to transfer title or otherwise dispose of any transportation, storage or other facility or other property or portion of or interest in the intermodal authority's facility or property acquired pursuant to this chapter.

(2) Notice of the public hearing shall be posted at least fourteen (14) days prior to the date of the hearing in at least one (1) conspicuous place in the county or city to be determined by the commissioners of the authority. A copy of such notice shall also be published in a daily or weekly newspaper published within such county or city in one (1) issue thereof at least fourteen (14) days prior to the date of the hearing. The place, hour and day of such hearing shall be specified in the notice.

SECTION 9. That Section 70-2211, Idaho Code, be, and the same is hereby amended to read as follows:

70-2211. BONDS AND OBLIGATIONS. (1) An intermodal authority may borrow money for any of its lawful purposes and shall have the power to issue bonds from time to time in its discretion to finance the undertaking of any

project or purpose under this chapter. Bonds shall be payable out of any revenue of the intermodal authority, including revenue derived from:

- (a) Any transportation, storage or other facility;
- (b) Grants or appropriations from federal, state or local governments;
- or
- (c) Other sources.

(2) The bonds may be issued by resolution of the intermodal authority without any limitation of amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any year on the bonds and on any then outstanding bonds for which revenue from the same source is pledged exceeds the amount of revenue to be received in that year, as estimated in the intermodal authority order authorizing the issuance of the bonds. The intermodal authority shall take all action necessary and possible to impose, maintain, and collect rates, charges and rentals sufficient to make the revenue from the pledged source in such year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and shall bear interest at such rate or rates as the issuing intermodal authority respectively shall determine. Except as otherwise provided in this chapter, any bonds issued pursuant to this chapter by an intermodal authority shall be payable as to principal and interest solely from revenue of the intermodal authority or from particular transportation, storage or other facilities of the intermodal authority. The bonds must state on their face the applicable limitations or restrictions regarding the source from which principal and interest are payable. In no circumstance shall the bonds be payable with a property tax.

(4) Bonds issued by an intermodal authority pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose and together with interest thereon and income therefrom, shall be exempted from all state and local taxes.

(5) For the security of bonds, the intermodal authority may by resolution make and enter into any covenant, agreement or indenture and may exercise any additional powers authorized by a county or city. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenue referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities. As further security for the bonds, the intermodal authority, with the approval of the governing body of the county or city that created the authority, may pledge, lease, sell, mortgage, or grant a security interest in all or any portion of its ~~land-based port~~ intermodal authority, transportation, storage or other facilities, whether or not the facilities are financed by the bonds. The instrument effecting the pledge, lease, sale, mortgage, or security interest may contain any agreements and provisions customarily contained in instruments securing bonds, as the commissioners of the intermodal authority consider advisable. The provisions must be consistent with this chapter and are subject to and must be in accordance with the laws of this state governing mortgages, trust indentures, security agreements, or instruments. The instrument may provide that in the event of a default in the payment of principal or interest on the bonds or in the performance of any agreement contained in the proceedings authorizing the bonds or instrument, the payment or performance may be enforced by the appointment of a receiver in equity. The receiver may collect charges, rents or fees and may apply the revenue from the mortgaged property or collateral in accordance with the provisions of the instrument.

(6) Nothing in this section may be construed to limit the use of intermodal authority revenue, including federal, state and local money to make grants and loans or to otherwise provide financial and other support to a private intermodal authority, including corporations and business entities operating under the provisions of Idaho law. The credit of the state, county

or municipal governments or their agencies or authorities may not be pledged to provide financial support to the intermodal authority.

SECTION 10. That Section 70-2213, Idaho Code, be, and the same is hereby amended to read as follows:

70-2213. FEDERAL, STATE AND LOCAL MONEY. An intermodal authority may accept, receive, receipt for, and spend federal, state and local money and other public or private money made available by grant, loan or appropriation to accomplish any of the purposes of this chapter and according to conditions of the grant, loan or appropriation. All federal money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state money accepted under this section must be accepted and spent by the intermodal authority upon terms and conditions prescribed by the state. All county or city money accepted under this section must be accepted and spent by the intermodal authority upon terms and conditions prescribed by the governing county or city.

Approved March 3, 2011.

CHAPTER 38  
(H.B. No. 93)

AN ACT

RELATING TO HAZARDOUS WASTE MANAGEMENT; AMENDING SECTION 39-4403, IDAHO CODE, TO REVISE THE DEFINITION OF "RESTRICTED HAZARDOUS WASTE."

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-4403, Idaho Code, be, and the same is hereby amended to read as follows:

39-4403. DEFINITIONS. As used in this chapter:

- (1) "Board" means the Idaho board of environmental quality.
- (2) "Commercial hazardous waste facility or site" means any hazardous waste facility whose primary business is the treatment, storage or disposal, for a fee or other consideration, of hazardous waste generated offsite by generators other than the owner and operator of the facility.
- (3) "Department" means the Idaho department of environmental quality.
- (4) "Director" means the director of the Idaho department of environmental quality or the director's authorized agent.
- (5) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.
- (6) "Gate ton" means the weight, in tons (2,000 pounds/ton), of waste material received at a facility. This weight does not include any subsequent changes to the weight resulting from the management of the waste by the facility.
- (7) "Generator" means any person, who by virtue of ownership, management, or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.
- (8) "Hazardous waste" means a waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological) may:

(a) Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible or incapacitating reversible illnesses; or

(b) Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties but do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to national pollution discharge elimination system permits under the federal water pollution control act, as amended, 33 U.S.C., section 1251 et seq., or source, special nuclear, or byproduct material as defined by the atomic energy act of 1954, as amended, 42 U.S.C., section 2011 et seq.

(9) "Hazardous waste management" means the systematic control of the collection, source separation, storage, treatment, transportation, processing, and disposal of hazardous wastes.

(10) "Hazardous waste facility or site" means any property, structure, or ancillary equipment intended or used for the transportation, treatment, storage or disposal of hazardous wastes.

(11) "Injection" means the subsurface emplacement of free liquids.

(12) "Manifest" means a form used for identifying the quantity, composition, origin, routing, waste identification code(s), and destination of hazardous waste during any transportation from the point of generation to the point of treatment, storage or disposal.

(13) "Manifested waste" means waste which at the point of origin or generation is required to be manifested for transportation in a manner similar to that of the federal uniform hazardous waste manifest or by other manifest requirements designed to assure proper treatment, storage and disposal of such waste.

(14) "PCB waste" means any waste or waste item which is not included in the definition of "hazardous waste" and which is contaminated with polychlorinated biphenyls.

(15) "Person" means any individual, association, partnership, firm, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency, or instrumentality, or any other legal entity which is recognized by law as the subject of rights and duties.

(16) "RCRA" means the resource conservation and recovery act of 1976 as amended from time to time.

(17) "Restricted hazardous waste" means a waste or combination of wastes regulated as land disposal restricted pursuant to federal statutes and regulations, including 40 CFR part 268. Restricted hazardous waste also includes byproduct, except as provided below, source, special nuclear materials or devices or equipment utilizing such materials regulated under the federal atomic energy act of 1954, as amended. Restricted hazardous waste shall not include radiologically contaminated waste materials from "Formerly Utilized Sites Remedial Action Program (FUSRAP)" sites administered by the United States army corps of engineers and being disposed of pursuant to a contract in existence on July 1, 2001, and as may be renewed thereafter, or byproduct materials or devices or equipment utilizing such materials that are authorized by the United States nuclear regulatory commission pursuant to the federal energy policy act of 2005, to be disposed of in a commercial hazardous waste facility.

(18) "Storage" means the containment of hazardous wastes, on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes.

(19) "Transportation" means the movement of any hazardous waste to or from a hazardous waste facility or site.

(20) "Transporter" means any person who transports a hazardous waste to or from a hazardous waste facility or site.

(21) "Treatment" means any method, technique, or process, including neutralization, which is designed not to be an integral part of a production process, but which is rather designed to change the physical, chemical, or biological character or composition of any hazardous waste prior to storage or final disposal so as to neutralize such waste or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(22) "Waste" means any solid, semisolid, liquid or contained gaseous material for which no reasonable use or reuse is intended or which is intended to be discarded.

Approved March 8, 2011.

CHAPTER 39  
(H.B. No. 20)

AN ACT

RELATING TO EDUCATION; REPEALING SECTION 33-3717, IDAHO CODE, RELATING TO FEES AT THE UNIVERSITY OF IDAHO; AMENDING SECTION 33-3717A, IDAHO CODE, TO PROVIDE THAT THE STATE BOARD OF EDUCATION AND THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO MAY PRESCRIBE FEES, INCLUDING TUITION FEES, FOR RESIDENT AND NONRESIDENT STUDENTS ENROLLED IN ALL STATE COLLEGES AND UNIVERSITIES; AMENDING SECTION 33-2101A, IDAHO CODE, TO DELETE A CODE REFERENCE; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-3717, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Section 33-3717A, Idaho Code, be, and the same is hereby amended to read as follows:

33-3717A. FEES AT STATE COLLEGES AND UNIVERSITIES ~~OTHER THAN THE UNIVERSITY OF IDAHO~~. (1) The state board of education and the board of regents of the university of Idaho may prescribe fees, including tuition fees, for resident and nonresident students enrolled in all state colleges and universities other than the university of Idaho. For purposes of this section, said fees, including tuition fees, may be used for any and all educational costs at the state colleges and universities including, but not limited to, costs associated with:

- (a) Academic services;
- (b) Instruction;
- (c) The construction, maintenance and operation of buildings and facilities;
- (d) Student services; or
- (e) Institutional support.

The state board of education also may prescribe fees for all students for any additional charges that are necessary for the proper operation of each institution.

(2) A resident student is a student who meets the residency requirements imposed by section 33-3717B, Idaho Code.

(3) Nothing contained in this section shall prevent the state board of education from waiving fees, including tuition fees, to be paid by nonresident students, as defined in section 33-3717C, Idaho Code, who are enrolled in the state colleges and universities.

(4) Nothing contained in this section shall apply to community colleges now or hereafter established pursuant to chapter 21, title 33, Idaho Code, or to postsecondary professional-technical schools now or hereafter established and not connected to or a part of a state college or university.

SECTION 3. That Section 33-2101A, Idaho Code, be, and the same is hereby amended to read as follows:

33-2101A. JUNIOR COLLEGE SHALL MEAN COMMUNITY COLLEGE. Notwithstanding any other provision of law, in sections 21-805, 21-806, 21-809, 23-404, 31-808, 33-101, 33-107, 33-107B, 33-601, 33-1252, 33-2101, 33-2102, 33-2103, 33-2104, 33-2105, 33-2106, 33-2107, 33-2107A, 33-2107B, 33-2107C, 33-2108, 33-2109A, 33-2110, 33-2110A, 33-2110B, 33-2111, 33-2112, 33-2113, 33-2114, 33-2115, 33-2116, 33-2117, 33-2118, 33-2119, 33-2121, 33-2122, 33-2123, 33-2124, 33-2125, 33-2126, 33-2130, 33-2135, 33-2137, 33-2138, 33-2139, 33-2141, 33-2142, 33-2143, 33-2144, 33-2211, 33-3716, ~~33-3717~~, 33-4001, 33-4003, 33-4004, 33-4006, 33-4201, 33-4306, 33-4315, 46-314, 50-1721, 57-1105A, 59-1324, 59-1371, 59-1374, 67-2320, 67-2322 and 67-5332, Idaho Code, the term "junior college" shall mean and shall be denoted as "community college."

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 8, 2011.

CHAPTER 40  
(H.B. No. 21)

AN ACT

RELATING TO EDUCATION; AMENDING SECTION 33-1271, IDAHO CODE, TO PROVIDE THAT ACCURATE RECORDS OR MINUTES OF CERTAIN PROCEEDINGS SHALL BE KEPT AND SHALL BE AVAILABLE FOR PUBLIC INSPECTION AT THE OFFICE OF THE AFFECTED SCHOOL DISTRICT AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-1271, Idaho Code, be, and the same is hereby amended to read as follows:

33-1271. SCHOOL DISTRICTS -- PROFESSIONAL EMPLOYEES -- NEGOTIATION AGREEMENTS. The board of trustees of each school district, including specially chartered districts, or the designated representative(s) of such district, is hereby empowered to and shall, upon its own initiative or upon the request of a local education organization representing professional employees, enter into a negotiation agreement with the local education organization or the designated representative(s) of such organization and negotiate with such party in good faith on those matters specified in any such negotiation agreement between the local board of trustees and the local education organization. A request for negotiations may be initiated by either party to such negotiation agreement. Accurate records or minutes of the proceedings shall be kept, and shall be available for public inspection

at the offices ~~of the board of education~~ of the affected school district during normal business hours. Joint ratification of all final offers of settlement shall be made in open meetings.

Approved March 8, 2011.

CHAPTER 41  
(H.B. No. 41)

AN ACT

RELATING TO UNDERGROUND STORAGE TANKS; AMENDING SECTION 39-8811, IDAHO CODE, TO PROVIDE FOR CERTAIN MONETARY PENALTIES FOR SPECIFIED VIOLATIONS AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-8811, Idaho Code, be, and the same is hereby amended to read as follows:

39-8811. ENFORCEMENT. Failure to comply with this chapter or rules promulgated pursuant to this chapter shall be subject to enforcement pursuant to the enforcement provisions of the Idaho environmental protection and health act contained in section 39-108, Idaho Code, provided however, that any monetary penalties for violations of the provisions of this chapter, or rules promulgated pursuant to this chapter, shall be assessed against the violator, or the violator shall be sued to recover in court, as follows:

(1) Anyone subject to the provisions of this chapter as provided in section 39-8804, Idaho Code, or rules promulgated pursuant to this chapter, who has been determined in a civil enforcement action to have failed to comply with tank notification requirements, or to have submitted false information pursuant to tank notification requirements, as provided in this chapter, any rule promulgated pursuant to this chapter or any order entered related to such violation, shall be liable for penalties of up to five thousand dollars (\$5,000) per violation.

(2) Anyone subject to the provisions of this chapter as provided in section 39-8804, Idaho Code, or rules promulgated pursuant to this chapter, who has been determined in a civil enforcement action to have failed to comply with any provisions of this chapter, any rule promulgated pursuant to this chapter or any order entered related to such violation, for existing or new tank systems, shall be liable for penalties of up to five thousand dollars (\$5,000) for each tank for each day of violation. If the violation is continuous, the violator shall be liable for penalties of up to five thousand dollars (\$5,000) for each day of violation.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 8, 2011.

CHAPTER 42  
(H.B. No. 76)

AN ACT

RELATING TO PUBLIC EMPLOYMENT AND COVERAGE; AMENDING SECTION 72-205, IDAHO CODE, TO REMOVE REFERENCE TO THE STATE INSURANCE FUND.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-205, Idaho Code, be, and the same is hereby amended to read as follows:

72-205. PUBLIC EMPLOYMENT GENERALLY -- COVERAGE. The following shall constitute employees in public employment and their employers subject to the provisions of this law:

(1) Every person in the service of the state or of any political subdivision thereof, under any contract of hire, express or implied, and every official or officer thereof, whether elected or appointed, while performing his official duties, except officials of athletic contests involving secondary schools, as defined by section 33-119, Idaho Code.

(2) Every person in the service of a county, city, or any political subdivision thereof, or of any municipal corporation.

(3) Participants in the Idaho youth conservation project under the supervision of the Idaho state forester.

(4) Every person who is a volunteer emergency responder shall be deemed, for the purposes of this law, to be in the employment of the political subdivision or municipality where the department, agency or organization is organized.

(5) Every person who is a regularly enrolled volunteer member or trainee of the department of disaster and civil defense, or of a civil defense corps, shall be deemed, for the purposes of this law, to be in the employment of the state.

(6) Members of the Idaho national guard while on duty and employees of or persons providing voluntary service to an approved Idaho national guard morale, welfare, and recreational activity. No Idaho compensation benefits shall inure to any such member, employee or volunteer or their beneficiaries for any injury or death compensable under federal law.

(7) A community service worker, as that term is defined in section 72-102, Idaho Code, is considered to be an employee in public employment for purposes of receiving worker's compensation benefits, which shall be the community service worker's exclusive remedy for all injuries and occupational diseases as provided under chapters 1 through 8, title 72, Idaho Code.

(8) Every person who participates in a youth employment program funded in whole or in part by state or federal money and administered by a state or federal agency or a nonprofit corporation or entity.

(9) A work experience student, as that term is defined in section 72-102, Idaho Code, who does not receive wages while participating in the school's work experience program shall be covered by the school district's policy with the state insurance fund.

Approved March 8, 2011.

CHAPTER 43  
(H.B. No. 105)

AN ACT

RELATING TO THE IDAHO BUREAU OF EDUCATIONAL SERVICES FOR THE DEAF AND THE BLIND; AMENDING SECTION 33-3407, IDAHO CODE, TO CORRECT A CODE REFERENCE; AMENDING SECTION 59-1374, IDAHO CODE, TO PROVIDE THAT THE IDAHO BUREAU OF EDUCATIONAL SERVICES FOR THE DEAF AND THE BLIND IS AN EMPLOYER FOR PUBLIC EMPLOYEE RETIREMENT SYSTEM PURPOSES; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-3407, Idaho Code, be, and the same is hereby amended to read as follows:

33-3407. GOVERNMENTAL ENTITY -- LIABILITY -- INSURANCE. (1) The Idaho bureau of educational services for the deaf and the blind, as provided for in this chapter, is not a single department of state government unto itself, nor is it a part of any of the twenty (20) departments of state government authorized by section 20, article IV, of the constitution of the state of Idaho, or of the departments provided for in section 67-2402, Idaho Code. It is legislative intent that the Idaho bureau of educational services for the deaf and the blind operate and be recognized not as a state agency or department, but as a governmental entity whose creation has been authorized by the state, much in the manner as other single purpose districts. For the purposes of section 59-1302(15), Idaho Code, the Idaho bureau of educational services for the deaf and the blind created pursuant to this chapter shall be deemed a governmental entity. Pursuant to the provisions of section 63-36220, Idaho Code, sales to or purchases by the Idaho bureau of educational services for the deaf and the blind are exempt from payment of the sales and use tax. The Idaho bureau of educational services for the deaf and the blind, its employees and its board of directors are subject to the following provisions in the same manner as a traditional public school and the board of trustees of a school district:

- (a) Sections 18-1351 through 18-1362, Idaho Code, on bribery and corrupt influence, except as provided by section 33-5204A(2), Idaho Code;
- (b) Chapter 2, title 59, Idaho Code, on prohibitions against contracts with officers;
- (c) Chapter 7, title 59, Idaho Code, on ethics in government;
- (d) Chapter 23, title 67, Idaho Code, on open public meetings; and
- (e) Chapter 3, title 9, Idaho Code, on disclosure of public records.

(2) The Idaho bureau of educational services for the deaf and the blind, its employees and its board of directors are subject to the following provisions:

- (a) Section 33-1216, Idaho Code, on sick and other leave, or the laws, rules and policies of the state of Idaho for sick and other leave as provided for in chapter 53, title 67, Idaho Code, as determined by the board;
- (b) Section 33-1217, Idaho Code, on accumulation of unused sick leave, or the laws, rules and policies of the state of Idaho for accumulation of unused sick leave as provided for in section 67-5333, Idaho Code, as determined by the board;
- (c) Section 33-1218, Idaho Code, on sick leave in excess of statutory minimum amounts, or the laws, rules and policies of the state of Idaho for sick leave in excess of statutory minimum amounts as provided for in section 67-5333, Idaho Code, as determined by the board; and

(d) Section 33-1228, Idaho Code, on severance allowance at retirement, or the laws, rules and policies of the state of Idaho for severance allowance at retirement as provided for in section 67-534233, Idaho Code, as determined by the board.

(3) The Idaho bureau of educational services for the deaf and the blind may sue or be sued, purchase, receive, hold and convey real and personal property for school purposes, and its employees, directors and officers shall enjoy the same immunities as employees, directors and officers of traditional public school districts and other public schools, including those provided by chapter 9, title 6, Idaho Code.

(4) The Idaho bureau of educational services for the deaf and the blind shall be considered a state department for purposes of risk management and group insurance pursuant to chapter 57, title 67, Idaho Code, and the department of administration shall treat the bureau as such.

(5) It shall be unlawful for:

(a) Any director to have pecuniary interest directly or indirectly in any contract or other transaction pertaining to the maintenance or conduct of the Idaho bureau of educational services for the deaf and the blind, or to accept any reward or compensation for services rendered as a director except as may be otherwise provided in this subsection. The board of directors of the Idaho bureau of educational services for the deaf and the blind may accept and award contracts involving the Idaho bureau of educational services for the deaf and the blind to businesses in which the director or a person related to him by blood or marriage within the second degree of consanguinity 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 the Idaho bureau of educational services for the deaf and the blind for deposit in any bank or trust company, or the lending of moneys by any bank or trust company to the Idaho bureau of educational services for the deaf and the blind, shall not be deemed to be a contract pertaining to the maintenance or conduct of the Idaho bureau of educational services for the deaf and the blind within the meaning of this section; nor shall the payment of compensation by the Idaho bureau of educational services for the deaf and the blind board of directors to any bank or trust company for services rendered in the transaction of any banking business with the Idaho bureau of educational services for the deaf and the blind board of directors 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.

(b) The board of directors of the Idaho bureau of educational services for the deaf and the blind to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract require, or shall require, the payment or delivery of any Idaho bureau of educational services for the deaf and the blind funds, moneys or property to such spouse, except as provided in section 18-1361 or 18-1361A, Idaho Code.

(6) When any relative of any director, or relative of the spouse of a director related by affinity or consanguinity within the second degree, is to be considered for employment in the Idaho bureau of educational services for the deaf and the blind, such director 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.

SECTION 2. That Section 59-1374, Idaho Code, be, and the same is hereby amended to read as follows:

59-1374. EMPLOYERS -- MEMBERS -- EXCEPTIONS. All school districts, public community college districts and Boise State University shall become

employers pursuant to the provisions of chapter 13, title 59, Idaho Code, on July 1, 1967, except as herein otherwise provided. School employees shall become members pursuant to the provisions of chapter 13, title 59, Idaho Code, on July 1, 1967, except as herein otherwise provided. Provided, however, that teacher members employed by the agricultural extension service of the college of agriculture of the University of Idaho shall be deemed to be employees of the state of Idaho notwithstanding the provisions of section 59-1302(14)(B)(e), Idaho Code, and may elect to participate or be excluded as members of the system in accordance with rules of the board. All public charter schools created pursuant to chapter 52, title 33, Idaho Code, shall be employers pursuant to the provisions of chapter 13, title 59, Idaho Code. The Idaho digital learning academy created pursuant to chapter 55, title 33, Idaho Code, shall be an employer pursuant to the provisions of this chapter 13, title 59, Idaho Code. The Idaho bureau of educational services for the deaf and the blind created pursuant to chapter 34, title 33, Idaho Code, shall be an employer pursuant to the provisions of this chapter 13, title 59, Idaho Code.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval, and retroactively to July 1, 2010. Section 2 of this act shall be in full force and effect on and after passage and approval, and retroactively to July 1, 2009.

Approved March 8, 2011.

CHAPTER 44  
(S.B. No. 1058)

AN ACT

RELATING TO THE IDAHO BOARD OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-3627, IDAHO CODE, TO PROVIDE THAT MUNICIPALITIES AND COMMUNITY AND NONPROFIT NONCOMMUNITY PUBLIC DRINKING WATER SYSTEMS SHALL AGREE TO PROVIDE FOR FULL AMORTIZATION OF LOANS NOT LATER THAN THIRTY YEARS FROM THE DATE PROJECT CONSTRUCTION IS COMPLETED REGARDING CONTRACTS BETWEEN THE BOARD AND SUCH ENTITIES CONCERNING ELIGIBLE CONSTRUCTION PROJECTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-3627, Idaho Code, be, and the same is hereby amended to read as follows:

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 thirty~~ (230) 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.

Approved March 8, 2011.

CHAPTER 45  
(S.B. No. 1079)

AN ACT

RELATING TO EXTENSION OF TIME UNDER THE STATE INCOME TAX ACT; AMENDING SECTION 63-3033, IDAHO CODE, TO PROVIDE FOR AN EXTENSION OF TIME UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 63-3072, IDAHO CODE, TO PROVIDE AN EXTENSION OF TIME UNDER CERTAIN CIRCUMSTANCES; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3033, Idaho Code, be, and the same is hereby amended to read as follows:

63-3033. EXTENSION OF TIME. (a) Taxpayers shall have an automatic extension of time for filing any return, declaration, statement or other document required by this chapter for a period of six (6) months if on or before the unextended due date the taxpayer has paid at least eighty percent (80%) of the total tax due on the income tax return when it is filed, or the total tax due on the income tax return for the prior year if a return was filed for the prior year.

(b) If, on the unextended due date, the payment required to meet the provisions of subsection (a) of this section, after consideration of any previous credits or payments applicable to the return, is fifty dollars (\$50.00) or less, such payment shall not be required in order to qualify for the extension. However, interest shall accrue as provided in subsection (f) of this section. Payment of any balance of tax is due on the earlier of the extended due date or the date the return is filed.

(c) Taxpayers residing outside any of the United States and Puerto Rico (including persons in military or naval service) shall have an automatic extension of time within which to file income tax returns with this state for a period which shall expire on the fifteenth day of the sixth month following the close of their taxable year.

(d) Individuals who are entitled to extensions for filing federal income tax returns as a result of the application of the provisions of sections 911 and 7508 of the Internal Revenue Code, shall be entitled to extensions of time for the same period for filing income tax returns with the state of Idaho subject to the requirements imposed in implementation of the indicated sections.

(e) Any taxpayer entitled to an extension under subsection (c) or (d) of this section shall attach a statement to his return claiming his right to the extension.

(f) If the amount of payment made under subsection (a) of this section is less than eighty percent (80%) of the total tax due under the provisions of this chapter and is less than the amount of the total tax due on the income tax return for the prior year, except as permitted by subsection (b) of this section, a penalty may be applied to the total of the balance due unless reasonable cause can be established. The penalty shall be:

(1) If the taxes for the taxable year are paid on or before the extended due date, two percent (2%) per month from the original due date to the date of payment.

(2) If the taxes for the taxable year are not paid on or before the extended due date, the penalty provided in section 63-3046(c), Idaho Code, from the original due date.

(g) In all cases of an extension of time in which to file any return, except for those related to section 7508 of the Internal Revenue Code, interest shall be paid on any tax due from the original due date to date of payment at the rate provided in section 63-3045, Idaho Code. For an individual entitled to an extension of time allowed by subsection (d) of this section and section 7508 of the Internal Revenue Code, interest shall be paid on any tax due from the extended due date allowed in subsection (d) of this section to the date of payment.

SECTION 2. That Section 63-3072, Idaho Code, be, and the same is hereby amended to read as follows:

63-3072. CREDITS AND REFUNDS. (a) Subject to the provisions of subsections (b), (c) and (h) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) Except in regard to amounts withheld as provided in section 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments under section 63-3036A, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions.

(c) With regard to amounts withheld as provided in section 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments under section 63-3036A, Idaho Code, a claim for credit or refund shall be made within three (3) years from the due date of the return, without regard to extensions, for the taxable year in respect to which the tax was withheld or paid. However, with regard to an individual who is entitled to an extension of time as provided in section 7508 of the Internal Revenue Code, the three (3) year period provided in this subsection for claiming a credit or refund shall be extended by the number of days disregarded under section 7508 of the Internal Revenue Code.

(d) Notwithstanding any other provisions of this section, when Idaho taxable income and/or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitations for claiming a refund or credit of tax, penalties, or interest shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the taxpayer by the internal revenue service, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection, the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the inter-

nal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (b) and (h) of this section, only those specific items of income, deductions, gains, losses or credits which were adjusted in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(e) If a claim for credit or refund relates to an overpayment attributable to a net operating loss carryback or a capital loss carryback, in lieu of the period of limitations prescribed in subsection (b) of this section, the period shall be that period which ends with the expiration of the fifteenth day of the fortieth month following the end of the taxable year of the net operating loss or capital loss which results in such carryback.

(f) If an adjustment, which was made within the period of limitations as provided in this section, affects the amount of tax credit, net operating loss, or capital loss, claimed in a taxable year other than the tax year in which the adjustment is made, then adjustments to the credit, net operating loss, or capital loss, claimed in such other tax year may be made and a claim for credit or refund of tax, penalties or interest may be made even though such claim would otherwise be barred under the provisions of this section.

(g) In the case of a duplicate return filed under section 63-217(1)(b), Idaho Code, the limitations under this section shall be the later of one (1) year from the filing of the duplicate return or the date otherwise applicable under this section.

(h) Prior to the expiration of the time prescribed in this section for credit or refund of any tax imposed by the provisions of this chapter, both the state tax commission or its delegate or deputy and the taxpayer may consent in writing to extend such period of time. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. When a pass-through entity extends the period of limitations in accordance with the provisions of this subsection the period of limitations for the other taxpayers is automatically extended for the same period for the purpose of claiming a credit or refund of tax, penalties or interest by the other taxpayers reflecting the pass-through entity adjustments.

(i) The expiration of the period of limitations as provided in this section shall be suspended for the time period between the issuance by the state tax commission of a notice under either section 63-3045 or 63-3065, Idaho Code, and the final resolution of any proceeding resulting from the notice.

(j) Appeal of a state tax commission decision denying in whole or in part a claim for credit or refund shall be made in accordance with and within the time limits prescribed in section 63-3049, Idaho Code.

(k) For purposes of this section, "return" includes a notice of deficiency determination issued by the state tax commission when no return was filed by the taxpayer. Such a return is deemed filed on the date the taxes determined by the state tax commission are assessed.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2011.

Approved March 9, 2011.

CHAPTER 46  
(H.B. No. 119)

AN ACT

RELATING TO UNIFORM CONTROLLED SUBSTANCES; AMENDING SECTION 37-2705, IDAHO CODE, TO IDENTIFY ADDITIONAL SUBSTANCES TO BE CLASSIFIED IN SCHEDULE I; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 37-2705, Idaho Code, be, and the same is hereby amended to read as follows:

37-2705. SCHEDULE I. (a) The controlled substances listed in this section are included in schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM);
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl;
- (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (9) Benzethidine;
- (10) Betacetylmethadol;
- (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
- (12) Beta-hydroxy-3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide);
- (13) Betameprodine;
- (14) Betamethadol;
- (15) Betaprodine;
- (16) Clonitazene;
- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;
- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;
- (26) Ethylmethylthiambutene;
- (27) Etonitazene;
- (28) Etoxeridine;
- (29) Furethidine;
- (30) Hydroxypethidine;
- (31) Ketobemidone;
- (32) Levomoramide;
- (33) Levophenacylmorphane;
- (34) 3-Methylfentanyl;

- (35) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (36) Morpheridine;
- (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (38) Noracymethadol;
- (39) Norlevorphanol;
- (40) Normethadone;
- (41) Norpipanone;
- (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
- (43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (44) Phenadoxone;
- (45) Phenampromide;
- (46) Phenomorphan;
- (47) Phenoperidine;
- (48) Piritramide;
- (49) Proheptazine;
- (50) Properidine;
- (51) Propiram;
- (52) Racemoramide;
- (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
- (54) Tilidine;
- (55) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphanol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine;
- (23) Thebacon.

(d) Hallucinogenic substances. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

- (1) 4-bromo-2,5-dimethoxy amphetamine;

- (2) 2,5-dimethoxyamphetamine;
- (3) 4-bromo-2,5-dimethoxyphenethylamine (some other names: alpha-desmethyl DOB, 2C-B);
- (4) 2,5-dimethoxy-4-ethylamphetamine (another name: DOET);
- (5) 2,5-dimethoxy-4-(n)-propylthiophenethylamine;
- (6) 4-methoxyamphetamine (PMA);
- (7) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (8) 5-methoxy-N,N-diisopropyltryptamine;
- (9) 4-methyl-2,5-dimethoxy-amphetamine (DOM, STP);
- (10) 3,4-methylenedioxy amphetamine;
- (11) 3,4-methylenedioxymethamphetamine (MDMA);
- (12) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-ethyl MDA, MDE, MDEA);
- (13) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-hydroxy MDA);
- (14) 3,4,5-trimethoxy amphetamine;
- (15) Alpha-ethyltryptamine (some other names: etryptamine, 3-(2-aminobutyl) indole);
- (16) Alpha-methyltryptamine;
- (17) Bufotenine;
- (18) Diethyltryptamine (DET);
- (19) Dimethyltryptamine (DMT);
- (20) Ibogaine;
- (21) Lysergic acid diethylamide;
- (22) Marihuana;
- (23) Mescaline;
- (24) Parahexyl;
- (25) Peyote;
- (26) N-ethyl-3-piperidyl benzilate;
- (27) N-methyl-3-piperidyl benzilate;
- (28) Psilocybin;
- (29) Psilocyn;
- (30) Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
  - $\Delta^1$  cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.
  - $\Delta^6$  cis or trans tetrahydrocannabinol, and their optical isomers.
  - $\Delta^{3,4}$  cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)
- (31) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE);
- (32) Pyrrolidine analog of phencyclidine: 1-(phenylcyclohexyl) -pyrrolidine, PCPy, PHP;
- (33) Thiophene analog of phencyclidine 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP;
- (34) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine another name: TCPy;
- (35) Spores or mycelium capable of producing mushrooms that contain psilocybin or psilocin.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Gamma hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate, 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);
- (2) Flunitrazepam (also known as "R2," "Rohypnol");
- (3) Mecloqualone;
- (4) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (1) Aminorex (some other names: aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine);
- (2) Cathinone (some other names: 2-amino-1-phenol-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone);
- (3) Substituted cathinones. Any compound, except bupropion or compounds listed under a different schedule, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl or thiophene ring systems, whether or not the compound is further modified in any of the following ways:
  - i. By substitution in the ring system to any extent with alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl or halide substituents, whether or not further substituted in the ring system by one (1) or more other univalent substituents;
  - ii. By substitution at the 3-position with an acyclic alkyl substituent;
  - iii. By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure.

(4) Fenethylamine;

(45) Methcathinone (some other names: 2-(methyl-amino)-propiophenone, alpha-(methylamino)-propiophenone, N-methylcathinone, AL-464, AL-422, AL-463 and UR1423);

(56) (+/-) cis-4-methylaminorex [(+/-) cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine];

(67) N-benzylpiperazine (also known as: BZP, 1-benzylpiperazine);

(78) N-ethylamphetamine;

(89) N,N-dimethylamphetamine (also known as: N,N-alpha-trimethylbenzeneethanamine).

(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers.

(2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 10, 2011.

CHAPTER 47  
(H.B. No. 139)

AN ACT

RELATING TO UNIFORM CONTROLLED SUBSTANCES; AMENDING SECTION 37-2705, IDAHO CODE, TO IDENTIFY ADDITIONAL SUBSTANCES TO BE CLASSIFIED IN SCHEDULE I; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 37-2705, Idaho Code, be, and the same is hereby amended to read as follows:

37-2705. SCHEDULE I. (a) The controlled substances listed in this section are included in schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM);
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl;
- (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (9) Benzethidine;
- (10) Betacetylmethadol;
- (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
- (12) Beta-hydroxy-3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide);
- (13) Betameprodine;
- (14) Betamethadol;
- (15) Betaprodine;
- (16) Clonitazene;
- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;
- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;
- (26) Ethylmethylthiambutene;
- (27) Etonitazene;
- (28) Etoperidine;
- (29) Furethidine;
- (30) Hydroxypethidine;
- (31) Ketobemidone;
- (32) Levomoramide;
- (33) Levophenacetylmorphan;
- (34) 3-Methylfentanyl;

- (35) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (36) Morpheridine;
- (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (38) Noracymethadol;
- (39) Norlevorphanol;
- (40) Normethadone;
- (41) Norpipanone;
- (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
- (43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (44) Phenadoxone;
- (45) Phenampromide;
- (46) Phenomorphan;
- (47) Phenoperidine;
- (48) Piritramide;
- (49) Proheptazine;
- (50) Properidine;
- (51) Propiram;
- (52) Racemoramide;
- (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
- (54) Tilidine;
- (55) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphanol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine;
- (23) Thebacon.

(d) Hallucinogenic substances. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

- (1) 4-bromo-2,5-dimethoxy amphetamine;

- (2) 2,5-dimethoxyamphetamine;
- (3) 4-bromo-2,5-dimethoxyphenethylamine (some other names: alpha-desmethyl DOB, 2C-B);
- (4) 2,5-dimethoxy-4-ethylamphetamine (another name: DOET);
- (5) 2,5-dimethoxy-4-(n)-propylthiophenethylamine;
- (6) 4-methoxyamphetamine (PMA);
- (7) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (8) 5-methoxy-N,N-diisopropyltryptamine;
- (9) 4-methyl-2,5-dimethoxy-amphetamine (DOM, STP);
- (10) 3,4-methylenedioxy amphetamine;
- (11) 3,4-methylenedioxymethamphetamine (MDMA);
- (12) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-ethyl MDA, MDE, MDEA);
- (13) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-hydroxy MDA);
- (14) 3,4,5-trimethoxy amphetamine;
- (15) Alpha-ethyltryptamine (some other names: etryptamine, 3-(2-aminobutyl) indole);
- (16) Alpha-methyltryptamine;
- (17) Bufotenine;
- (18) Diethyltryptamine (DET);
- (19) Dimethyltryptamine (DMT);
- (20) Ibogaine;
- (21) Lysergic acid diethylamide;
- (22) Marihuana;
- (23) Mescaline;
- (24) Parahexyl;
- (25) Peyote;
- (26) N-ethyl-3-piperidyl benzilate;
- (27) N-methyl-3-piperidyl benzilate;
- (28) Psilocybin;
- (29) Psilocyn;
- (30) Tetrahydrocannabinols, or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

i. Tetrahydrocannabinols:

a.  $\Delta^1$  cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.

b.  $\Delta^6$  cis or trans tetrahydrocannabinol, and their optical isomers.

c.  $\Delta^{3,4}$  cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

d. [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2methyl-octan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol)], also known as 6aR-trans-3-(1,1-dimethylheptyl)-6a,7,10,10a-tetrahydro-1-hydroxy-6,6-dimethyl-6H-dibenzo[b,d]pyran-9-methanol (HU-210) and its geometric isomers (HU211 or dexanabinol).

ii. The following synthetic drugs:

a. Any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

b. Any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

c. Any compound structurally derived from 1-(1-naphthylmethyl)indene by substitution at the 3-position of the indene ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent.

d. Any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent.

e. Any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not substituted in the cyclohexyl ring to any extent.

f. Any compound structurally derived from 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.

g. [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrol-  
o[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone  
(WIN-55,212-2).

h. 3-dimethylheptyl-11-hydroxyhexahydrocannabinol (HU-243).

i. 9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-  
5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate  
(CP 50,5561).

(31) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(32) Pyrrolidine analog of phencyclidine: 1-(phenylcyclohexyl) - pyrrolidine, PCPy, PHP;

(33) Thiophene analog of phencyclidine 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP;

(34) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine another name: TCPy;

(35) Spores or mycelium capable of producing mushrooms that contain psilocybin or psilocin.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity

of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Gamma hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate, 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);
- (2) Flunitrazepam (also known as "R2," "Rohypnol");
- (3) Mecloqualone;
- (4) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (1) Aminorex (some other names: aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine);
- (2) Cathinone (some other names: alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone);
- (3) Fenethylamine;
- (4) Methcathinone (some other names: 2-(methyl-amino)-propiophenone, alpha-(methylamino)-propiophenone, N-methylcathinone, AL-464, AL-422, AL-463 and UR1423);
- (5) (+/-) cis-4-methylaminorex [(+/-) cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine];
- (6) N-benzylpiperazine (also known as: BZP, 1-benzylpiperazine);
- (7) N-ethylamphetamine;
- (8) N,N-dimethylamphetamine (also known as: N,N-alpha-trimethyl-benzeneethanamine).

(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:

- (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers.
- (2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 10, 2011.

CHAPTER 48  
(S.B. No. 1050)

AN ACT

RELATING TO HIGHWAYS; AMENDING CHAPTER 5, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-513D, IDAHO CODE, TO DESIGNATE STATE HIGHWAY 3 AS THE NORTH IDAHO MEDAL OF HONOR HIGHWAY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 5, Title 40, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 40-513D, Idaho Code, and to read as follows:

40-513D. STATE HIGHWAY 3 DESIGNATED AS NORTH IDAHO MEDAL OF HONOR HIGHWAY. State highway 3, connecting U.S. highway 12 near Spalding with interstate 90 near Rose Lake, shall be designated as the "North Idaho Medal of Honor Highway" to honor Idahoans awarded the congressional medal of honor for their service in our armed forces. The Idaho transportation department shall identify areas suitable for posting markers along state highway 3 indicating its designation as the "North Idaho Medal of Honor Highway."

Approved March 10, 2011.

CHAPTER 49  
(H.B. No. 51)

AN ACT  
RELATING TO EDUCATION; AMENDING SECTION 33-1218, IDAHO CODE, TO ELIMINATE CERTAIN LANGUAGE RELATING TO REGULATIONS FOR PROOF OF ILLNESS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-1218, Idaho Code, be, and the same is hereby amended to read as follows:

33-1218. SICK LEAVE IN EXCESS OF STATUTORY MINIMUM AMOUNTS -- PROOF OF ILLNESS. The board of trustees may fix and establish for the district a period of annual sick leave and accumulation of sick leave in excess of the amounts provided herein, in sections 33-1216 and 33-1217, Idaho Code, not discriminatory between employees, and as in its discretion may appear necessary, and may require proof of illness in accordance with section 33-1216, Idaho Code.

~~The state board of education may provide uniform regulations for proof of illness, including forms for submission of proof, and when so provided, its regulations shall supersede the regulations of the district in this regard.~~

Approved March 8, 2011.

CHAPTER 50  
(H.B. No. 38)

AN ACT  
RELATING TO ORGANIC FOOD PRODUCTS; AMENDING SECTION 22-1103, IDAHO CODE, TO DELETE A CERTIFICATE ISSUANCE RESTRICTION RELATING TO EDUCATION REQUIREMENTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-1103, Idaho Code, be, and the same is hereby amended to read as follows:

22-1103. ADMINISTRATION AND ENFORCEMENT -- RULES -- ANNUAL LIST DISTRIBUTION. (1) The administration and enforcement of the provisions of this chapter shall be under the director. The director is authorized, in conformance with chapter 52, title 67, Idaho Code, to promulgate rules concerning, but not limited to:

- (a) Standards for agricultural crops and livestock produced for sale as organically grown food products.
- (b) Records required of organically grown food products producers.

- (c) The number of on-site inspections, announced and unannounced.
- (d) Chemical residue analysis of organically grown food products and fees for conducting such analysis.
- (e) Certification of private laboratories to conduct chemical residue analyses.
- (f) Standards that a producer must meet to be recognized as a producer under the provisions of this chapter.
- (g) Development and distribution of the organic certification seal and standards for its application for use on Idaho organically grown food products.
- (h) Development and implementation of labeling standards.
- (i) Rules establishing organic standards for poultry and poultry products, livestock and livestock products, milk and dairy products or aquaculture products, which will be promulgated in consultation with the appropriate agricultural or commodity organizations as determined by the director. No pending or temporary rule adopted by the department shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review pursuant to sections 67-5224 and 67-5291, Idaho Code.
- ~~(j) Education. The director may not issue a certificate under the provisions of this chapter unless the applicant has met the requirements imposed by the director to ensure the applicant has the knowledge necessary to comply with the requirements of this chapter.~~
- ~~(k) Standards for health care and medical treatment for livestock qualifying as organically grown food products and for the prevention and control of infections or communicable diseases among such livestock.~~
- ~~(l) Standards for prohibitions against denial of health care for or medical treatment of livestock in order to obtain or retain organic certification.~~

(2) An annual list of all certified organic producers, handlers and vendors shall be distributed to state regulatory authorities, and to other persons upon request.

Approved March 11, 2011.

CHAPTER 51  
(H.B. No. 40)

AN ACT

RELATING TO THE BURNING OF CROP RESIDUE; AMENDING SECTION 39-114, IDAHO CODE, TO PROVIDE AN EXCEPTION TO THE IMPOSITION OF A SPECIFIED FEE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-114, Idaho Code, be, and the same is hereby amended to read as follows:

39-114. OPEN BURNING OF CROP RESIDUE. (1) The open burning of crop residue to develop physiological conditions conducive to increase crop yields, or to control diseases, insects, pests or weed infestations shall be an allowable form of open burning, such that it is expressly authorized as referenced in section 52-108, Idaho Code, so long as the open burning is conducted in accordance with the provisions of this section and the rules promulgated pursuant to this chapter.

(2) Crop residue means any vegetative material remaining in the field after harvest or vegetative material produced on designated conservation reserve program (CRP) lands.

(3) The open burning of crop residue shall be conducted in the field where it was generated. A burn may not take place without preapproval from the department. The department shall not approve a burn if it determines that ambient air quality levels:

(a) Are exceeding, or are expected to exceed, seventy-five percent (75%) of the level of any national ambient air quality standard on any day, and these levels are projected to continue or recur over at least the next twenty-four (24) hours; or

(b) Have reached, or are forecasted to reach and persist at, eighty percent (80%) of the one (1) hour action criteria for particulate matter pursuant to section 556 of IDAPA 58.01.01, rules for the control of air pollution in Idaho.

The department shall make available to the public, prior to the burn, information regarding the date of the burn, location, acreage and crop type to be burned. If the agricultural community desires to burn more than twenty thousand (20,000) acres annually of bluegrass within the state, that does not include Indian or tribal lands within the reservation boundaries as recognized by the federal clean air act, then, prior to approving the burning of the additional acres, the department shall complete an air quality review analysis to determine that the ambient air quality levels in this section will be met.

(4) A fee in an amount of two dollars (\$2.00) per acre to be burned shall be paid to the department prior to burning. This fee shall not apply to propane flaming, as defined in the rules promulgated pursuant to this chapter. The department shall remit all fees quarterly to the state treasurer, who shall deposit the moneys in the general fund.

Approved March 11, 2011.

CHAPTER 52  
(H.B. No. 43)

AN ACT

RELATING TO THE MILITARY DIVISION; AMENDING SECTION 46-1103, IDAHO CODE, TO PROVIDE THAT FOR CERTAIN PURPOSES MEMBERS OF THE IDAHO MILITARY SHALL BE CONSIDERED TO BE IN A DUTY STATUS AT ALL TIMES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 46-1103, Idaho Code, be, and the same is hereby amended to read as follows:

46-1103. PERSONS SUBJECT TO THE CODE. The Idaho code of military justice applies to all members of the Idaho military not in federal service when they are in or lawfully ordered to be in a duty status and to all members of the military forces of any other state when in or ordered to be in a duty status while they are assigned or attached to any command within the Idaho military, unless jurisdiction has been exclusively reserved by the other state's general court-martial convening authority, and at any time any of the aforesaid members engage in activities which tend to bring discredit upon the Idaho national guard or disrupt the good order and discipline thereof. For purposes of section 46-1177, Idaho Code, members of the Idaho military shall be considered to be in a duty status at all times.

Approved March 11, 2011.

CHAPTER 53  
(H.B. No. 44)

AN ACT

RELATING TO THE MILITARY DIVISION; AMENDING SECTION 46-112, IDAHO CODE, TO REVISE DUTIES OF THE ADJUTANT GENERAL.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 46-112, Idaho Code, be, and the same is hereby amended to read as follows:

46-112. DUTIES OF THE ADJUTANT GENERAL. The duties of the adjutant general are:

(1) To be chief of staff to the commander-in-chief and administrative head of the military division of the office of governor.

(2) To be custodian of all military records and property of the national guard and organized militia.

(3) To publish and distribute all orders from the governor as commander-in-chief and perform such other duties as the governor may direct.

(4) Subject to the provisions of section 67-5303(j), Idaho Code, to employ such clerical and other personnel as may be required in the military division of the office of the governor.

(5) To pay the members of the national guard when such members are to be paid from state funds.

(6) To attend to the care, maintenance, repair and safekeeping of all federal equipment issued to the state of Idaho for the use of the national guard.

(7) To be custodian of the seal of the office of adjutant general and to deliver the same to his successor.

(8) To organize such units and recruit such personnel, with the consent of the governor, as may be authorized by federal law and regulations, and as may be required for the security of the state of Idaho.

(9) To supervise the training of the national guard and the organized militia.

(10) To make such returns and reports as may be required by the federal laws and regulations.

(11) To coordinate the planning and execution of state activities pertaining to the inauguration of the governor of the state of Idaho and the other elected state executive officers.

(12) To provide or secure all plans and specifications for, to let all contracts for, and to have charge of and supervision over the construction, expansion, rehabilitation, conversion, maintenance and repair, procurement, and the collection of fees for military and nonmilitary facilities and operations within the military division.

Approved March 11, 2011.

CHAPTER 54  
(H.B. No. 100)

AN ACT

RELATING TO THE PEA AND LENTIL COMMISSION; AMENDING SECTION 22-3502, IDAHO CODE, TO REVISE COMPOSITION PROVISIONS RELATING TO THE IDAHO PEA AND LENTIL COMMISSION AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 22-3506, IDAHO CODE, TO REVISE APPOINTMENT PROVISIONS RELATING TO THE IDAHO PEA AND LENTIL COMMISSION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-3502, Idaho Code, be, and the same is hereby amended to read as follows:

22-3502. PEA AND LENTIL COMMISSION CREATED -- MEMBERS. There is hereby created and established in the department of self-governing agencies the "Idaho Pea and Lentil Commission" to be composed of ~~seven~~ six (76) members. Five (5) of the members shall be growers and ~~two~~ one (21) of the members shall be a processors or dealers. The dean of the College of Agriculture, University of Idaho, or his duly authorized representative, shall be an ex officio member without vote of the commission.

SECTION 2. That Section 22-3506, Idaho Code, be, and the same is hereby amended to read as follows:

22-3506. SELECTION OF COMMISSION -- TERMS OF MEMBERS -- VACANCIES. (1) The governor shall appoint ~~seven~~ six (76) persons to the commission based upon submitted nominee petitions. ~~Two~~ One (21) members shall be a dealers or processors and five (5) members shall be growers.

(a) Growers, dealers and processors shall nominate from among themselves, by petition, not more than two (2) names for each position to be filled on the commission.

(b) In the case of grower members, petitions shall be signed by not less than fifteen (15) qualified growers. The nominations made shall be, as near as practicable, representative of lentils, dry peas and chickpeas.

(c) Petitions for dealer or processor members shall be signed by not less than three (3) qualified processors or dealers.

(2) The first members of the commission shall draw lots to determine their respective terms of office. Two (2) of the original members shall serve for one (1) year; two (2) of the original members shall serve for two (2) years; and three (3) of the original members shall serve for three (3) years, provided however, that the terms of office of both dealer members of the commission shall not expire in the same year. The term of office of members of the commission thereafter shall be three (3) years, commencing on July 1.

(3) Members of the commission may not serve more than two (2) consecutive terms, nor may they hold or file for any elective political office while a member of the commission.

(4) In the event there are vacancies in the commission, it shall be the duty of the western pea and lentil growers' association, as the designated representative of Idaho growers of dry peas, lentils and chickpeas or, in the case of the dealer positions, the U.S. pea and lentil trade association as the designated representative of the dealers and processors of Idaho, to submit to the governor not more than two (2) qualified names for each vacancy supported by the proper nominating petitions. The governor shall make the appointment or appointments to fill each vacancy. The appointment shall be for the remainder of the term for that position.

Approved March 11, 2011.

CHAPTER 55  
(H.B. No. 101)

AN ACT

RELATING TO THE STATE BRAND BOARD; AMENDING SECTION 25-1122, IDAHO CODE, TO REVISE FEE PROVISIONS RELATING TO OWNERSHIP AND TRANSPORTATION CERTIFICATES AND TO CORRECT A CODIFIER'S ERROR; AMENDING SECTION 25-1145, IDAHO CODE, TO REVISE A DATE PROVISION RELATING TO THE RENEWAL OF THE

RECORDINGS OF BRANDS AND TO REVISE A FEE PROVISION RELATING TO THE FILING OF RENEWAL APPLICATIONS ASSOCIATED WITH THE RECORDING OF BRANDS; AMENDING SECTION 25-1146, IDAHO CODE, TO REVISE A FEE PROVISION RELATING TO THE RECORDING OF WRITINGS EVIDENCING CERTAIN SALES, ASSIGNMENTS OR TRANSFERS OF BRANDS; AND AMENDING SECTION 25-3303, IDAHO CODE, TO REVISE FEE PROVISIONS RELATING TO LIVESTOCK DEALER LICENSING.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 25-1122, Idaho Code, be, and the same is hereby amended to read as follows:

25-1122. OWNERSHIP AND TRANSPORTATION CERTIFICATE. (1) The owner or owners of any horses, mules or asses desiring to transport them within the state for any purpose other than sale or trade, may, upon request to the state brand inspector, be issued an ownership and transportation certificate, which certificate shall be issued in lieu of the required brand inspection certificate or other written permit for each horse, mule or ass to be transported.

(2) An ownership and transportation certificate may be used by the owner or owners of a horse, mule or ass for identification purposes and as prima facie proof of ownership of any animal described by such a certificate.

(3) The ownership and transportation certificate shall be valid as long as the horse, mule or ass described therein remains under the ownership of the person or persons to whom the certificate is issued.

(4) The ownership and transportation certificate of a horse, mule or ass must accompany the animal for which it is issued at all times while the animal is in transit.

(5) Each ownership and transportation certificate of a horse, mule or ass shall identify the particular animal by color, markings, sex, age and where applicable by brand, registration number, tattoo or other marks as provided for by regulation of the state brand board.

(6) There shall be a fee in an amount to be set by the state brand board, not to exceed ~~twentythree~~ thirty-five dollars (\$~~235.00~~ 35.00), for issuance of each ownership and transportation certificate, which fee shall be in addition to any brand inspection certificate or other written permit which may be requested by the owner or owners of a horse, mule or ass under other provisions of law.

(7) Upon any change of ownership of a horse, mule or ass for which an ownership and transportation certificate has been issued, the former owner or owners may transfer the certificate to the new owner or owners upon payment of a fee to be set by the state brand board, not to exceed ~~twentythree~~ thirty-five dollars (\$~~235.00~~ 35.00) per certificate.

(8) The state brand board may, under such terms and conditions as it deems necessary to protect ownership of horses, mules and asses, ~~provided~~ provide by regulation that ownership and transportation certificates may be used in transportation of horses, mules or asses to and from points outside of the state of Idaho, and may provide that similar certificates from other states may be used for proof of ownership of horses, mules or asses entering Idaho.

SECTION 2. That Section 25-1145, Idaho Code, be, and the same is hereby amended to read as follows:

25-1145. RENEWAL OF BRANDS. (1) On July 1, ~~1995~~ 2011, and at the end of each recording period of an original application pursuant to section 25-1144, Idaho Code, and at the end of each successive period thereafter on the first day of July, the recording of every brand in the office of the state brand inspector shall be renewed upon application for such renewal by the owner. The fee of the state brand inspector for filing each such renewal application shall be not more than ~~seventy-five~~ one hundred dollars

(~~\$75.00~~100) and it shall be the duty of the state brand inspector to furnish without further or other charge one (1) certified copy of the certificate of such brand to the owner thereof upon his request, and for each additional certified copy the state brand inspector shall be paid a reasonable fee as determined by the state brand board not to exceed one dollar and fifty cents (\$1.50) for the additional certified copy. The fee for recording each renewal shall be paid coincident with the filing of the application therefor.

(2) Each application for the renewal and the record of renewal of each brand shall be made in the same manner as is provided by law for the filing of an original application for the recording of a brand.

(3) If an application for the renewal of any brand shall not be made and the fee therefor paid within the period of six (6) months after the expiration date for such renewal, then such brand may be allotted by the state brand inspector to any other person who shall apply therefor.

SECTION 3. That Section 25-1146, Idaho Code, be, and the same is hereby amended to read as follows:

25-1146. SALES AND TRANSFERS OF BRANDS. Any brand recorded in accordance with the requirements of this chapter shall be the property of the stock grower in whose name the same shall be recorded, and shall be subject to sale, assignment, transfer, devise and descent, the same as personal property. Instruments of writing evidencing any such sale, assignment or transfer shall be acknowledged as deeds to real estate are now required to be, and shall be recorded in the office of the state brand inspector in a book to be by said officer kept for that purpose, which shall be properly indexed. The recording of such instruments in said office shall have the same force and effect as to third parties, as the recording of instruments affecting real estate, and the acknowledgment of the same shall have the same force and effect as the acknowledgment of deeds to real estate, and certified copies of the record of any such instrument, duly acknowledged, may be introduced in evidence the same as is now provided for certified copies of instruments affecting real estate. The fee of the state brand inspector for recording the writings evidencing each such sale, assignment or transfer shall be ~~twenty-five~~ fifty dollars (~~\$25~~50.00).

SECTION 4. That Section 25-3303, Idaho Code, be, and the same is hereby amended to read as follows:

25-3303. LICENSE REQUIRED. Any person doing business as a livestock dealer in the state of Idaho must secure an annual license from the board. A fee of ~~forty one hundred~~ one hundred dollars (~~\$40.00~~100) shall accompany any such application for initial issuance or renewal. In addition, a fee of ~~fifteen~~ thirty-five dollars (~~\$15~~35.00) shall be paid for each authorized representative of a licensee. Such fees so received are not returnable and shall be deposited in the state brand account created in section 25-1161, Idaho Code. Upon determination that the applicant is qualified, the board shall issue a license to the applicant and all annual licenses shall terminate and become void each successive June 30th.

Approved March 11, 2011.

CHAPTER 56  
(H.B. No. 112)

AN ACT

RELATING TO AUCTIONEERS; REPEALING SECTION 63-2304, IDAHO CODE, RELATING TO AUCTIONEER LICENSES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-2304, Idaho Code, be, and the same is hereby repealed.

Approved March 11, 2011.

CHAPTER 57  
(H.B. No. 155)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-1407, IDAHO CODE, TO REMOVE PROCESSING FEE PROVISIONS FOR BLACK BEAR AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 36-1407, Idaho Code, be, and the same is hereby amended to read as follows:

36-1407. PROCESSING FEE IMPOSED ON VIOLATORS. (a) In addition to the penalties provided for violating any of the provisions of title 36, Idaho Code, any person who pleads guilty, is found guilty, or is convicted of or received a withheld judgment for the illegal killing or the illegal possession or illegal waste of game animals shall be assessed a processing fee as follows:

- (1) Moose or elk, two hundred fifty dollars (\$250) per animal killed, possessed or wasted.
- (2) Deer, pronghorn antelope, seventy-five dollars (\$75.00) per animal killed, possessed or wasted.
- (3) Bighorn sheep, caribou, and mountain goat ~~and black bear~~, one hundred twenty-five dollars (\$125.00) per animal killed, possessed or wasted.

(b) In every case of a plea of guilty, a finding of guilt, a conviction or a withheld judgment, the court before whom such plea of guilty, finding of guilt or conviction is obtained or who enters a withheld judgment shall enter judgment ordering the defendant to pay the state in a sum or sums as hereinbefore set forth including post-judgment interest. If two (2) or more defendants are convicted of the illegal taking, killing or the illegal possession or wasting of the game animal, such judgment shall be declared against them jointly and severally.

(c) The judgment shall fix the manner and the time of payment. A defaulted judgment or any installment payment thereof may be collected by any means authorized for the enforcement of a judgment under the provisions of the Idaho Code.

(d) All courts ordering such judgments of processing fees shall order such payments to be made to the department which shall deposit them with the state treasurer, and the treasurer shall place them in the state fish and game set-aside account. These fees shall be available for the processing

of the meat of moose, elk, deer, pronghorn antelope, bighorn sheep, caribou, ~~and~~ mountain goat ~~and~~ black bear which have been illegally taken, accidentally killed, taken as a result of depredation problems or donated by sportsmen. The processed meat thereof shall be distributed by charitable organizations free to needy Idaho residents or utilized by charitable organizations.

Approved March 11, 2011.

CHAPTER 58  
(S.B. No. 1059)

AN ACT

RELATING TO APPROPRIATION OF FUNDS TO THE IDAHO TRANSPORTATION DEPARTMENT'S AERONAUTICS PROGRAM; AMENDING SECTION 21-211, IDAHO CODE, TO AUTHORIZE APPROPRIATION OF MONEYS IN THE STATE AERONAUTICS FUND FOR THE PURPOSE OF DEFRAYING STATE AIR FLIGHT PROGRAM COSTS; AMENDING SECTION 40-707, IDAHO CODE, TO REVISE AN ARCHAIC TERM USED TO IDENTIFY THE IDAHO TRANSPORTATION BOARD AND TO AUTHORIZE APPROPRIATION OF MONEYS IN THE STATE HIGHWAY ACCOUNT FOR THE PURPOSE OF DEFRAYING STATE AIR FLIGHT PROGRAM COSTS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 21-211, Idaho Code, be, and the same is hereby amended to read as follows:

21-211. PROCEEDS OF LICENSES AND FINES -- STATE AERONAUTICS FUND. All moneys collected for the licensing of aircraft and airmen, all fines and penalties paid under the provisions of laws relating to or regulating the operation, registration or licensing of aircraft or pilots, air safety or air flight not otherwise appropriated and such other funds as may be paid into the state aeronautics fund shall be paid to the state treasurer, and shall be placed by him in the state aeronautics fund, which is hereby created, and all of said state aeronautics fund is hereby appropriated for the purpose of furthering the administration, development and enforcement of laws relating to aviation, for defraying state air flight program costs, and for defraying administrative expenses of the Idaho transportation department, including per diem compensation of the Idaho transportation board, and the salary of the director of the department. Interest earned on the investment of idle moneys in the state aeronautics fund shall be paid to the state aeronautics fund.

SECTION 2. That Section 40-707, Idaho Code, be, and the same is hereby amended to read as follows:

40-707. APPROPRIATION OF MONEYS IN STATE HIGHWAY ACCOUNT. (1) From federal funds within the state highway account, there are hereby continuously appropriated first such amounts as, from time to time, shall be certified by the Idaho housing and finance association to the state controller, state treasurer and the board as necessary for payment of principal, interest and other amounts required for transportation bonds or notes of the Idaho housing and finance association in accordance with chapter 62, title 67, Idaho Code, which amounts shall be transferred to the GARVEE debt service fund established in section 40-718, Idaho Code.

(2) The board may, but is not obligated to, use any nonfederal funds in the state highway account to pay match as required for receipt of federal funds used to pay the bonds or notes as described in subsection (1) of this

section. Such match may be transferred to the GARVEE debt service fund established in section 40-718, Idaho Code.

(3) One-half of one percent (.5%) of the moneys in the state highway account may be utilized to encourage the use of recycled materials including, but not limited to, recycled glass, reclaimed asphalt, asphalt containing recycled plastic, recycled rubber tires and paper in highway construction and maintenance projects. All other moneys at any time in the state highway account, except those as are otherwise required by law to be placed in the state highway redemption account, are hereby appropriated for the purpose of defraying the expenses, debts and costs incurred in carrying out the powers and duties of the highway Idaho transportation board as provided by law, and for defraying administrative expenses of the department, including salaries of the board, the salary of the director, and salaries and wages of employees of the department and board and expenses for traveling. Communication supplies, equipment, fixed charges and all other necessary expenses of the department, including the aeronautics air flight program and the board, not otherwise provided for and all claims against the state highway account shall be examined by the department and certified to the state controller, who shall, upon approval of the board of examiners, draw his warrant against the state highway account for all bills and claims allowed by the board.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 11, 2011.

CHAPTER 59  
(H.B. No. 87)

AN ACT

RELATING TO DISPOSAL OF SURPLUS PERSONAL PROPERTY; AMENDING SECTION 67-5732A, IDAHO CODE, TO ALLOW DISPOSAL OF SURPLUS PERSONAL PROPERTY TO FEDERAL AGENCIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5732A, Idaho Code, be, and the same is hereby amended to read as follows:

67-5732A. DISPOSAL OF SURPLUS PERSONAL PROPERTY AUTHORIZED. Whenever the head of any commission, board, council, task force, committee or department of state government, or any institution of the state, or any elected state official, has under their jurisdiction or control, any personal property belonging to the state which, in their judgment, is of no further use to the state or to such commission, board, council, task force, committee, department, institution or state office, they may sell, transfer, recycle or discard such personal property in the name of the state and in accordance with the internal management policies and procedures of the board of examiners. The board of examiners shall adopt internal management policies and procedures for the disposal of state surplus personal property to efficiently dispose of surplus personal property, to allow conveyance of surplus personal property to other state, federal and local agencies, to offer state surplus personal property for sale to the public at large and to provide for maximum value received by the state of Idaho with attendant benefits to its citizens. Provided that when sales will be offered to the

public and sold to the highest responsible bidder, notice of such sale shall be published in at least a newspaper of general circulation in accordance with section 60-106, Idaho Code, for at least two (2) weeks prior to such offering.

Approved March 11, 2011.

CHAPTER 60  
(H.B. No. 17)

AN ACT

RELATING TO FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION REQUIREMENTS FOR COMMERCIAL DRIVERS; AMENDING SECTION 49-105, IDAHO CODE, TO ADD A DEFINITION FOR A COMMERCIAL DRIVER'S LICENSE DOWNGRADE AS IT PERTAINS TO A DRIVER'S MEDICAL STATUS; AMENDING SECTION 49-301, IDAHO CODE, TO REQUIRE COMMERCIAL DRIVERS TO HAVE A CURRENT AND VALID MEDICAL EXAMINER'S CERTIFICATE ON FILE WHILE OPERATING IN A "NON-EXCEPTED" STATUS AND TO HAVE, WHEN REQUIRED, A CURRENT VALID MEDICAL EXEMPTION LETTER OR SKILLS PERFORMANCE EVALUATION CERTIFICATE IN THE COMMERCIAL DRIVER'S PHYSICAL POSSESSION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 49-306, IDAHO CODE, TO REQUIRE COMMERCIAL DRIVERS TO CERTIFY THE CATEGORY OF COMMERCE IN WHICH THEY WILL BE OPERATING; AMENDING SECTION 49-317, IDAHO CODE, TO ALLOW DRIVER'S LICENSES TO BE RESTRICTED BASED ON NON-AUTHORIZED SPECIAL MECHANICAL CONTROL DEVICES OR FOR MEDICAL VARIANCES; AMENDING SECTION 49-321, IDAHO CODE, TO REQUIRE THE DEPARTMENT TO MAINTAIN ON FILE FOR THREE YEARS AFTER ISSUANCE OF ALL MEDICAL EXAMINER'S CERTIFICATES MEDICAL EXEMPTION LETTERS AND SKILL PERFORMANCE EVALUATION CERTIFICATES PROVIDED BY COMMERCIAL DRIVERS OR APPLICANTS FOR DRIVER INSTRUCTION PERMITS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 49-322, IDAHO CODE, TO REQUIRE THE DEPARTMENT TO DOWNGRADE THE COMMERCIAL DRIVING PRIVILEGES OF DRIVERS WHO FAIL TO MAINTAIN THE REQUIRED MEDICAL EXAMINER'S CERTIFICATES, MEDICAL EXEMPTION LETTERS OR SKILL PERFORMANCE EVALUATION CERTIFICATES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-2444, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-105, Idaho Code, be, and the same is hereby amended to read as follows:

49-105. DEFINITIONS -- D. (1) "Dealer" means every person in the business of buying, selling or exchanging five (5) or more new or used vehicles, new or used neighborhood electric vehicles, new or used motorcycles, motor-driven cycles, snow machines or motorbikes, travel trailers, truck campers, all-terrain vehicles, utility type vehicles or motor homes in any calendar year, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, or who has an established place of business for the sale, lease, trade, or display of these vehicles. No insurance company, bank, finance company, public utilities company, or other person coming into possession of any vehicle, as an incident to its regular business, who shall sell that vehicle under any contractual rights it may have, shall be considered a dealer. See also "salvage pool," section 49-120, Idaho Code.

(2) "Dealer's selling agreement." (See "Franchise," section 49-107, Idaho Code)

(3) "Department" means the Idaho transportation department acting directly or through its duly authorized officers and agents, except in chap-

ters 6 and 9, title 49, Idaho Code, where the term means the Idaho state police, except as otherwise specifically provided.

(4) "Designated family member" means the spouse, child, grandchild, parent, brother or sister of the owner of a vehicle dealership who, in the event of the owner's death, is entitled to inherit the ownership interest in the dealership under the same terms of the owner's will, or who has been nominated in any other written instrument, or who, in the case of an incapacitated owner of a dealership, has been appointed by a court as the legal representative of the dealer's property.

(5) "Director" means the director of the Idaho transportation department, except in chapters 6, 9 and 22, title 49, Idaho Code, where the term means the director of the Idaho state police.

(6) "Disclose" means to engage in any practice or conduct to make available and make known personal information contained in records of the department about a person to any other person, organization or entity, by any means of communication.

(7) "Disqualification" as defined in 49 CFR part 383, means withdrawal by the department of commercial vehicle driving privileges.

(8) "Distributor" means any person, firm, association, corporation or trust, resident or nonresident, who has a franchise from a manufacturer of vehicles to distribute vehicles in this state, and who in whole or in part sells or distributes new vehicles to dealers or who maintains distributor representatives.

(9) "Distributor branch" means a branch office similarly maintained by a distributor for the same purposes a factory branch is maintained.

(10) "Distributor representative" means any person, firm, association, corporation or trust, and each officer and employee thereof engaged as a representative of a distributor or distributor branch of vehicles for the purpose of making or promoting the sale of vehicles, or for supervising or contacting dealers or prospective dealers.

(11) "District" means:

(a) Business district. The territory contiguous to and including a highway when within any six hundred (600) feet along the highway there are buildings in use for business or industrial purposes, including hotels, banks or office buildings, railroad stations and public buildings which occupy at least three hundred (300) feet of frontage on one side or three hundred (300) feet collectively on both sides of the highway.

(b) Residential district. The territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of three hundred (300) feet or more is in the main improved with residences, or residences and buildings in use for business.

(c) Urban district. The territory contiguous to and including any highway which is built up with structures devoted to business, industry or dwelling houses. For purposes of establishing speed limits in accordance with the provisions of section 49-654, Idaho Code, no state highway or any portion thereof lying within the boundaries of an urban district is subject to the limitations which otherwise apply to nonstate highways within an urban district. Provided, this subsection shall not limit the authority of the duly elected officials of an incorporated city acting as a local authority to decrease speed limits on state highways passing through any district within the incorporated city.

(12) "Documented vessel" means a vessel having a valid marine document as a vessel of the United States.

(13) "Downgrade" as it pertains to commercial drivers licensing shall mean either:

(a) The driver has changed his or her medical requirement self-certification to interstate but operates exclusively in transportation or op-

erations excepted from part 391 of the federal motor carrier safety regulations; or

(b) The driver has changed his or her medical requirement self-certification to intrastate and operates exclusively in transportation or operations as listed in section 67-2901B(2), Idaho Code; or

(c) The driver no longer has commercial motor vehicle driving privileges, but has retained privileges to drive noncommercial motor vehicles.

(14) "Drag race" means the operation of two (2) or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out-distance each other, or the operation of one (1) or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of the vehicles within a certain distance or time limit.

(145) "Driver" means every person who drives or is in actual physical control of a vehicle.

(156) "Driver's license" means a license or permit issued by the department or by any other jurisdiction to an individual which authorizes the individual to operate a motor vehicle or commercial motor vehicle on the highways in accordance with the requirements of title 49, Idaho Code.

(167) "Driver's license -- Classes of" are issued for the operation of a vehicle based on the size of the vehicle or the type of load and mean:

(a) Class A. This license shall be issued and valid for the operation of any combination of motor vehicles with a manufacturer's gross combination weight rating (GCWR) in excess of twenty-six thousand (26,000) pounds, provided the manufacturer's gross vehicle weight rating (GVWR) of the vehicle(s) being towed is in excess of ten thousand (10,000) pounds. Persons holding a valid class A license may also operate vehicles requiring a class B, C or D license.

(b) Class B. This license shall be issued and valid for the operation of any single vehicle with a manufacturer's gross vehicle weight rating (GVWR) in excess of twenty-six thousand (26,000) pounds, or any such vehicle towing a vehicle not in excess of ten thousand (10,000) pounds manufacturer's gross vehicle weight rating (GVWR). Persons holding a valid class B license may also operate vehicles requiring a class C license or a class D license.

(c) Class C. This license shall be issued and valid for the operation of any single vehicle or combination of vehicles that does not meet the definition of class A or class B, as defined in this section, but that either is designed to transport sixteen (16) or more people including the driver, or is of any size which does not meet the definition of class A or class B and is used in the transportation of materials found to be hazardous according to the hazardous material transportation act and which requires the motor vehicle to be placarded under the federal hazardous materials regulations 49 CFR part 172, subpart F. Persons holding a valid class C license may also operate vehicles requiring a class D license.

(d) Class D. This license shall be issued and valid for the operation of a motor vehicle that is not a commercial vehicle as defined in section 49-123, Idaho Code.

(e) "Seasonal driver's license" means a special restricted class B or C driver's license to operate certain commercial vehicles in farm-related industries under restrictions imposed by the department. As used in this definition, "farm-related industry" shall mean custom harvesters, farm retail outlets and suppliers, agri-chemical businesses and livestock feeders. Seasonal driver's licenses are not valid for driving vehicles carrying any quantities of hazardous material requiring placarding, except for diesel fuel in quantities of one thousand (1,000) gallons or less, liquid fertilizers, i.e., plant nutrients,

in vehicles or implements of husbandry with total capacities of three thousand (3,000) gallons or less, and solid fertilizers, i.e., solid plant nutrients, that are not mixed with any organic substance.

(178) "Driver record" means any record that pertains to an individual's driver's license, driving permit, driving privileges, driving history, identification documents or other similar credentials issued by the department.

(189) "Driver's license endorsements" means special authorizations that are required to be displayed on a driver's license which permit the driver to operate certain types of commercial vehicles or commercial vehicles hauling certain types of cargo, or to operate a motorcycle or a school bus.

(a) "Endorsement T -- Double/Triple trailer" means this endorsement is required on a class A, B or C license to permit the licensee to operate a vehicle authorized to tow more than one (1) trailer.

(b) "Endorsement H -- Hazardous material" means this endorsement is required on a class A, B or C license if the driver is operating a vehicle used in the transportation of materials found to be hazardous according to the hazardous material transportation act and which requires the motor vehicle to be placarded under the federal hazardous materials regulations 49 CFR part 172, subpart F.

(c) "Endorsement P -- Passenger" means this endorsement is required on a class A, B or C license to permit the licensee to operate a vehicle designed to transport sixteen (16) or more people including the driver.

(d) "Endorsement N -- Tank vehicle" means this endorsement is required on a class A, B or C license to permit the licensee to operate a vehicle which is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in federal regulations 49 CFR part 171. This definition does not include portable tanks having a rated capacity under one thousand (1,000) gallons.

(e) "Endorsement M -- Motorcycle" means this endorsement is required on a driver's license to permit the driver to operate a motorcycle or motor-driven cycle.

(f) "Endorsement S -- School bus" means this endorsement is required on a class A, B or C license to permit the licensee to operate a school bus in accordance with 49 CFR part 383, to transport preprimary, primary or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

(1920) "Driveway" means a private road giving access from a public way to a building on abutting grounds.

(201) "Dromedary tractor" means every motor vehicle designed and used primarily for drawing a semitrailer and so constructed as to carry manifested cargo in addition to a part of the weight of the semitrailer.

SECTION 2. That Section 49-301, Idaho Code, be, and the same is hereby amended to read as follows:

49-301. DRIVERS TO BE LICENSED. (1) No person, except those expressly exempted by the provisions of this chapter, shall drive any motor vehicle upon a highway unless the person has a current and valid Idaho driver's license. Provided however, that those persons holding a restricted school attendance driving permit may drive upon a highway pursuant to the restrictions set forth in section 49-307A, Idaho Code.

(2) No person shall operate a motorcycle upon a highway unless he has a motorcycle endorsement on his valid driver's license.

(3) No person shall operate a motor vehicle in violation of any valid restriction identified on, or attached to, his valid driver's license.

(4) No person shall receive a class D driver's license unless and until he surrenders to the department all driver's licenses in his possession issued to him by Idaho or any other jurisdiction for use within the United States, or any identification cards issued by any other jurisdiction within the United States, or until he executes an affidavit that he does not possess a driver's license or any identification cards.

(5) No person shall be permitted to have more than one (1) driver's license issued for use within the United States at any time.

(6) No person shall operate a commercial motor vehicle as defined in section 49-123, Idaho Code, upon a highway:

(a) Without obtaining a commercial driver's license.

(b) Without having the appropriate class A, B or C commercial driver's license in the operator's possession.

(c) Without the proper license class of commercial driver's license or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.

(d) Unless the operator has a seasonal or class A, B or C driver's license with required endorsements in his possession.

(e) Without having a current and valid medical examiner's certificate on file with the department while operating in a "non-excepted" status as required by the federal motor carrier safety administration. Medical examiner's certificates submitted for filing must be legible and shall be submitted in a manner acceptable to the department. If the federal motor carrier safety administration has issued a medical exemption letter or skill performance evaluation certificate, the driver must have the current and valid documentation in physical possession and available upon request to a duly authorized federal, state or local enforcement official.

(7) Any holder of a class A, B or C commercial driver's license issued by a jurisdiction other than Idaho shall apply for an Idaho-issued commercial driver's license within thirty (30) days of establishing a domicile in Idaho. In accordance with the federal motor carrier safety regulations, no person shall receive a class A, B or C driver's license unless and until he surrenders to the department all driver's licenses in his possession issued to him by Idaho or any other jurisdiction.

(8) Except as provided in section 49-304, Idaho Code, a violation of this section is a misdemeanor.

SECTION 3. That Section 49-306, Idaho Code, be, and the same is hereby amended to read as follows:

49-306. APPLICATION FOR DRIVER'S LICENSE, INSTRUCTION PERMIT, OR RESTRICTED SCHOOL ATTENDANCE DRIVING PERMIT. (1) Every application for any instruction permit, restricted school attendance driving permit, or for a driver's license shall be made upon a form furnished by the department and shall be verified by the applicant before a person authorized to administer oaths. Officers and employees of the department and sheriffs and their deputies are authorized to administer the oaths without charge. Every application for a permit, extension or driver's license shall be accompanied by the following fee, none of which is refundable:

(a) Class A, B, C (4-year) license with endorsements -- age 21 years and older .....	\$40.00
(b) Class A, B, C (3-year) license with endorsements -- age 18 to 21 years .....	\$30.00
(c) Class A, B, C (1-year) license with endorsements -- age 20 years .....	\$15.00
(d) Class D (3-year) license -- under age 18 years .....	\$25.00

(e) Class D (3-year) license -- age 18 to 21 years .....	\$25.00
(f) Class D (1-year) license -- age 17 years or age 20 years ....	\$15.00
(g) Four-year Class D license -- age 21 years and older .....	\$30.00
(h) Eight-year Class D license -- age 21 to 63 years .....	\$55.00
(i) Class A, B, C instruction permit .....	\$29.00
(j) Class D instruction permit or supervised instruction permit .....	\$15.00
(k) Duplicate driver's license or permit issued under section 49-318, Idaho Code .....	\$15.00
(l) Driver's license extension issued under section 49-319, Idaho Code .....	\$10.00
(m) License classification change (upgrade) .....	\$25.00
(n) Endorsement addition .....	\$15.00
(o) Class A, B, C skills tests not more than .....	\$70.00
(p) Class D skills test .....	\$24.00
(q) Motorcycle endorsement skills test .....	\$10.00
(r) Knowledge test .....	\$ 3.00
(s) Seasonal driver's license .....	\$39.00
(t) One time motorcycle "M" endorsement .....	\$15.00
(u) Motorcycle endorsement instruction permit .....	\$15.00
(v) Restricted driving permit or restricted school attendance driving permit .....	\$60.00

(2) Every application shall state the true and full name, date of birth, sex, declaration of Idaho residency, Idaho residence address and mailing address, if different, of the applicant, height, weight, hair color, and eye color, and the applicant's social security number as verified by the social security administration. If an applicant has submitted an application pursuant to the provisions of chapter 58, title 19, Idaho Code, then the applicant may state, in his or her application pursuant to this section, the applicant's alternative Idaho mailing address in place of his or her Idaho residence address and mailing address.

(a) The requirement that an applicant provide a social security number as verified by the social security administration shall apply only to applicants who have been assigned a social security number.

(b) An applicant who has not been assigned a social security number shall:

- (i) Present written verification from the social security administration that the applicant has not been assigned a social security number; and
- (ii) Submit a birth certificate, passport or other documentary evidence issued by an entity other than a state or the United States; and
- (iii) Submit such proof as the department may require that the applicant is lawfully present in the United States.

A driver's license or any instruction permit issued on and after January 1, 1993, shall not contain an applicant's social security number. Applications on file shall be exempt from disclosure except as provided in sections 49-202, 49-203, 49-203A and 49-204, Idaho Code.

(c) Every application for a class A, B or C license shall state where the applicant has been licensed for the preceding ten (10) years and under which of the following driving categories the applicant will operate:

- (i) Non-excepted Interstate. The applicant operates or expects to operate in interstate commerce, and is required to provide a medical examiner's certificate;
- (ii) Excepted Interstate. The applicant operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted by the federal motor carrier safety administration from all or parts of the qualification requirements of federal motor carrier safety regulation 49, part

391, and is therefore not required to provide a medical examiner's certificate;

(iii) Non-excepted Intrastate. The applicant operates only in intrastate commerce and is subject to and meets all Idaho driver qualification requirements and the applicable parts of federal motor carrier safety regulation 49, part 391, and is required to provide a medical examiner's certificate; or

(iv) Excepted Intrastate. The applicant operates in intrastate commerce, but engages exclusively in exempted transportation or operations as listed in section 67-2901B(2), Idaho Code, and the applicable parts of federal motor carrier safety regulation 49, part 391, and is therefore not required to provide a medical examiner's certificate.

All applications shall also state whether the applicant has previously been licensed as a driver, and if so, when and by what state or country, and whether a driver's license or privileges have ever been suspended, revoked, denied, disqualified, canceled or whether an application has ever been refused, and if so, the date of and reason for the suspension, revocation, denial, disqualification, cancellation or refusal and the applicant's oath that all information is correct as signified by the applicant's signature.

The applicant must submit proof of identity acceptable to the examiner or the department and date of birth as set forth in a certified copy of his birth certificate. When a certified copy of his birth certificate or a delayed birth certificate is impossible to obtain from a vital statistics agency, another government issued document may be submitted that provides satisfactory evidence of a person's full legal name and date of birth acceptable to the examiner or the department.

(ed) Individuals required to register in compliance with section 3 of the federal military selective service act, 50 U.S.C. App. 451 et seq., as amended, shall be provided an opportunity to fulfill such registration requirements in conjunction with an application for a driver's license or instruction permit. Any registration information so supplied shall be transmitted by the department to the selective service system.

(3) Whenever an application is received from a person previously licensed in another jurisdiction, the department shall request a copy of the driver's record from the other jurisdiction and shall contact the national driver register. When received, the driver's record from the previous jurisdiction shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

(4) Whenever the department receives a request for a driver's record from another licensing jurisdiction, the record shall be forwarded without charge.

(5) The department shall contact and notify the commercial driver license information system of the proposed application for a class A, B or C driver's license to ensure identification of the person and to obtain clearance to issue the license.

(6) When the fees required under this section are collected by a county officer, they shall be paid over to the county treasurer not less often than monthly, who shall immediately:

(a) Deposit an amount equal to five dollars (\$5.00) from each driver's license except an eight-year class D license, or any class D instruction permit application fees, application for a duplicate driver's license or permit, classification change, seasonal driver's license and additional endorsement, and ten dollars (\$10.00) from each eight-year class D driver's license, in the current expense fund; and

(b) Deposit two dollars and fifty cents (\$2.50) from each motorcycle endorsement and motorcycle endorsement instruction permit fee in the current expense fund; and

(c) Deposit an amount equal to three dollars (\$3.00) from each fee for a knowledge test in the current expense fund; and

(d) Deposit an amount equal to ten dollars (\$10.00) from each fee for a motorcycle endorsement skills test in the current expense fund; provided however, if a contractor administers the skills test he shall be entitled to the ten dollar (\$10.00) fee; and

(e) Remit the remainder to the state treasurer; and

(f) Deposit seventeen dollars and fifty cents (\$17.50) from each fee for a class D skills test into the county current expense fund, unless the test is administered by a department-approved contractor, in which case the contractor shall be entitled to seventeen dollars and fifty cents (\$17.50) of each fee.

(7) When the fees required under this section are collected by a state officer or agency, they shall be paid over to the state treasurer.

(8) The state treasurer shall distribute the moneys received from fees imposed by the provisions of this section, whether collected by a county officer or by a state officer or agency as follows:

(a) Two dollars (\$2.00) of each fee for a four-year driver's license or seasonal driver's license, and four dollars (\$4.00) of each fee for an eight-year class D driver's license, and one dollar and fifty cents (\$1.50) of each fee charged for driver's licenses pursuant to subsections (1) (b), (d) and (e) of this section, and fifty cents (50¢) of each fee charged for driver's licenses pursuant to subsections (1) (c) and (f) of this section, shall be deposited in the emergency medical services fund II created in section 56-1018A, Idaho Code, and four dollars (\$4.00) of each fee charged pursuant to subsections (1) (a), (g) and (s) of this section and eight dollars (\$8.00) of each fee charged pursuant to subsection (1) (h) of this section and three dollars (\$3.00) of each fee for driver's licenses pursuant to subsections (1) (b), (d) and (e) of this section, and one dollar (\$1.00) of each fee charged for driver's licenses pursuant to subsections (1) (c) and (f) of this section shall be deposited in the emergency medical services fund III created in section 56-1018B, Idaho Code; and

(b) Twenty-eight dollars (\$28.00) of each fee for a seasonal or class A, B or C driver's license, and nineteen dollars and fifty cents (\$19.50) of each fee charged for a license pursuant to subsection (1) (b) of this section, and eight dollars and sixteen cents (\$8.16) of each fee charged for a license pursuant to subsection (1) (c) of this section shall be deposited in the state highway account; and

(c) Twenty dollars (\$20.00) of each fee for a class A, B or C instruction permit or driver's license classification change shall be deposited in the state highway account; and

(d) Four dollars (\$4.00) of each fee for a class A, B or C instruction permit shall be deposited in the emergency medical services fund III created in section 56-1018B, Idaho Code; and

(e) Ten dollars (\$10.00) of each fee for a duplicate seasonal or class A, B or C driver's license, class A, B or C driver's license extension, or additional endorsement shall be deposited in the state highway account; and

(f) Seven dollars and fifty cents (\$7.50) of each fee for a motorcycle endorsement and motorcycle endorsement instruction permit shall be deposited in the state highway account; and

(g) Five dollars and thirty cents (\$5.30) of each fee for a four-year class D driver's license, and ten dollars and sixty cents (\$10.60) of each fee for an eight-year class D driver's license, and four dollars (\$4.00) of each fee charged for a license pursuant to subsections (1) (d)

and (e) of this section, and one dollar and thirty-three cents (\$1.33) of each fee charged for a license pursuant to subsection (1) (f) of this section shall be deposited in the driver training fund; and

(h) Twelve dollars and seventy cents (\$12.70) of each fee for a four-year class D driver's license, and twenty dollars and forty cents (\$20.40) of each fee for an eight-year class D driver's license, and ten dollars and fifty cents (\$10.50) of each fee charged for a license pursuant to subsections (1) (d) and (e) of this section, and six dollars and eighty-three cents (\$6.83) of each fee charged for a license pursuant to subsection (1) (f) of this section shall be deposited in the highway distribution fund; and

(i) Two dollars and sixty cents (\$2.60) of each fee for a class D instruction permit, duplicate class D license or permit, and class D license extension shall be deposited in the driver training fund; and

(j) Seven dollars and forty cents (\$7.40) of each fee for a class D instruction permit, duplicate class D license or permit, and class D license extension shall be deposited in the highway distribution fund; and

(k) Ten dollars (\$10.00) of each fee for a class A, B or C skills test shall be deposited in the state highway account; and

(l) One dollar (\$1.00) of each fee for a class A, B, C or four-year D driver's license, and two dollars (\$2.00) of each fee for an eight-year class D driver's license, and one dollar (\$1.00) of each fee charged for a license pursuant to subsections (1) (b), (d) and (e) of this section, and thirty-four cents (34¢) of each fee charged for a license pursuant to subsections (1) (c) and (f) of this section shall be deposited in the motorcycle safety program fund established in section 33-4904, Idaho Code; and

(m) Six dollars and fifty cents (\$6.50) of each fee for a class D skills test shall be deposited into the state highway account.

(9) The contractor administering a class A, B or C skills test shall be entitled to not more than sixty dollars (\$60.00) of the skills test fee. A contractor administering a class A, B or C skills test may collect an additional fee for the use of the contractor's vehicle for the skills test.

(10) Sixty dollars (\$60.00) of each restricted driving permit and each restricted school attendance driving permit shall be deposited in the state highway account.

(11) The department may issue seasonal class B or C driver's licenses to drivers who are employees of agri-chemical businesses, custom harvesters, farm retail outlets and suppliers, and livestock feeders that:

(a) Will only be valid for driving commercial vehicles that normally require class B or C commercial driver's licenses;

(b) Will be valid for seasonal periods that begin on the date of issuance and that are not to exceed one hundred eighty (180) days in a twelve (12) month period;

(c) May only be obtained twice in a driver's lifetime;

(d) Are valid only within a one hundred fifty (150) mile radius of the place of business or farm being serviced; and

(e) Will be valid only in conjunction with valid Idaho class D driver's licenses.

(12) The department may issue seasonal class B or C driver's licenses to drivers who:

(a) Have not violated the single license provisions of applicable federal regulations;

(b) Have not had any license suspensions, revocations or cancellations;

(c) Have not had any convictions in any vehicle for any offense listed in section 49-335(1) or (2), Idaho Code, or any one (1) serious traffic offense;

- (d) Have at least one (1) year of driving experience with a class D or equivalent license in any type motor vehicle; and
- (e) Are at least sixteen (16) years old.

SECTION 4. That Section 49-317, Idaho Code, be, and the same is hereby amended to read as follows:

49-317. RESTRICTED DRIVER'S LICENSES. (1) The department, upon issuing a driver's license, shall have authority whenever good cause appears to impose restrictions suitable to the licensee's driving ability with respect to:

- (a) The type of or special mechanical control devices required or not permitted on a motor vehicle which the licensee may operate;
- (b) Medical variances as determined by the federal motor carrier safety administration; or
- (c) Other restrictions applicable to the licensee as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(2) The department may either issue a special restricted driver's license or may set forth restrictions upon the usual driver's license form.

(3) The department shall, upon receiving satisfactory evidence of any violation of the restrictions of a driver's license, suspend the driver's license or privileges for a period of thirty (30) days but the licensee shall be entitled to a hearing as provided in section 49-326, Idaho Code.

SECTION 5. That Section 49-321, Idaho Code, be, and the same is hereby amended to read as follows:

49-321. RECORDS TO BE KEPT BY THE DEPARTMENT. (1) The department shall file every application for a driver's license received by it and shall maintain suitable indices containing:

- (a) All applications denied and on each note the reason for denial;
- (b) All applications granted;
- (c) The name of every licensee whose driver's license has been suspended, revoked, canceled, denied or disqualified by the department and after each name note the reasons for the action;
- (d) The driver's license number for the applicant; and
- (e) The social security number of the applicant.

(2) The department shall file the original or copy of the medical examiner's certificates, medical exemption letters and skill performance evaluation certificates of all commercial driver's license or instruction permit holders required to provide documentation of their physical qualification. The department shall maintain the document(s) for a period of three (3) years beyond the date the certificate or document was issued.

(3) The department shall also file all accident reports and abstracts of court records of convictions received by it under the law from any jurisdiction, and is authorized to forward records of convictions, suspensions or disqualifications to any jurisdiction. Records may be in either paper or electronic form. The department shall maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions and the traffic accidents in which the licensee has been involved shall be readily ascertainable and available for consideration of the department upon any application for renewal of a driver's license and at other suitable times.

(34) The department of health and welfare, on or about the 25th day of each month shall, upon the request of the department, furnish the department a listing showing the name, age, county of residence, and residence address of each Idaho resident who has died during the preceding month. The listing shall be used only for purposes of updating the driver's license files of the

department and shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

SECTION 6. That Section 49-322, Idaho Code, be, and the same is hereby amended to read as follows:

49-322. AUTHORITY OF DEPARTMENT TO CANCEL DRIVER'S LICENSE OR INSTRUCTION PERMIT. (1) The department shall cancel any driver's license, restricted school attendance driving permit, or instruction permit upon determining that the licensee or permittee was not entitled to the issuance of the driver's license or instruction permit, or that the licensee or permittee failed to give the required or correct information in his application, or committed fraud in making the application.

(2) Upon a cancellation, the licensee or permittee shall surrender the canceled driver's license or canceled instruction permit to the department.

(3) The department shall cancel a person's commercial driver's license upon determining that the class A, B, or C licensee has falsified information. Upon cancellation of a class A, B, or C driver's license, the licensee shall be disqualified from operating a commercial motor vehicle for a period of sixty (60) days.

(4) The department shall decertify the medical status and initiate a downgrade of any driver who is required by the federal motor carrier safety administration to maintain a medical examiner's certificate and/or medical exemption letter or skill performance evaluation certificate upon determining the person's medical certification has expired or has been revoked or canceled. The department shall change the person's driving status in the driver record to "not-certified," within ten (10) days and shall mail a notification letter regarding the pending decertification and downgrade action to the driver's last known address. The downgrade action shall occur no more than sixty (60) days from the date the "not-certified" status is posted to the record. Drivers can remove the "not-certified" medical status from their driving record by presenting a current and valid medical examiner's certificate and/or medical exemption letter or skill performance evaluation certificate to the department or by submitting an application to the department requesting their medical status be changed to "Excepted."

(5) When a driver's license has been canceled for reasons of impairment, incompetence or inability of the licensed driver to operate a motor vehicle safely as provided in section 49-303 or 49-326, Idaho Code, and the licensee has voluntarily surrendered his driver's license, or when a licensed driver requests cancellation of his license for any of the same reasons stated in this subsection and he voluntarily surrenders his license, the licensee may be eligible for a no-fee identification card as provided in section 49-2444, Idaho Code.

SECTION 7. That Section 49-2444, Idaho Code, be, and the same is hereby amended to read as follows:

49-2444. IDENTIFICATION CARD ISSUED -- FOUR-YEAR OR EIGHT-YEAR. (1) The department shall issue a distinguishing identification card which that shall set forth the information contained in the application, in a form as prescribed by the department. All identification cards issued on or after January 1, 1993, shall not contain the applicant's social security number. An applicant's social security number shall be exempt from disclosure except for inquiries from agencies or institutions authorized to obtain such information by federal law or regulation, from peace officers or from jury commissioners. Each card shall have printed on it the applicant's full name, date of birth, Idaho residence address, sex, weight, height, eye color, hair color, and shall be issued a distinguishing number assigned to the applicant. If an applicant has submitted an application pursuant to the provi-

sions of chapter 58, title 19, Idaho Code, then the applicant's identification card shall contain his or her alternative Idaho mailing address in place of his or her Idaho residence address. Each card shall also have printed on it the name of this state, the date of issuance, and the date of expiration. An identification card shall not be valid until it has been signed on the signature line by the applicant. Each card shall bear upon it a color photograph of the applicant which shall be taken by the examiner at the time of application. The photograph shall be taken without headgear or other clothing or device that disguises or otherwise conceals the face or head of the applicant. A waiver may be granted by the department allowing the applicant to wear headgear or other head covering for medical, religious or safety purposes so long as the face is not disguised or otherwise concealed. At the request of the applicant, an identification card may contain a statement or indication of the medical condition of the applicant.

No person shall receive an identification card unless and until he surrenders to the department all identification cards in his possession issued to him by Idaho or any other jurisdiction, or any driver's license issued by any other jurisdiction within the United States, or until he executes an affidavit that he does not possess an identification card or any driver's license.

Identification cards issued to persons under eighteen (18) years of age shall include a notation "under 18 until (month, day, year)," and identification cards issued to persons eighteen (18) years of age to twenty-one (21) years of age shall include a notation "under 21 until (month, day, year)." The nonrefundable fee for a four-year identification card issued to persons twenty-one (21) years of age or older shall be ten dollars (\$10.00) of which five dollars (\$5.00) shall be retained by the county and credited to the current expense fund, and five dollars (\$5.00) shall be deposited in the state treasury to the credit of the highway distribution account. The nonrefundable fee for identification cards issued to persons under twenty-one (21) years of age shall be ten dollars (\$10.00), of which five dollars (\$5.00) shall be retained by the county and credited to the current expense fund, and five dollars (\$5.00) shall be deposited in the state treasury to the credit of the highway distribution account. The nonrefundable fee for an eight-year identification card shall be twenty dollars (\$20.00) of which ten dollars (\$10.00) shall be retained by the county and credited to the current expense fund, and ten dollars (\$10.00) shall be deposited in the state treasury to the credit of the highway distribution account. At the option of the applicant, the identification card issued to a person twenty-one (21) years of age or older shall expire either on the cardholder's birthday in the fourth year or the eighth year following issuance of the card, except as otherwise provided in subsection (3) of this section. Every identification card issued to a person under eighteen (18) years of age shall expire five (5) days after the person's eighteenth birthday, except as otherwise provided in subsection (3) of this section. Every identification card issued to a person eighteen (18) years of age but under twenty-one (21) years of age shall expire five (5) days after the person's twenty-first birthday, except as otherwise provided in subsection (3) of this section.

Individuals required to register in compliance with section 3 of the federal military selective service act, 50 U.S.C. App. 451 et seq., as amended, shall be provided an opportunity to fulfill such registration requirements in conjunction with an application for an identification card. Any registration information so supplied shall be transmitted by the department to the selective service system.

(2) Every identification card, except those issued to persons under twenty-one (21) years of age, shall be renewable on or before its expiration, but not more than twelve (12) months before, and upon application and payment of the required fee.

(3) Every identification card issued to a person who is not a citizen or permanent legal resident of the United States shall have an expiration date that is the same date as the end of lawful stay in the United States as indicated on documents issued and verified by the department of homeland security, provided however, that the expiration date shall not extend beyond the expiration date for the same category of identification card issued to citizens. Persons whose department of homeland security documents do not state an expiration date shall be issued an identification card with an expiration date of one (1) year from the date of issuance.

(4) When an identification card has been expired for less than twelve (12) months, the renewal of the identification card shall start from the original date of expiration regardless of the year in which the application for renewal is made. If the identification card is expired for more than twelve (12) months, the application shall expire, at the option of the applicant, on the applicant's birthday in the fourth year or the eighth year following reissuance of the identification card, except as otherwise provided in subsection (3) of this section.

(5) A person possessing an identification card who desires to donate any or all organs or tissue in the event of death, and who has completed a document of gift pursuant to the provisions for donation of anatomical gifts as set forth in chapter 34, title 39, Idaho Code, may, at the option of the donor, indicate this desire on the identification card by the imprinting of the word "donor" on the identification card. The provisions of this subsection shall apply to persons possessing an identification card who are sixteen (16) years of age or older but less than eighteen (18) years of age if the requirements provided in chapter 34, title 39, Idaho Code, have been complied with.

(6) A person possessing an identification card or an applicant for an identification card who is a person with a permanent disability may request that the notation "permanently disabled" be imprinted on the identification card, provided the person presents written certification from a licensed physician verifying that the person's stated impairment qualifies as a permanent disability according to the provisions of section 49-117, Idaho Code.

(7) In the case of a name change, the applicant shall provide legal documentation to verify the change in accordance with department rules.

(8) Whenever any person, after applying for or receiving an identification card, shall move from the address shown on the application or on the identification card issued, that person shall, within thirty (30) days, notify the transportation department in writing of the old and new addresses.

(9) The department shall cancel any identification card upon determining that the person was not entitled to the issuance of the identification card, or that the person failed to give the required and correct information in his application or committed fraud in making the application. Upon cancellation, the person shall surrender the canceled identification card to the department.

(10) If any person shall fail to return to the department the identification card as required, the department may direct any peace officer to secure its possession and return the identification card to the department.

(11) The department may issue a no-fee identification card to an individual whose driver's license has been canceled and voluntarily surrendered as provided in section 49-322(45), Idaho Code. The identification card may be renewed at no cost to the applicant as long as the driver's license remains canceled.

(12) It is an infraction for any person to fail to notify the department of a change of address as required by the provisions of subsection (8) of this section.

SECTION 8. This act shall be in full force and effect on and after January 30, 2012.

Law without signature.

CHAPTER 61  
(H.B. No. 52)

AN ACT

RELATING TO GEOTHERMAL RESOURCES; AMENDING SECTION 47-1601, IDAHO CODE, TO AUTHORIZE THE STATE BOARD OF LAND COMMISSIONERS TO ISSUE GEOTHERMAL RESOURCE LEASES FOR TERMS OF UP TO FORTY-NINE YEARS ON CERTAIN STATE OR SCHOOL LANDS AND TO DELETE REFERENCE TO OTHER TERM OF LEASE PROVISIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 47-1601, Idaho Code, be, and the same is hereby amended to read as follows:

47-1601. GEOTHERMAL RESOURCES -- LAND LEASES -- AUTHORIZATION. The state board of land commissioners is hereby authorized and empowered to issue geothermal resource leases for a terms of ten (10) up to forty-nine (49) years, and as long thereafter as geothermal resources are produced in paying quantities, or as much longer thereafter as the lessee in good faith shall conduct geothermal resource well drilling or construction operations, thereon, or for such lesser term as it finds to be in the public interest, on any state or school lands which may contain geothermal resources, together with the right to use and occupy so much of the surface of said land as may be required for all purposes reasonably incident to the prospecting for, exploration for, drilling or other well construction for, and production of geothermal resources.

Approved March 15, 2011.

CHAPTER 62  
(H.B. No. 53)

AN ACT

RELATING TO GEOTHERMAL RESOURCE LEASES; AMENDING SECTION 47-1605, IDAHO CODE, TO DELETE CERTAIN ROYALTY PROVISIONS, TO REVISE PROVISIONS RELATING TO THE MANNER OF FIXING RENTALS AND TO PROVIDE FOR ROYALTIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 47-1605, Idaho Code, be, and the same is hereby amended to read as follows:

47-1605. LEASES -- RENTAL AND ROYALTY. (1) Geothermal resources leases shall be issued at an annual rental of not less than twenty-five cents (25¢) per acre, payable in advance and a royalty which shall not be less than ten per cent (10%) of the geothermal resources produced from the lands under lease or the value thereof. The rentals and the royalties specified in geothermal leases shall be fixed in any manner, including but not limited to competitive bidding, or according to any formula as the state board of land commissioners finds will maximize public benefits from such leases. Royalties shall be paid in addition to rental payments, at the discretion

of the board of land commissioners by the state board of land commissioners including, but not limited to, competitive bidding, negotiation, fixed amounts or formulas.

(2) Royalty shall be established by the board of land commissioners based on the market value of the geothermal resources produced from the lands under lease. The royalties specified in geothermal leases shall be fixed in any manner by the state board of land commissioners including, but not limited to, competitive bidding, negotiation, fixed amounts or formulas. Royalties shall be paid in addition to rental payments, at the discretion of the board of land commissioners.

Approved March 15, 2011.

CHAPTER 63  
(H.B. No. 54)

AN ACT

RELATING TO GEOTHERMAL LEASES; AMENDING SECTION 47-1604, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE SURFACE AREA OF GEOTHERMAL LEASES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 47-1604, Idaho Code, be, and the same is hereby amended to read as follows:

47-1604. LEASES RESTRICTED LEASED AREA. No single geothermal resource lease issued under this chapter shall be for an area exceeding one (1) section, provided that any one (1) person may hold more than one lease. The surface area covered by a geothermal lease issued pursuant to this chapter shall be determined by the state board of land commissioners.

Approved March 15, 2011.

CHAPTER 64  
(H.B. No. 56)

AN ACT

RELATING TO GEOTHERMAL RESOURCES; AMENDING SECTION 47-1608, IDAHO CODE, TO REVISE BOND PROVISIONS RELATING TO DAMAGES TO THE LAND SURFACE AND IMPROVEMENTS THEREON, TO PROVIDE FOR BONDS RELATING TO RECLAMATION, TO CLARIFY THAT BONDS SHALL NOT DUPLICATE CERTAIN BONDS FOR WELL CLOSURE AND TO DELETE CERTAIN BOND PROVISIONS RELATING TO THE COMMENCEMENT OF OPERATIONS FOR THE DRILLING OF GEOTHERMAL RESOURCE WELLS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 47-1608, Idaho Code, be, and the same is hereby amended to read as follows:

47-1608. BOND BONDING. (1) The board shall require the execution of a good and sufficient bonds in an amounts the board determines reasonable, which shall not be less than one thousand dollars (\$1,000) in favor of the state of Idaho conditioned upon the payment of for reclamation and all damages to the land surface and improvements thereon, whether or not the lands have been sold or leased for any other purpose. These bonds shall not duplicate bonds for well closure held by the Idaho department of water resources.

~~(2) Upon commencement of operations for the drilling of any geothermal resource well, the lessee shall be required by the board to furnish such a bond as the board determines reasonable which shall not be less than six thousand dollars (\$6,000) which bond shall be in lieu of the bond required in subsection (1) of this section and shall cover all subsequent operations on such lease.~~

Approved March 15, 2011.

CHAPTER 65  
(H.B. No. 79)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1347B, IDAHO CODE, TO DELETE LANGUAGE REGARDING AMOUNTS THAT HAVE BEEN OBLIGATED PURSUANT TO LETTERS OF INTENT FOR PROPOSED JOB TRAINING PROJECTS THAT IS USED IN CALCULATING THE FUND BALANCE OF THE TRAINING FUND AND TO EXTEND THE SUNSET PROVISION TO JANUARY 1, 2018.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-1347B, Idaho Code, be, and the same is hereby amended to read as follows:

72-1347B. WORKFORCE DEVELOPMENT TRAINING FUND. (1) There is established in the state treasury a special trust fund, separate and apart from all other public funds of this state, to be known as the workforce development training fund, hereinafter "training fund." Except as provided herein, all proceeds from the training tax defined in subsection (4) of this section shall be paid into the training fund. The state treasurer shall be the custodian of the training fund and shall invest said moneys in accordance with law. Any interest earned on the moneys in the training fund shall be deposited in the training fund. Moneys in the training fund shall be disbursed in accordance with the directions of the director. In any month when the unencumbered balance in the training fund exceeds six million dollars (\$6,000,000), the excess amount over six million dollars (\$6,000,000) shall be transferred to the employment security reserve fund, section 72-1347A, Idaho Code. For the purposes of this subsection (1), the unencumbered balance in the training fund is the balance in such fund reduced by the sum of:

- (a) The amounts that have been obligated pursuant to fully-executed workforce development training fund contracts; and
- (b) ~~The amounts that have been obligated pursuant to letters of intent for proposed job training projects; and~~
- ~~(e) Any administrative costs related to the training fund that are due and payable.~~

(2) All moneys in the training fund are perpetually appropriated to the director for expenditure in accordance with the provisions of this section. The purpose of the training fund is to provide or expand training and re-training opportunities in an expeditious manner that would not otherwise exist for Idaho's workforce. The training fund is intended to supplement, but not to supplant or compete with, money available through existing training programs. The moneys in the training fund shall be used for the following purposes:

- (a) To provide training for skills necessary for specific economic opportunities and industrial expansion initiatives;
- (b) To provide training to upgrade the skills of currently employed workers at risk of being permanently laid off;

(c) For refunds of training taxes erroneously collected and deposited in the workforce training fund;

(d) For all administrative expenses incurred by the department associated with the collection of the training tax and any other administrative expenses associated with the training fund.

(3) Expenditures from the training fund for purposes authorized in paragraphs (a) and (b) of subsection (2) of this section shall be approved by the director, and the director of the department of commerce, in consultation with the office of the governor, based on procedures, criteria and performance measures established by the council appointed pursuant to section 72-1336, Idaho Code. The activities funded by the training fund will be coordinated with similar activities funded by the state division of professional-technical education. Expenditures from the training fund for purposes authorized in paragraphs (c) and (d) of subsection (2) of this section shall be approved by the director. The director shall pay all approved expenditures as long as the training fund has a positive balance. The council shall report annually to the governor and the joint finance-appropriations committee the commitments and expenditures made from the training fund in the preceding fiscal year and the results of the activities funded by the training fund.

(4) A training tax is hereby imposed on all covered employers required to pay contributions pursuant to section 72-1350, Idaho Code, with the exception of deficit employers who have been assigned a taxable wage rate from rate class six pursuant to section 72-1350, Idaho Code. The training tax rate shall be equal to three percent (3%) of the taxable wage rate then in effect for each eligible, standard-rated and deficit employer. The training tax shall be due and payable at the same time and in the same manner as contributions. This subsection is repealed effective January 1, 2012~~8~~, unless, prior to that date, the Idaho legislature approves the continuation of this subsection by repeal of this sunset clause.

(5) The provisions of this chapter which apply to the payment and collection of contributions also apply to the payment and collection of the training tax, including the same calculations, assessments, method of payment, penalties, interest, costs, liens, injunctive relief, collection procedures and refund procedures. In the administration of the provisions of this section, the director is granted all rights, authority, and prerogatives granted under the provisions of this chapter. Moneys collected from an employer delinquent in paying contributions, reserve taxes and the training tax shall first be applied to any penalty and interest imposed pursuant to the provisions of this chapter and shall then be applied pro rata to delinquent contributions to the employment security fund, section 72-1346, Idaho Code, delinquent reserve taxes to the reserve fund, section 72-1347A, Idaho Code, and delinquent training taxes to the training fund. Any interest and penalties collected pursuant to this subsection shall be paid into the state employment security administrative and reimbursement fund, section 72-1348, Idaho Code, and any interest or penalties refunded under this subsection shall be paid out of that same fund. Training taxes paid pursuant to this section shall not be credited to the employer's experience rating account and may not be deducted by any employer from the wages of individuals in its employ. All training taxes shall be deposited in the clearing account of the employment security fund, section 72-1346, Idaho Code, for clearance only and shall not become part of such fund. After clearance, the moneys shall be deposited in the training fund established in subsection (1) of this section.

(6) Administrative costs related to the training fund shall be paid from the training fund in accordance with subsection (3) of this section.

CHAPTER 66  
(S.B. No. 1073)

AN ACT

RELATING TO VETERANS LICENSE PLATES; AMENDING SECTION 49-418, IDAHO CODE, TO PROVIDE FOR AN AFGHANISTAN AND IRAQ VETERANS LICENSE PLATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-418, Idaho Code, be, and the same is hereby amended to read as follows:

49-418. VETERANS PLATES. (1) Any person who is the owner of a vehicle registered under the provisions of section 49-402 or 49-434(1), Idaho Code, may apply for and upon department approval receive special veterans license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of veterans plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) Proof of being a current or former member of the United States armed forces must be furnished to the department before special veterans plates will be issued. Acceptable proof shall be a copy of form DD214 or an equivalent document or statement from the department of veterans affairs.

(3) In addition to the regular registration fees required in section 49-402(1) or 49-434(1), Idaho Code, the applicant shall pay the initial program fee of twenty-five dollars (\$25.00) and the annual program fee of fifteen dollars (\$15.00) as specified in section 49-402, Idaho Code, and the plate fee specified in section 49-450, Idaho Code. Ten dollars (\$10.00) of the initial program fee and ten dollars (\$10.00) of the annual program fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Fifteen dollars (\$15.00) of the initial program fee and five dollars (\$5.00) of the annual program fee shall be deposited to the veterans cemetery maintenance fund created in section 65-107, Idaho Code, and shall be used to operate and maintain a state veterans cemetery.

(4) Whenever title or interest in a vehicle registered under the provisions of this section is transferred or assigned, the owner may transfer the special plates to another vehicle upon payment of the required transfer fees. The owner may only display the plates on another vehicle upon receipt of the new registration from the department.

(5) The veterans license plate design shall include the colors red, white and blue, shall designate one (1) of the five (5) branches of military service, and display either:

(a) The word "VETERAN"; or

(b) The name of a conflict or war period recognized by the United States department of veterans affairs for the purpose of awarding federal veterans benefits as defined in 38 U.S.C. 101(11); or

(c) For a current or former member of the United States armed forces who has served in Afghanistan or Iraq during the post 9/11 global operations period, as defined in 38 U.S.C. section 4110A(c), the name of the post 9/11 global operations theater.

The license plate design shall comply with all applicable rules of the department, and shall include a separate and distinct numbering system. The design, color, and numbering system shall be subject to approval of the department.

(6) Veterans license plates may be retained and displayed on vehicles owned by the surviving spouse of a qualified veteran. In addition, the sur-

viving spouse of a deceased qualified veteran is eligible to reapply for and shall be issued veterans license plates if the deceased qualified veteran died on or after January 1 of the five (5) years preceding the date of reapplication for the plates. Such plates shall be used on a vehicle owned by the surviving spouse.

Approved March 15, 2011.

CHAPTER 67  
(S.B. No. 1117)

AN ACT

RELATING TO THE OFFICE OF STATE APPELLATE PUBLIC DEFENDER; AMENDING SECTION 19-869, IDAHO CODE, TO REMOVE CERTAIN LANGUAGE RELATING TO THE APPOINTMENT OF THE STATE APPELLATE PUBLIC DEFENDER; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-869, Idaho Code, be, and the same is hereby amended to read as follows:

19-869. CREATION -- APPOINTMENT -- QUALIFICATIONS -- TERM -- COMPENSATION. (1) The office of state appellate public defender is hereby created in the department of self-governing agencies.

(2) The state appellate public defender shall be appointed by the governor, with the advice and consent of the senate, ~~from a list of not less than two (2) nor more than four (4) qualified persons recommended by a committee consisting of the president of the Idaho state bar association, the chairman of the senate judiciary and rules committee and the chairman of the house judiciary, rules and administration committee and a citizen at large appointed by the governor. The chief justice of the Idaho supreme court, or her designee, shall be an ex officio member of the committee.~~

(3) The state appellate public defender shall be an attorney licensed to practice law in the state of Idaho and shall have a minimum of five (5) years' experience as a practicing attorney. The governor may prescribe such further qualifications as he deems necessary for the position.

(4) The state appellate public defender shall serve for a term of four (4) years, during which term he may be removed only for good cause, and shall be compensated in an amount determined by the governor.

(5) The state appellate public defender may adopt policies or rules necessary to give effect to the purposes of this act.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 15, 2011.

CHAPTER 68  
(H.B. No. 144)

AN ACT

RELATING TO FUEL TAX DISTRIBUTION; REPEALING SECTION 2, CHAPTER 333, LAWS OF 2009, RELATING TO THE REVISION OF DISTRIBUTIONS FROM THE HIGHWAY DISTRIBUTION ACCOUNT; REPEALING SECTION 3, CHAPTER 333, LAWS OF 2009, RELATING TO THE REVISION OF A CODE REFERENCE IN PROVISIONS RELATING TO THE DISTRIBUTION OF APPLICATION FEES AND TRANSFER FEES; REPEALING SECTION 4, CHAPTER 333, LAWS OF 2009, RELATING TO REVISIONS TO THE DISTRIBUTIONS OF TAX REVENUES FROM THE TAX ON GASOLINE; AMENDING SECTION 67-2914, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE IDAHO LAW ENFORCEMENT FUND; AND AMENDING SECTION 7, CHAPTER 333, LAWS OF 2009, AS AMENDED BY SECTION 1, CHAPTER 129, LAWS OF 2010, TO DELETE REFERENCE TO SECTIONS 2, 3 AND 4.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 2, Chapter 333, Laws of 2009, be, and the same is hereby repealed.

SECTION 2. That Section 3, Chapter 333, Laws of 2009, be, and the same is hereby repealed.

SECTION 3. That Section 4, Chapter 333, Laws of 2009, be, and the same is hereby repealed.

SECTION 4. That Section 67-2914, Idaho Code, be, and the same is hereby amended to read as follows:

67-2914. IDAHO LAW ENFORCEMENT FUND ESTABLISHED. ~~(1)~~ For the purposes of the Idaho state police, there is established in the state treasury of the state of Idaho the Idaho law enforcement fund, to which shall be deposited funds as provided by law.

~~(2) The Idaho state police provide a critical service to the citizens and motorists of the state of Idaho by providing for the public's health, welfare and safety. In light of the vital service the agency provides, the legislature acknowledges that providing an ongoing and dedicated source of funds for the agency is necessary to safeguard the Idaho state police from the impacts of future economic downturns.~~

SECTION 5. That Section 7, Chapter 333, Laws of 2009, as amended by Section 1, Chapter 129, Laws of 2010, be, and the same is hereby amended to read as follows:

SECTION 7. An emergency existing therefor, which emergency is hereby declared to exist, Sections 1, 5 and 6 of this act shall be in full force and effect on and after passage and approval. ~~Sections 2, 3 and 4 of this act shall be in full force and effect on and after July 1, 2011.~~

Law without signature.

CHAPTER 69  
(S.B. No. 1044, As Amended)

AN ACT

RELATING TO THE UNIFORM PROBATE CODE; AMENDING SECTION 15-3-715, IDAHO CODE, TO REVISE TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVES AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 15-5-424, IDAHO CODE, TO REVISE POWERS OF CONSERVATORS IN ADMINISTRATION AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 15-3-715, Idaho Code, be, and the same is hereby amended to read as follows:

15-3-715. TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVES -- EXCEPTIONS. Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 15-3-902 of this code, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) Receive assets from fiduciaries, or other sources;

(3) Exercise the same power as the decedent in performance, compromise or refusal to perform the decedent's contracts which continue as obligations of the decedent's estate. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action may:

(a) ~~e~~Execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) ~~d~~Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

(6) Acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) Subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) Abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

(12) Vote stocks or other securities in person or by general or limited proxy;

(13) Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) Insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;

(16) Borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

(17) Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(18) Pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) Allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) Employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one (1) or more agents to perform any act of administration, whether or not discretionary;

(22) Prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(23) Sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;

(24) Continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(a) ±In the same business form for a period of not more than four (4) months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will<sub>τ</sub>;

(b) ±In the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or

(c) ±Throughout the period of administration if the business is incorporated by the personal representative and if none of the probable dis-

tributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) Incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;

(27) Satisfy and settle claims and distribute the estate as provided in this code;

(28) Take control of, conduct, continue or terminate any accounts of the decedent on any social networking website, any microblogging or short message service website or any e-mail service website.

SECTION 2. That Section 15-5-424, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-424. POWERS OF CONSERVATOR IN ADMINISTRATION. (a~~1~~) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of eighteen (18) years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 15-5-209 of this code until the minor attains the age of eighteen (18) years or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by part 2 of this chapter.

(b~~2~~) A conservator has power without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(e~~3~~) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation to:

(1a) e~~C~~ollect, hold and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(2b) ~~r~~Receive additions to the estate;

(3c) e~~C~~ontinue or participate in the operation of any business or other enterprise;

(4d) a~~A~~cquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(5e) ~~i~~Invest and reinvest estate assets in accordance with subsection (b~~2~~) of this section;

(6f) ~~d~~Deposit estate funds in a bank including a bank operated by the conservator;

(7g) a~~A~~cquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(8h) m~~M~~ake ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(9i) s~~S~~ubdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;

(10j) e~~E~~nter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;

- (11k) eEnter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- (12l) gGrant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;
- (13m) vVote a security, in person or by general or limited proxy;
- (14n) pPay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- (15o) sSell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (16p) hHold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;
- (17q) iInsure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;
- (18r) bBorrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the conservator has a lien on the estate as against the protected person for advances so made;
- (19s) pPay or contest any claim; to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;
- (20t) pPay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate;
- (21u) aAllocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
- (22v) pPay any sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or, if none, to a relative or other person with custody of his person;
- (23w) eEmploy persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one (1) or more agents to perform any act of administration, whether or not discretionary;
- (24x) pProsecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and
- (25y) eExecute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator; and
- (z) Take control of, conduct, continue or terminate any accounts of the protected person on any social networking website, any microblogging or short message service website or any e-mail service website.

CHAPTER 70  
(S.B. No. 1057, As Amended)

AN ACT

RELATING TO THE CONTROL OF VENEREAL DISEASES; AMENDING SECTION 39-604, IDAHO CODE, TO PROVIDE THAT CERTAIN PERSONS SHALL BE TESTED FOR THE HUMAN IMMUNODEFICIENCY VIRUS AND TO PROVIDE THAT AT THE REQUEST OF CERTAIN PERSONS, SUCH TEST SHALL BE ADMINISTERED NOT LATER THAN FORTY-EIGHT HOURS AFTER THE DATE ON WHICH THE INFORMATION OR INDICTMENT IS PRESENTED; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-604, Idaho Code, be, and the same is hereby amended to read as follows:

39-604. CONFINED AND IMPRISONED PERSONS -- EXAMINATION, TREATMENT, AND QUARANTINE -- VICTIMS OF SEXUAL OFFENSES -- ACCESS TO OFFENDERS' TEST RESULTS, TESTING FOR HIV, COUNSELING AND REFERRAL SERVICES. (1) All persons who shall be confined or imprisoned in any state prison facility in this state shall be examined for on admission, and again before release, and, if infected, treated for the diseases enumerated in section 39-601, Idaho Code, and this examination shall include a test for HIV antibodies or antigens. This examination is not intended to limit any usual or customary medical examinations that might be indicated during a person's imprisonment. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime.

(2) All persons who shall be confined in any county or city jail may be examined for and, if infected, treated for the venereal diseases enumerated in section 39-601, Idaho Code, if such persons have, in the judgment of public health authorities and the jailer, been exposed to a disease enumerated in section 39-601, Idaho Code.

(3) All persons who are charged with any sex offense in which body fluid, as defined in this chapter, has likely been transmitted to another shall be tested for the human immunodeficiency virus (HIV). At the request of the victim or parent, guardian or legal custodian of a minor victim, such test shall be administered not later than forty-eight (48) hours after the date on which the information or indictment is presented.

(4) All persons, including juveniles, who are charged with sex offenses, drug related charges, prostitution, any crime in which body fluid has likely been transmitted to another, or other charges as recommended by public health authorities shall be tested for the venereal diseases enumerated in section 39-601, Idaho Code, and for hepatitis C virus.

(45) All persons who are charged with any crime in which body fluid as defined in this chapter has likely been transmitted to another shall be tested for the presence of HIV antibodies or antigens, for hepatitis C virus and for hepatitis B virus.

(56) If a person is tested as required in subsections (3), ~~or~~ (4) or (5) of this section, the results of the test shall be revealed to the court. The court shall release the results of the test to the victim(s), or if the victim(s) is a minor, to the minor's parent, guardian or legal custodian. Whenever a prisoner tests positive for HIV antibodies or antigens, the victim(s) of said prisoner shall be entitled to counseling regarding HIV, HIV testing in accordance with applicable law, and referral for appropriate health care and support services. Said counseling, HIV testing and referral services shall be provided to the victim(s) by the district health departments at no charge to the victim(s). Provided however, the requirement to provide referral services does not, in and of itself, obligate the district health

departments to provide or otherwise pay for a victim's health care or support services. Any court, when releasing test results to a victim(s), or if the victim(s) is a minor, to the minor's parent, guardian, or legal custodian, shall explain or otherwise make the victim(s) or the victim's parent, guardian, or legal custodian, aware of the services to which the victim(s) is entitled as described herein.

(67) Responsibility for the examination, testing and treatment of persons confined in county or city jails shall be vested in the county or city that operates the jail. The county or city may contract with the district health departments or make other arrangements for the examination, testing and treatment services. The district health department or other provider may charge and collect for the costs of such examination and treatment, as follows:

(a) When the prisoner is a convicted felon awaiting transfer to the board of correction, or when the prisoner is a convicted felon being confined in jail pursuant to a contract with the board of correction, the board of correction shall reimburse such costs;

(b) When the prisoner is awaiting trial after an arrest by any state officer, the state agency employing such arresting officer shall reimburse such costs;

(c) When the prisoner is being held for any other authority or jurisdiction, including another state, the authority or jurisdiction responsible shall reimburse such costs unless otherwise provided for by contract.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to February 15, 2011.

Approved March 16, 2011.

CHAPTER 71  
(S.B. No. 1061)

AN ACT

RELATING TO MOTOR VEHICLES AND DEFINITIONS; AMENDING SECTION 49-117, IDAHO CODE, TO REVISE A DEFINITION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-117, Idaho Code, be, and the same is hereby amended to read as follows:

49-117. DEFINITIONS -- P. (1) "Park" or "parking" means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

(2) "Park trailer." (See "Trailer," section 49-121, Idaho Code)

(3) "Part-time salesman" means any person employed as a vehicle salesman on behalf of a dealer less than thirty (30) hours per week.

(4) "Peace officer." (See section 19-5101(d), Idaho Code)

(5) "Pedestrian" means any person afoot and any person operating a wheelchair or a motorized wheelchair or an electric personal assistive mobility device.

(6) "Pedestrian path" means any path, sidewalk or way set-aside and used exclusively by pedestrians.

(7) (a) "Person" means every natural person, firm, fiduciary, copartnership, association, corporation, trustee, receiver or assignee for the benefit of creditors, political subdivision, state or federal governmental department, agency, or instrumentality, and for the purposes of chapter 22 of this title shall include a private, common or contract carrier operating a vehicle on any highway of this state.

(b) "Person with a disability" means:

(i) A person who is unable to walk two hundred (200) feet or more unassisted by another person;

(ii) A person who is unable to walk two hundred (200) feet or more without the aid of a walker, cane, crutches, braces, prosthetic device or a wheelchair; or

(iii) A person who is unable to walk two hundred (200) feet or more without great difficulty or discomfort due to the following impairments: neurological, orthopedic, respiratory, cardiac, arthritic disorder, blindness, or the loss of function or absence of a limb.

(iv) For the purposes of chapters 3 and 4 of this title, a person with a permanent disability is one whose physician certifies that the person qualifies as a person with a disability pursuant to this subsection (7) (b), and further certifies that there is no expectation for a fundamental or marked change in the person's condition at any time in the future.

(8) "Personal information" means information that identifies an individual, including an individual's photograph or computerized image, social security number, driver identification number, name, address, telephone number, and medical or disability information, but does not include information on vehicular accidents, driving or equipment-related violations, the five-digit zip code of the person's address, or status of the driver's license or motor vehicle registration.

(9) "Pneumatic tire." (See "Tires," section 49-121, Idaho Code)

(10) "Pole trailer." (See "Trailer," section 49-121, Idaho Code)

(11) "Possessory lien" means a lien dependent upon possession for compensation to which a person is legally entitled for making repairs or performing labor upon, and furnishing supplies or materials for, and for the towing, storage, repair, or safekeeping of, any vehicle of a type subject to registration.

(12) "Possessory lienholder" means any person claiming a lien, that lien claimed to have accrued on a basis of services rendered to the vehicle which is the subject of the lien.

(13) "Preceding year" means, for the purposes of section 49-435, Idaho Code, a period of twelve (12) consecutive months fixed by the department, prior to July 1 of the year immediately preceding the commencement of the registration or license year for which proportional registration is sought. The department in fixing the period shall make it conform to the terms, conditions and requirements of any applicable agreement or arrangement for the proportional registration of vehicles.

(14) "Pressure regulator valve" means a device or system which governs the load distribution and controls the weight borne by a variable load suspension axle in accordance with a predetermined valve setting.

(15) "Principal place of business" means an enclosed commercial structure located within the state, easily accessible and open to the public at all reasonable times, with an improved display area large enough to display five (5) or more vehicles of the type the dealer is licensed to sell, immediately adjoining the building, and at which the business of a dealership, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning and other land-use regulatory ordinances, and in which building the public shall be able to contact the dealer or his salesmen in person or by telephone at all

reasonable times, ~~and at which place of business shall be kept and maintained~~ ~~†~~The books, records and files necessary to conduct the business of the dealership must be kept or reproduced electronically at the dealership's licensed location(s). A dealership keeping its physical books, records and files at an off-site location must notify the department in writing of such location at least thirty (30) days in advance of moving such books, records and files off-site. Physical books, records and files must be made available to the department upon request within three (3) business days of such request. The principal place of business shall display an exterior sign permanently affixed to the land or building, with letters clearly visible to the major avenue of traffic. In no event shall a room or rooms in a hotel, rooming house, or apartment house building or a part of any single or multiple unit dwelling house be considered a "principal place of business" within the terms and provisions of this title unless the entire ground floor of that hotel, apartment house, or rooming house building or dwelling house be devoted principally to and occupied for commercial purposes, and the office or offices of the dealer be located on the ground floor.

(16) "Private property open to the public" means real property not owned by the federal government or the state of Idaho or any of its political subdivisions, but is available for vehicular traffic or parking by the general public with the permission of the owner or agent of the real property.

(17) "Private road" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(18) "Proof of financial responsibility" means proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of the proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of twenty-five thousand dollars (\$25,000) because of bodily injury to or death of one (1) person in any one (1) accident, and, subject to the limit for one (1) person, in the amount of fifty thousand dollars (\$50,000) because of bodily injury to or death of two (2) or more persons in any one (1) accident, and in the amount of fifteen thousand dollars (\$15,000) because of injury to or destruction of property of others in any one (1) accident.

(19) "Proper authority" means a public highway agency.

(20) "Public highway agency" means the state transportation department, any city, county, highway district or any other state agency which has jurisdiction over public highway systems and public rights-of-way.

(21) "Public right-of-way" means a right-of-way open to the public and under the jurisdiction of a public highway agency, where the public highway agency has no obligation to construct or maintain said right-of-way for vehicular traffic.

(22) "Public road jurisdiction" means a public highway agency.

(23) "Purchase." (See "Sell," "sold," and "buy," section 49-120, Idaho Code)

Approved March 16, 2011.

CHAPTER 72  
(S.B. No. 1062)

AN ACT

RELATING TO MOTOR VEHICLE REGISTRATION AND DEALERS AND SALESMEN LICENSING;  
AMENDING SECTION 49-411, IDAHO CODE, TO PROVIDE THAT LADEN DEALER OR  
MANUFACTURER PLATES SHALL BE AVAILABLE TO LICENSED DEALERS AND MANU-  
FACTURERS OPERATING VEHICLES WITH LADEN LOADS, TO PROVIDE THAT SUCH  
PLATES SHALL BE EXEMPT FROM CERTAIN PROVISIONS, TO PROVIDE THAT THE

OPERATING FEE FOR A LADEN DEALER OR MANUFACTURER PLATE WILL BE EQUAL TO THE FEES FOR CERTAIN COMMERCIAL VEHICLES, TO PROVIDE FOR A MAXIMUM GROSS VEHICLE WEIGHT, TO PROVIDE FOR TEMPORARY WEIGHT INCREASE PERMITS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 49-432, IDAHO CODE, TO PROVIDE THAT CERTAIN PROVISIONS SHALL NOT APPLY TO LADEN DEALER OR MANUFACTURER PLATES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 49-1627, IDAHO CODE, TO PROVIDE FOR DISPLAY OF LADEN DEALER OR MANUFACTURER PLATES, TO PROVIDE FOR LIMITATION OF USE, TO PROVIDE THAT LADEN DEALER OR MANUFACTURER PLATES SHALL NOT BE USED FOR PERSONAL USE, TO PROVIDE THAT LADEN DEALER OR MANUFACTURER PLATES SHALL BE VALID UP TO A MAXIMUM WEIGHT, TO PROVIDE FOR FEES AND TO PROVIDE THAT THE DEALER OR MANUFACTURER MAY INCREASE THE WEIGHT THROUGH THE PURCHASE OF A TEMPORARY PERMIT, PURSUANT TO STATUTE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-411, Idaho Code, be, and the same is hereby amended to read as follows:

49-411. DEALER AND MANUFACTURER PLATE -- FEES. (1) Any person conducting the business of manufacturing, buying, selling or dealing in vehicles, and licensed as a manufacturer of or a dealer in vehicles, and owning and operating any such vehicle upon any highway may, in lieu of registering each vehicle, obtain from the department upon application on the proper form and payment of the required fee, and attach to each vehicle, one (1) number plate as required for different classes of vehicles in section 49-434, Idaho Code. The special number plate shall bear a distinctive number assigned to the manufacturer or dealer, the name of this state, which may be abbreviated, and the year for which the plate is issued, together with words which may be abbreviated or a distinguishing symbol indicating that the plate is issued to a manufacturer or dealer.

(a) Dealer license plates shall be limited to two (2) license plates for up to twenty (20) vehicles sold during the previous dealer licensing period and one (1) license plate for each ten (10) additional vehicles sold during the previous dealer licensing period. Any new dealer who applies for a dealer license shall be eligible for the number of dealer plates requested based on the number of vehicles that the dealer estimates he will sell during the first year of licensure.

(b) Upon renewal of a dealer's license, the department may audit vehicle sales from previous years to determine the number of dealer plates that will be authorized for the current dealer licensing period.

(2) The fee to validate a dealer or manufacturer number plate shall be twelve dollars (\$12.00) for each validation sticker.

(3) All such fees shall be paid to the state treasurer and deposited to the state highway account.

(4) Laden dealer or manufacturer plates shall be available to licensed dealers and manufacturers operating vehicles with laden loads in furtherance of their business pursuant to section 49-1627(5), Idaho Code. Such plates shall be exempt from the limit provisions of subsection (1) (a) of this section. The operating fee for a laden dealer or manufacturer plate will be equal to the fees for commercial vehicles pursuant to section 49-434(1), Idaho Code, for twenty-six thousand (26,000) pounds. Laden dealer and manufacturer plates are limited to a maximum combined gross vehicle weight of twenty-six thousand (26,000) pounds. Temporary weight increase permits may be purchased pursuant to section 49-432(2), Idaho Code.

SECTION 2. That Section 49-432, Idaho Code, be, and the same is hereby amended to read as follows:

49-432. TEMPORARY REGISTRATION FOR RESIDENTS AND NONRESIDENTS -- FEES. (1) When a vehicle or combination of vehicles subject to registration is to be moved upon the public highways in the state of Idaho, the department may issue a permit in lieu of registration for any vehicle or combination of vehicles upon the payment of a fee as set forth in the following schedule:

- (a) One hundred twenty (120) hour permit
  - Single vehicle .....\$60.00
  - Combination of vehicles, where such combination of vehicles includes more than one (1) unregistered vehicles .....\$120.00
- (b) Fuel permit .....\$60.00
- (c) Thirty (30) day unladen weight permit .....\$60.00

An owner-operator vehicle moving between lessee fleets where the vehicle registration was issued in the name of the former lessee shall be eligible for a thirty (30) day unladen weight permit for the unladen movement from the point of entry into the state to the destination of the new lessee's place of business.

If an annual registration is purchased within thirty (30) calendar days of issuance of a permit under paragraph (a) or (c) of this subsection (1), the amount of the permit fee shall be applied to the registration fee. No portion of a permit fee is subject to refund.

(2) Permits to operate a vehicle or combination of vehicles in excess of the registered maximum gross vehicle weight up to a maximum of one hundred twenty-nine thousand (129,000) pounds gross vehicle weight shall be:

- (a) One hundred twenty (120) hour permit to increase gross weight .....\$50.00
- (b) Thirty (30) day permit to increase gross vehicle weight:

Maximum Registered Gross Weight of Vehicle (Pounds)	Temporary Permitted Maximum Gross Weight (Pounds)					
	80,000	86,000	96,000	106,000	116,000	129,000
50,001-60,000	\$225	\$250	\$275	\$300	\$325	\$350

The permit issued pursuant to this subsection (2) shall be specific to the motor vehicle to which it is issued. No permit or fee shall be transferable or apportionable to any other vehicle, nor shall any such fee be refundable. At the time of purchasing a permit, the applicant may purchase additional permits in any combination which does not exceed a maximum of ninety (90) days.

(3) Permits issued pursuant to subsection (1) or (2) of this section shall be limited to three (3) per vehicle in a calendar year except for those permits provided for in subsection (1) (b) and (c). The provisions of this subsection (3) with respect to limiting the number of permits issued shall not apply to transporters and wreckers as defined in sections 49-121 and 49-124, Idaho Code, or to laden dealer and manufacturer plates as provided for in sections 49-411(4) and 49-1627(5), Idaho Code.

(4) A temporary permit shall be in a form, and issued under rules adopted by the board, and shall be displayed at all times while the vehicle is being operated on the highways by posting the permit upon the windshield of each vehicle or in another prominent place, where it may be readily legible.

(5) Any permit issued pursuant to subsection (2) of this section shall be purchased prior to movement of the vehicle on a highway, and such permit shall be in addition to and available only to a vehicle which is currently

and validly registered in Idaho pursuant to section 49-432(1), 49-434(1), 49-434(8)(c) or 49-435, Idaho Code.

(6) The department may select vendors to serve as agents on state highways for the purpose of selling permits where fixed ports of entry do not adequately serve a respective highway entering the state. The vendor shall be remunerated at the rate of three dollars (\$3.00) per permit sold, and he shall collect the fees specified in this section and pay the fees to the department. The vendor shall guarantee payment by giving a bond to the state in a sum as shall be fixed by the board, the premium on the bond to be paid by the department.

SECTION 3. That Section 49-1627, Idaho Code, be, and the same is hereby amended to read as follows:

49-1627. USE OF DEALER AND MANUFACTURER LICENSE PLATE. (1) Any dealer or manufacturer license plate issued may, during the calendar year for which issued, be transferred from one (1) vehicle to another owned or operated by such manufacturer or dealer, in pursuance of his business as a manufacturer or dealer.

(2) Dealer plates shall not be used on vehicles under the following circumstances:

- (a) On work or service vehicles not held in stock for sale;
- (b) On leased or rented vehicles owned by the licensed manufacturer or dealer;
- (c) On a laden vehicle designed for transportation of cargo, unless the manufacturer or dealer has complied with section 49-434, Idaho Code, except as provided in subsection (3) of this section;
- (d) On vehicles which have been sold;
- (e) On vehicles used by the licensee for furtherance of another business;
- (f) On vehicles owned by a licensed wholesaler used for personal use;
- (g) On vehicles owned by a licensed wholesaler, operated by their licensed salesmen, used for personal use.

(3) Dealer and manufacturer plates may be used on laden vehicles operated by the manufacturer, dealer or his licensed vehicle salesman, in connection with the manufacturer's or dealer's business. A dealer plate may be used on a laden trailer in connection with a manufacturer's or dealer's business to move vehicles or trailers from a manufacturer to a dealer, from dealership to dealership or from a dealership to off-site locations in promotion of the dealer's business as long as the power unit is properly licensed under chapter 4, title 49, Idaho Code. A dealer plate may be used on a vehicle assigned for personal use on a full-time basis to the dealer, or licensed full-time vehicle salesman. This personal use exception applies only to the manufacturer, dealer, or licensed full-time vehicle salesman personally, and any other persons, including members of their families, are excluded. A prospective purchaser of a vehicle may have possession of the vehicle with a dealer plate for not more than ninety-six (96) hours or may operate the vehicle when accompanied by the manufacturer, dealer or a licensed vehicle salesman.

(4) Licensed part-time vehicle salesmen may use a dealer plate on a vehicle that is offered for sale only to demonstrate the vehicle to a purchaser, but not for personal use. Other employees or authorized persons, not licensed as a vehicle salesman, may use a dealer plate when testing the mechanical operation of a vehicle or for the necessary operation in pursuance of the dealer's business, including the delivery and pickup of vehicles owned or purchased by that manufacturer or dealer.

(5) Laden dealer and manufacturer plates may be displayed on any power unit in the dealer's or manufacturer's inventory to operate vehicles laden with vehicles that are in the dealer's or manufacturer's inventory in pur-

suance of the dealer's or manufacturer's business. Such use shall be limited to moving vehicles from a manufacturer to a dealer, from dealership to dealership, or from a dealership to off-site locations in furtherance of the dealer's business. Such uses may include travel to licensed temporary supplemental lot locations, to and from auctions or to a new licensed location.

(a) Laden dealer and manufacturer plates shall not be used for personal use by the dealer or manufacturer or a licensed full-time or part-time salesman of the dealership.

(b) Laden dealer and manufacturer plates shall be valid up to a maximum of twenty-six thousand (26,000) pounds combined gross vehicle weight.

(c) Fees will be as provided in section 49-434(1), Idaho Code, for commercial vehicles at a weight limit of twenty-six thousand (26,000) pounds combined gross vehicle weight.

(d) The dealer or manufacturer may increase the weight limit through the purchase of a temporary weight increase permit, as provided for in section 49-432(2), Idaho Code.

(6) Vehicle manufacturers and dealers shall keep a written record of the vehicles upon which dealer's number plates are used for personal use on a full-time basis, and the time during which each plate is used. The record shall be open to inspection by any peace officer or any officer or employee of the department.

(67) No manufacturer or dealer shall cause or permit any vehicle owned by them to be operated or moved upon a public highway without displaying upon the vehicle a license plate issued to that person, either under the provisions of this section or section 49-428, Idaho Code, except as otherwise authorized in section 49-431, Idaho Code.

Approved March 16, 2011.

CHAPTER 73  
(S.B. No. 1063)

AN ACT

RELATING TO THE STATE BOARD OF CORRECTION; AMENDING SECTION 20-225, IDAHO CODE, TO INCREASE THE AMOUNT OF A CERTAIN MONTHLY CONTRIBUTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 20-225, Idaho Code, be, and the same is hereby amended to read as follows:

20-225. PAYMENT FOR COST OF SUPERVISION. Any person under state probation or parole supervision shall be required to contribute not more than fifty seventy-five dollars (\$750.00) per month as determined by the board of correction. Costs of supervision are the direct and indirect costs incurred by the department of correction to supervise probationers and parolees, including tests to determine drug and alcohol use, books and written materials to support rehabilitation efforts, and monitoring of physical location through the use of technology. Any failure to pay such contribution shall constitute grounds for the revocation of probation by the court or the revocation of parole by the commission for pardons and parole. The division of probation and parole in the department of correction may exempt a person from the payment of all or any part of the foregoing contribution if it finds any of the following factors to exist:

(1) The offender has diligently attempted but been unable to obtain employment.

(2) The offender has a disability affecting employment, as determined by a physical, psychological or psychiatric examination acceptable to the division of probation and parole. Money collected as a fee for services will be placed in the probation and parole receipts revenue fund, which is hereby created in the dedicated fund in the state treasury, and utilized to provide supervision for clients. Moneys in the probation and parole receipts revenue fund may be expended only after appropriation by the legislature.

Approved March 16, 2011.

CHAPTER 74  
(S.B. No. 1097)

AN ACT

RELATING TO JUDGMENT; AMENDING CHAPTER 25, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-2516, IDAHO CODE, TO PROVIDE THAT THE COURT SHALL ORDER A DEFENDANT TO PAY AN AMOUNT OF THE COST OF CONDUCTING A COURT ORDERED PRESENTENCE INVESTIGATION AND PREPARING THE PRESENTENCE INVESTIGATION REPORT, TO PROVIDE THAT THE DEPARTMENT OF CORRECTION SHALL DETERMINE SUCH AMOUNT, TO PROVIDE THAT SUCH AMOUNT SHALL BE BASED ON THE DEFENDANT'S ABILITY TO PAY, TO PROVIDE FACTORS THE DEPARTMENT OF CORRECTION MAY CONSIDER IN DETERMINING A DEFENDANT'S ABILITY TO PAY, TO PROVIDE THAT PAYMENTS OF SUCH AMOUNTS SHALL BE MADE TO THE DEPARTMENT OF CORRECTION, TO PROVIDE THAT SUCH PAYMENTS WILL BE PLACED IN THE PROBATION AND PAROLE RECEIPTS ACCOUNT AND TO PROVIDE THAT MONEYS IN SUCH ACCOUNT MAY BE EXPENDED ONLY AFTER APPROPRIATION BY THE LEGISLATURE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 25, Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 19-2516, Idaho Code, and to read as follows:

19-2516. COST OF PRESENTENCE INVESTIGATION. If a court orders a presentence investigation to be conducted, the court shall order the defendant to pay an amount to be determined by the department of correction, not to exceed one hundred dollars (\$100), of the cost of conducting the presentence investigation and preparing the presentence investigation report. Such court orders shall be included in the judgment. Any such amount to be paid by the defendant shall be determined by the department of correction and shall be based on the defendant's ability to pay. In determining a defendant's ability to pay, the department of correction may consider such factors as the defendant's income, property owned, outstanding obligations and the number and ages of dependents. Such payments shall be made to the department of correction and will be placed in the probation and parole receipts account created pursuant to section 20-225A, Idaho Code, and utilized as reimbursement for the cost of conducting the presentence investigation and preparing the presentence investigation report. Moneys in the probation and parole receipts account may be expended only after appropriation by the legislature.

Approved March 16, 2011.

CHAPTER 75  
(H.B. No. 46)

## AN ACT

RELATING TO ACUPUNCTURE; AMENDING SECTION 54-4703, IDAHO CODE, TO PROVIDE THAT PERSONS HOLDING AN ACUPUNCTURE TRAINEE PERMIT MAY PRACTICE ACUPUNCTURE ON A SUPERVISED, LIMITED BASIS; AMENDING SECTION 54-4705, IDAHO CODE, TO REMOVE REFERENCE TO A TECHNICIAN CERTIFICATE, TO PROVIDE FOR A TRAINEE PERMIT AND TO PROVIDE THE BOARD THE AUTHORITY TO ADOPT RULES REQUIRING CONTINUING EDUCATION AS A CONDITION OF CONTINUED CERTIFICATION; AMENDING SECTION 54-4707, IDAHO CODE, TO PROVIDE ADDITIONAL REQUIREMENTS FOR CERTIFICATION; AMENDING SECTION 54-4708, IDAHO CODE, TO REMOVE PROVISIONS RELATING TO AN ACUPUNCTURE TECHNICIAN CERTIFICATE AND TO PROVIDE PROVISIONS FOR AN ACUPUNCTURE TRAINEE PERMIT; AMENDING CHAPTER 47, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-4708A, IDAHO CODE, TO PROVIDE FOR THE RETENTION AND RENEWAL OF CERTAIN ACUPUNCTURE TECHNICIAN CERTIFICATES AND TO PROVIDE THAT NO NEW TECHNICIAN CERTIFICATES SHALL BE ISSUED ON AND AFTER JULY 1, 2011; AMENDING SECTION 54-4710, IDAHO CODE, TO REVISE PROVISIONS RELATING TO FEES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-4711, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE SUSPENSION AND REVOCATION OF A LICENSE, CERTIFICATION OR PERMIT AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-4712, IDAHO CODE, TO PROVIDE THAT A PERSON GRANTED AN ACUPUNCTURE TRAINEE PERMIT MAY USE CERTAIN TITLES; AND AMENDING SECTION 54-4713, IDAHO CODE, TO REVISE PROVISIONS RELATING TO AN UNLAWFUL METHOD, ACT OR PRACTICE AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-4703, Idaho Code, be, and the same is hereby amended to read as follows:

54-4703. LICENSE REQUIRED. (1) From and after the 1st day of July, 1999, it is unlawful for any person to practice acupuncture in this state without, at such time being licensed or certified pursuant to this chapter; provided however, the provisions of this chapter shall not apply to persons licensed pursuant to chapter 18, title 54, Idaho Code, but such persons may seek licensure or certification pursuant to this chapter on a voluntary basis. Persons holding an acupuncture trainee permit pursuant to this chapter may practice acupuncture on a supervised, limited basis as prescribed by this chapter, the board's rules and the permit.

(2) No person shall use any title, designation, words, letters, abbreviations, or sign, card or device which indicates to the public that such person may practice acupuncture in any form or has been issued a license or been certified pursuant to this chapter unless the person is so licensed or certified, has been issued such license or certification, and the license or certification is in good standing pursuant to rules of the board.

SECTION 2. That Section 54-4705, Idaho Code, be, and the same is hereby amended to read as follows:

54-4705. BOARD OF ACUPUNCTURE -- POWERS AND DUTIES -- FUNDS. (1) The board shall have the authority to:

(a) Determine the qualifications of persons applying for licensure, certification and acupuncture ~~technician certificates~~ trainee permits pursuant to this chapter and define, by rule, the appropriate scope of acupuncture services that may be rendered to the public in this state;

- (b) Hire or appoint employees, including an executive director, investigators, attorneys, consultants and independent hearing examiners;
- (c) Establish, pursuant to the administrative procedure act, such rules as are necessary for the administration of this chapter, including standards for professional conduct that reflect current practice standards and promote inclusion of innovations and advances in acupuncture;
- (d) Conduct investigations and examinations and hold hearings;
- (e) Collect fees and other funds as prescribed by this chapter;
- (f) Contract, sue and be sued, and pursue other matters lawful in this state;
- (g) Provide such other services and perform such other functions as are necessary and desirable to fulfill its purposes;
- (h) Adopt rules requiring continuing education as a condition of continued licensure or certification.

(2) All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund and all costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund.

SECTION 3. That Section 54-4707, Idaho Code, be, and the same is hereby amended to read as follows:

54-4707. REQUIREMENTS FOR CERTIFICATION. A person applying for a certification shall, in addition to paying all required fees, submit a written application provided by the board showing that such person has successfully passed an examination or other demonstration of proficiency as may be uniformly required by the board and:

(1) Has successfully completed the requirements for full membership in the American academy of medical acupuncture; or

(2) Has met each of the following education and experience requirements:

(a) Possesses from an accredited college or university a doctoral degree in chiropractic, dentistry, podiatric medicine, or naturopathic medicine;

(b) Has successfully completed an approved program consisting of a minimum of one hundred (100) hours of on-site didactic coursework in acupuncture taught by an NCCAOM certified acupuncturist who has been practicing acupuncture for at least five (5) years and is currently licensed, two hundred (200) hours of practice as a certified technician or as an acupuncture trainee over a one (1) year period and twenty-five (25) case studies; and

(c) Has successfully passed a blood-borne pathogen course and comprehensive examination concerning the practice of acupuncture approved by the board that incorporates clean needle techniques and OSHA procedures and requirements.

SECTION 4. That Section 54-4708, Idaho Code, be, and the same is hereby amended to read as follows:

54-4708. ACUPUNCTURE ~~TECHNICIAN CERTIFICATE~~ TRAINEE PERMIT. (1) A person seeking the experience needed to obtain licensure or certification pursuant to this chapter may apply for an acupuncture ~~technician certificate~~ by, in addition to paying trainee permit. Such person shall pay all required fees, submitting a written application provided by the board and showing to the satisfaction of the board that such person meets the following requirements: is qualified and actively pursuing an acupuncture license or certification.

- ~~(a) Completion of the requirements for clinical technician certificate by the international academy of medical acupuncture, inc., or such other comparable requirements as are approved by the board; and~~
- ~~(b) Passed a clean needle technique course that has been approved by the board; and~~
- ~~(c) Passed an examination or other demonstration of proficiency as may be uniformly required for other similarly qualified applicants for an acupuncture technician certificate.~~

(2) In approving an acupuncture technician certificate trainee permit the board shall consider the scope and extent of the applicant's academic and other training and experience in health care to date and may, for each individual acupuncture technician trainee:

- (a) ~~Require the direct and immediate supervision such supervision, as the board may deem appropriate, by a person licensed or certified pursuant to this chapter or by a health care practitioner licensed or certified in Idaho or by a health care practitioner otherwise exempt from licensure under this chapter;~~
- (b) Restrict the practice of acupuncture for the acupuncture technician trainee to specified therapies or treatments.

(3) A person's acupuncture trainee permit expires one (1) year from the date of issuance. However, the board may renew the permit for up to one (1) year if, before the permit expires, the person asks the board for an extension and establishes to the board's satisfaction that good cause exists for the board to renew the permit. The renewal of any acupuncture trainee permit may be upon such conditions as the board may require. The board may not renew a permit more than once and the board may not issue more than one (1) permit to any person.

SECTION 5. That Chapter 47, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-4708A, Idaho Code, and to read as follows:

54-4708A. ACUPUNCTURE TECHNICIAN. Individuals who have been granted an acupuncture technician certificate before July 1, 2011, shall be entitled to retain and renew such certificate under the renewal terms as provided in section 54-4710, Idaho Code, and the board's rules, but no new technician certificates shall be issued on and after July 1, 2011.

SECTION 6. That Section 54-4710, Idaho Code, be, and the same is hereby amended to read as follows:

54-4710. EXPIRATION AND RENEWAL -- REINSTATEMENT. (1) All licenses and certifications issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(2) The board shall establish the following fees relating to licensing, which fees shall be established in an amount that is sufficient to defray all costs necessary for the administration of this chapter:

- (a) Initial license;
- (b) Renewal of license fee;
- (c) Initial fee for certification;
- (d) Initial acupuncture technician certificate trainee permit;
- (e) Renewal acupuncture technician certificate or acupuncture trainee permit;
- (f) Inactive license and certification fees;
- (g) Late renewal fees.

SECTION 7. That Section 54-4711, Idaho Code, be, and the same is hereby amended to read as follows:

54-4711. SUSPENSION AND REVOCATION. To protect the health, safety and welfare of the public, the board, in accordance with the requirements of chapter 52, title 67, Idaho Code, may refuse to issue ~~a license or certification,~~ or may refuse to renew a license, ~~or certification or permit,~~ or may suspend or revoke a license, or certification or permit, under such conditions as the board may ~~determine~~ require, if the applicant or holder of the license, or certification or permit has:

- (1) ~~Has been~~ convicted of a felonious act, or crime involving moral turpitude;
- (2) Obtained or attempted to obtain the issuance or renewal of a license, certification or permit pursuant to this chapter by means of fraud, misrepresentation or concealment of material facts;
- (3) ~~Endangered the health of any person engaging~~ Engaged in the practice of acupuncture in a manner which does not meet the generally accepted standards for the practice of acupuncture within the state of Idaho;
- (4) ~~Has failed~~ to maintain the confidentiality of records or other information pertaining to an identifiable client, except as required or authorized by law;
- (5) Engaged in any conduct that constitutes an abuse or exploitation of a client arising out of the trust and confidence placed in the acupuncturist by the client; ~~or~~
- (6) ~~Has engaged~~ in conduct that violates the provisions of this chapter, ~~or the rules of the board or the terms of any permit issued by the board;~~ or
- (7) Failed to comply with a board order entered in a disciplinary matter.

SECTION 8. That Section 54-4712, Idaho Code, be, and the same is hereby amended to read as follows:

54-4712. TITLES. Persons licensed pursuant to this chapter may use the title "licensed acupuncturist." Persons certified or granted an acupuncture technician certificate, or an acupuncture trainee permit pursuant to this chapter, may use the title "certified acupuncturist," ~~or "acupuncture technician" or "acupuncture trainee,"~~ respectively, but may not use the title "licensed acupuncturist" or "doctor," or any abbreviation thereof, unless the acupuncturist is otherwise authorized to use such title. No person authorized to practice acupuncture pursuant to this chapter may hold himself out in any way as a medical physician, doctor of osteopathy, chiropractor, physical therapist or other health care professional unless the person is properly authorized for such practice pursuant to law.

SECTION 9. That Section 54-4713, Idaho Code, be, and the same is hereby amended to read as follows:

54-4713. PENALTIES. (1) A person who violates any provision of this chapter shall, upon conviction, be guilty of a misdemeanor.

(2) The board may seek injunction against any person who practices acupuncture in violation of this chapter and may, in the event a permanent injunction is entered against such person or plea or verdict of guilty is entered in any criminal matter, impose a civil penalty in the amount of all costs and fees incurred by the board in prosecuting the matter.

(3) The representation to another person that a person ~~is licensed or holds a license,~~ certification or permit pursuant to this chapter, when such representation is untrue, constitutes the using of a method, act, ~~or prac-~~

tice which is declared to be unlawful under the provisions of chapter 6, title 48, Idaho Code.

Approved March 16, 2011.

CHAPTER 76  
(H.B. No. 47)

AN ACT

RELATING TO THE SPEECH AND HEARING SERVICES PRACTICE ACT; AMENDING SECTION 54-2918, IDAHO CODE, TO REMOVE AN EXCEPTION TO LICENSURE REQUIREMENTS AND TO PROVIDE FOR A LICENSE BY ENDORSEMENT; AND AMENDING SECTION 54-2927, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO THE UNLAWFUL PRACTICE OF HEARING AID DEALING AND FITTING.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2918, Idaho Code, be, and the same is hereby amended to read as follows:

~~54-2918. EXCEPTION TO LICENSURE REQUIREMENTS LICENSE BY ENDORSEMENT AND EDUCATIONAL EQUIVALENCY. (1) Prior to July 1, 2006, the board may deem other education or examination equivalent to licensure requirements, provided that the board is satisfied, and the applicant provides documentation acceptable to the board, that such applicant:~~

- ~~(a) Has engaged in the practice of audiology or speech-language pathology in this state prior to July 1, 2005, as provided in administrative rules; and~~
- ~~(b) Has practiced for not less than five (5) years in the field for which such applicant is applying for licensure under this chapter; and~~
- ~~(c) Applies for licensure prior to July 1, 2006~~

The board may issue a license by endorsement. An applicant for licensure by endorsement shall substantiate to the board that the applicant holds a current, active and unrestricted equivalent license in another state or United States territory. The applicant shall apply for a license by endorsement on such forms, pay such fees and satisfy such other requirements as may be provided by board rule.

(2) For applicants who received their professional education outside of the United States, the board may deem such education acceptable, provided that the board is satisfied, and the applicant provides documentation acceptable to the board, that equivalent education requirements have been met. The board, in its discretion, may require by rule that applicants who received their professional education outside of the United States provide additional information to the board concerning such professional education. The board may also, in its discretion, require successful completion of additional coursework before proceeding with the application process.

SECTION 2. That Section 54-2927, Idaho Code, be, and the same is hereby amended to read as follows:

54-2927. UNLAWFUL PRACTICE -- PENALTIES. (1) It shall be unlawful for any person to practice or offer to practice audiology, ~~or~~ speech-language pathology or hearing aid dealing and fitting in this state, or to use in connection with his or her name or otherwise assume, use or advertise any title or description tending to convey the impression that he or she is an audiologist, ~~or~~ speech-language pathologist or hearing aid dealer and fitter, unless such person has been appropriately licensed under the provisions of this chapter.

(2) It shall be unlawful for any person to aid, abet or require another person, licensed or unlicensed, to directly or indirectly violate or evade any provision of this chapter, or to combine or conspire with another person, or permit one's license to be used by another person, or to act as an agent, partner, associate or otherwise, of another person with the intent to violate or evade the provisions of this chapter.

(3) A violation of the provisions of this chapter shall constitute a misdemeanor and any person convicted thereof shall be fined an amount not to exceed one thousand dollars (\$1,000), or imprisoned in a county jail for a period not to exceed six (6) months, or shall be punished by both such fine and imprisonment.

Approved March 16, 2011.

CHAPTER 77  
(H.B. No. 48)

AN ACT

RELATING TO THE IDAHO RESIDENTIAL CARE ADMINISTRATION ACT; AMENDING SECTION 54-4204, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO REVISE BOARD MEMBER COMPENSATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-4204, Idaho Code, be, and the same is hereby amended to read as follows:

54-4204. BOARD OF EXAMINERS OF RESIDENTIAL CARE FACILITY ADMINISTRATORS. (1) There is hereby created in the department of self-governing agencies a board of examiners of residential care facility administrators, ~~which board that shall consist of five (5) members, and be composed of two (2) residential care facility administrators, duly licensed and registered under this chapter, and three (3) other members as hereinafter described, except that such members of the initial board shall be required only to possess the qualifications and be eligible for licensure as required under this chapter,~~ one (1) member shall be selected from any other profession or agency or institution concerned with the care of persons requiring assistance with the daily activities of living, one (1) licensed nurse from the nursing profession, and one (1) member representative of the public at large; but no more than two (2) of the members of the board shall be officials or full-time employees of state or local governments. All members of the board shall be citizens of the United States or shall have declared their intent to become citizens of the United States and shall be residents of this state.

(2) ~~One (1) member of the initial board shall be appointed for a one (1) year term of office, two (2) members of the initial board shall be appointed for a two (2) year term of office, and two (2) members of the initial board shall be appointed for a three (3) year term of office. Thereafter, tThe term of office for each member of the board shall be three (3) years.~~

(3) (a) Appointments to the board shall be made by the governor after consultation with the executive board of any organized and generally recognized group concerned with residential care facility administration. Each member of the board shall hold office until his successor is duly appointed and qualified. Dismissals shall be by the governor, for reasonable cause.

(b) The two (2) residential care facility administrators must be appointed from a list of three (3) submitted by any organized and generally recognized group concerned with residential care facility administration.

(c) Members of the board shall be compensated as provided in section 59-509(~~1~~), Idaho Code.

(4) The board shall elect annually from its membership a chairman and vice chairman. The board shall hold two (2) or more meetings each year. A majority of the board membership shall constitute a quorum.

(5) The board shall exercise its powers and perform its duties and functions specified by this chapter.

(6) The board may, by written agreement, authorize the bureau of occupational licenses, or other appropriate body as provided by law, as agent to act in its interest.

Approved March 16, 2011.

CHAPTER 78  
(H.B. No. 62)

AN ACT

RELATING TO THE BOARD OF VETERINARY MEDICINE; AMENDING SECTION 54-2105, IDAHO CODE, TO DELETE THE REQUIREMENTS THAT THE BOARD REVIEW AND APPROVE APPLICATIONS FOR CERTAIN NATIONAL EXAMINATIONS AND ADMINISTER CERTAIN NATIONAL EXAMINATIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2105, Idaho Code, be, and the same is hereby amended to read as follows:

54-2105. BOARD OF VETERINARY MEDICINE -- COMPOSITION -- APPOINTMENT -- VACANCY -- QUALIFICATIONS -- COMPENSATION -- REMOVAL -- MEETINGS -- OFFICERS -- REVENUES -- POWERS. (1) A board of veterinary medicine, which shall consist of six (6) members to be appointed by the governor, is hereby created in the department of self-governing agencies. Five (5) members shall be veterinarians and one (1) member shall be a public member. Each of the five (5) veterinary members shall serve a term of four (4) years as a veterinary board member and a fifth year as a liaison officer, or until his successor is appointed, except that the terms of the first appointees may be for shorter periods to permit staggering of terms whereby one (1) term expires each year. The public member shall serve for a term of three (3) years or until his successor is appointed.

Whenever the occasion arises for an appointment of a veterinary member under this section, the state veterinary medical association or one (1) of the regional veterinary medical associations may nominate three (3) or more qualified persons and forward the nominations to the governor at least thirty (30) days before the date set for the appointment. The governor shall appoint one (1) of the persons so nominated. Vacancies due to death, resignation or removal shall be filled for the remainder of the unexpired term in the same manner as regular appointments. No person shall serve two (2) consecutive terms, except in the case of a person appointed for less than a full term. Each of the five (5) veterinarians shall be qualified to serve as a member of the board if a graduate of an accredited or approved school of veterinary medicine or, if a graduate of a nonaccredited or nonapproved school, a letter from the educational commission for foreign veterinary graduates (ECFVG) certifying completion of the ECFVG program or a copy of their ECFVG certificate, or verification of successful completion of any educational equivalency program established for the purpose of evaluating an individual's educational knowledge and clinical skills as they relate to the practice of veterinary medicine, as approved and outlined by the rules of the board. In addition to verification of graduation from an accredited or

nonaccredited school of veterinary medicine, each of the five (5) veterinary members shall be a resident of this state, and have been licensed to practice veterinary medicine in this state for the five (5) years immediately preceding the time of appointment. The public member shall be at least twenty-one (21) years of age and a resident of this state for five (5) years immediately preceding appointment. No person may serve on the board who is, or was, during the two (2) years preceding appointment, a member of the faculty or trustees of an accredited school of veterinary medicine.

(2) Each member of the board and certified euthanasia task force shall be compensated as provided by section 59-509(n), Idaho Code.

(3) Any member of the board may be removed by the governor at his discretion.

(4) The board shall meet at least once each year at the time and place fixed by rule of the board. Other necessary meetings may be called by the president of the board by giving notice as may be required by state statute or rule. Except as may otherwise be provided, a majority of the board constitutes a quorum. Meetings shall be open and public except as otherwise provided by the open meeting law, chapter 23, title 67, Idaho Code.

(5) The board member serving the fourth year of appointment shall be the president of the board and shall serve as chairman at the board meetings.

(6) The veterinary board member serving the fifth year of appointment shall be the liaison officer of the board and shall render advice, review and mediate complaints, and perform other tasks assigned by the board.

(7) All revenues received under this chapter shall be paid to the state board of veterinary medicine account created in section 54-2121, Idaho Code, and shall be subject to and administered in accordance with the provisions of this chapter.

(8) The responsibility for enforcement of the provisions of this chapter is hereby vested in the board. The board shall have all of the duties, powers and authority specifically granted by or necessary for the enforcement of this chapter and the rules made pursuant thereto, as well as such other duties, powers and authority as it may be granted from time to time by applicable law. The powers vested in the board shall include, but are not limited to:

(a) Establish qualifications and prescribe the application format for issuance or renewal of a license to practice as a veterinarian and certification to practice as a veterinary technician, euthanasia agency or euthanasia technician, review each application for compliance with the licensure and certification requirements, issue, renew or deny licenses and certifications. Upon a showing of good cause by a licensee or certificate holder to the board, the board may grant an extension of time for submission of the required application or renewal documentation, including the required number of continuing education hours, as set forth by this chapter or the rules of the board.

(b) Examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine, or certification to practice veterinary technology or as a euthanasia technician or operate as a certified euthanasia agency in the state.

(c) Issue, renew, reinstate, deny, suspend, sanction, reprimand, restrict, limit, place on probation, require voluntary surrender of, or revoke any licenses, certifications or temporary permits or certifications to practice veterinary medicine, veterinary technology or euthanize animals in the state, and may fine and impose other forms of discipline, and enter into consent agreements and negotiated settlements with licensed veterinarians, certified veterinary technicians, certified euthanasia technicians and certified euthanasia agencies consistent with the provisions of this chapter and the rules adopted hereunder. Whenever it appears that grounds for discipline exist under this chapter and the board finds that there is an immediate danger to the

public health, safety or welfare, the board is authorized to commence emergency proceedings for revocation or other action. Such proceedings shall be promptly instituted and processed under the applicable provisions of chapter 52, title 67, Idaho Code.

(d) Establish a schedule of fees for licensing, certifying and registering veterinarians, veterinary technicians, euthanasia agencies and euthanasia technicians, as well as for the review, approval and administration of national licensing and certification examinations.

(e) In addition to the fees specifically provided for herein, the board may assess additional reasonable fees for services rendered to carry out its duties and responsibilities as required or authorized by this chapter or rules adopted hereunder. Such services rendered shall include, but not be limited to, the following:

- (i) Issuance of duplicate licenses or certificates;
- (ii) Mailing lists or reports of data maintained by the board;
- (iii) Copies of any documents;
- (iv) Verification of license or certification status;
- (v) Examination review, approval and administration; and
- (vi) Examination materials.

~~(f) Review and approve applications from candidates requesting authorization to take the national licensing examinations in veterinary medicine and the veterinary technician national examination and administer either or both national examinations.~~

~~(g)~~ Upon its own motion or upon any complaint, to initiate and conduct investigations on all matters relating to the practice of veterinary medicine or veterinary technology or the euthanizing of animals. Complaints not filed within one (1) year after the alleged unlawful conduct occurs will not be investigated. If the alleged unlawful conduct is of a continuing nature, the date of the occurrence of such conduct shall be deemed to be any date subsequent to the commencement of the unlawful conduct up to and including the date on which the complaint is filed so long as the alleged unlawful conduct continues.

~~(h)~~ Initiate and conduct disciplinary hearings or proceedings on its own or through its designated hearing officer, provided such hearings and proceedings shall be held in conformance with the provisions of chapter 52, title 67, Idaho Code, and in connection thereto, to administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings. The board may require the attendance and testimony of witnesses and the production of papers, records, or other documentary evidence and may commission depositions. The board may designate one (1) or more of its members or a person appointed by the state board of veterinary medicine to serve as its hearing officer.

~~(i)~~ Employ an executive director who shall be responsible for the performance of the administrative functions of the board and such other duties as the board may direct. The board may also employ or contract with other individuals to provide professional, clerical or other services deemed necessary by the board to effectuate the provisions of this chapter and the rules of the board, and purchase or rent necessary office space, equipment and supplies. The compensation of the executive director and other personnel shall be determined by the board and the executive director shall be exempt from the provisions of chapter 53, title 67, Idaho Code.

~~(j)~~ Appoint from its own membership one (1) or more members to act as representatives of the board at any meeting within or outside the state where such representation is deemed desirable.

~~(k)~~ Bring proceedings in the courts for the enforcement of this chapter or any rules made pursuant thereto.

(~~lk~~) For purposes of enforcement of the provisions of this chapter and any rules duly promulgated hereunder, including the levying of civil penalties, assessment and collection of fines, and recovery of costs and paralegal, hearing officer and attorney's fees incurred by the board in investigation and prosecution of complaints, the board shall maintain jurisdiction over individuals, irrespective of their license or certification status (i.e., active, inactive, expired, lapsed, surrendered or disciplined) relative to acts, omissions, complaints and investigations which occurred during the licensure or certification period. Jurisdiction of the board shall also extend to all individuals engaged in the practice of veterinary medicine, veterinary technology or practicing as a certified euthanasia agency or certified euthanasia technician in this state as defined in section 54-2103, Idaho Code. It is the intent of this subsection that the board's jurisdiction should extend to all licensed or unlicensed or certified or uncertified individuals and that licensees and certification holders cannot divest the board of jurisdiction by changing, surrendering or relinquishing licensure or certification status.

(~~ml~~) Establish a certified euthanasia task force for the purposes of training, examining, licensing and certifying euthanasia agencies and euthanasia technicians and assess application, training workshop and certification fees. The fees so assessed are continuously appropriated to the board to support the activities of the task force.

(~~nm~~) Adopt, amend or repeal all sections of this chapter and rules necessary for its government and all rules necessary to carry into effect the provisions of this chapter pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, including the establishment and publication of standards of professional conduct for the practice of veterinary medicine.

(~~en~~) Conduct probationary or other practice and facility inspections necessary for enforcement of this chapter or the rules duly promulgated hereunder or any order, negotiated settlement or probationary agreement of the board and issue administrative citations to alleged violators.

Approved March 16, 2011.

CHAPTER 79  
(H.B. No. 63)

AN ACT

RELATING TO VETERINARIANS; AMENDING SECTION 54-2115, IDAHO CODE, TO PROVIDE THAT CERTAIN VIOLATIONS CONSTITUTING A BREACH OF THE NORTH AMERICAN VETERINARY LICENSING EXAMINATION SHALL CONSTITUTE GROUNDS FOR SPECIFIED DISCIPLINE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2115, Idaho Code, be, and the same is hereby amended to read as follows:

54-2115. GROUNDS FOR DISCIPLINE. The board may refuse to issue, renew or reinstate the license of a veterinarian, or may deny, revoke, suspend, sanction, reprimand, restrict, limit, place on probation or require voluntary surrender of, the license of a veterinarian, and may fine and impose other forms of discipline and enter into consent agreements and negotiated settlements with any licensed veterinarian pursuant to the procedures set

forth in chapter 52, title 67, Idaho Code, for any or all of the following reasons:

(1) The employment of fraud, misrepresentation of a material fact or deception by an applicant or licensee in:

(a) Securing or attempting to secure the issuance or renewal of a license; or

(b) Statements regarding the veterinarian's skills or efficacy or value of any treatment provided or to be provided or using any false, fraudulent, misleading or deceptive statement connected with the practice of veterinary medicine including, but not limited to, false or misleading advertising.

(c) Participating in a breach of the north American veterinary licensing examination (NAVLE). The following activity is a violation and constitutes grounds for discipline under this subsection:

(i) Written notification from the national board examination committee (NBEC), or its designee, that the NBEC has nullified the NAVLE score of the applicant or licensee because the applicant or licensee has admitted cheating or committing other improprieties in the taking, administering or processing of the NAVLE; or

(ii) Written notification from the NBEC, or its designee, that the NBEC has obtained a court judgment against the applicant or licensee after proving allegations that the applicant or licensee cheated or committed other improprieties in the taking, administering or processing of the NAVLE.

(2) Unethical or unprofessional conduct, as defined by section 54-2103, Idaho Code, the rules of the board, and the code of professional conduct established by the rules of the board.

(3) Being found guilty, convicted, placed on probation, having entered a guilty plea that is accepted by the court, forfeiture of bail, bond or collateral deposited to secure a defendant's appearance, or having received a withheld judgment or suspended sentence by a court of competent jurisdiction in this state or any other state of one (1) or more of the following:

(a) Any felony as defined in chapter 1, title 18, Idaho Code;

(b) Any other criminal act which in any way is related to the practice of veterinary medicine as defined by section 54-2103, Idaho Code; or

(c) Any violation of any federal or state statute, rule or regulation regulating narcotics, dangerous drugs or controlled substances.

(4) Medical incompetence in the practice of veterinary medicine, as defined by section 54-2103, Idaho Code.

(5) Physical or mental incompetence, in the practice of veterinary medicine, as defined in section 54-2103, Idaho Code.

(6) Malpractice or negligence, in the practice of veterinary medicine, as defined in section 54-2103, Idaho Code.

(7) Aiding or abetting an unlicensed or uncertified person to practice veterinary medicine or veterinary technology or employing or holding such unlicensed person out as being able to practice veterinary medicine or veterinary technology.

(8) Fraud, dishonesty, failure to report, or gross negligence in the inspection of animals and animal products intended for human consumption, issuance of health or inspection certificates, in the application, vaccination, treatment or reporting of any test for disease in animals, and in reporting any contagious or infectious disease.

(9) Failure to comply with the veterinary standards of practice, as established by board rule.

(10) Failure to comply with the recordkeeping requirements, as established by the rules of the board.

(11) Cruelty to animals including, but not limited to, the intentional and malicious infliction of pain, physical suffering, injury or death, performance of experimental treatments without the owner's consent, depriva-

tion of necessary sustenance, withholding of appropriate pain medications or levels of pain medications, or the administration of unnecessary procedures and treatment.

(12) Infliction of pain on any animal in self-defense, or to prevent physical harm to others, or in accordance with local custom and culture in moving, handling, treating, dehorning, castrating or performing other procedures on livestock, shall not be considered cruel or physically abusive unless done in an unnecessary or intentionally malicious manner. This provision does not alter section 25-3514, Idaho Code.

(13) Revocation, suspension, disciplinary sanction, other adverse action, or failure to report any such adverse action to the board, including voluntary surrender of a license or certificate by virtue of which one is licensed to practice veterinary medicine in that jurisdiction or country on grounds other than nonpayment of renewal fees.

(14) Falsifying or failing to fulfill the continuing education requirements, as established by the rules of the board.

(15) The use, prescription or sale of any controlled substance, veterinary legend/prescription drug or prescription of an extra-label use for any human or veterinary drug without a valid veterinarian/client/patient relationship.

(16) Charging for services which were not rendered, charging for services that were not documented in the patient's records, or charging for services that were not consented to by the owner of the patient or the owner's agent.

(17) Failure to timely furnish details of a patient's medical record to another veterinarian, hospital, clinic, owner or owner's agent.

(18) Failure of any applicant or licensee to cooperate with the board during any investigation, even if such investigation does not personally concern the applicant or licensee.

(19) Failure to comply with the terms of any order, negotiated settlement or probationary agreement of the board or to pay the costs assessed in a disciplinary matter pursuant to section 54-2105, Idaho Code.

(20) Failure to comply with the terms for renewal or to timely pay license, certification or registration renewal fees, as specified by section 54-2112, Idaho Code, and the rules of the board.

(21) Failure of a licensed veterinarian to exercise proper supervision, as defined by the rules of the board, when supervising a temporary licensee or holder of a temporary certification, a certified veterinary technician, a veterinary technician, a veterinary assistant, a certified euthanasia technician or other person, except in an emergency situation as defined in section 54-2103, Idaho Code.

(22) Delegation of an act pertaining to the practice of veterinary medicine or veterinary technology to an unqualified person, regardless of the supervision provided.

(23) Aiding or abetting or violating any of the provisions of this chapter or any lawful rule or order of the board.

Approved March 16, 2011.

CHAPTER 80  
(H.B. No. 64)

AN ACT

RELATING TO VETERINARIANS; AMENDING SECTION 54-2104, IDAHO CODE, TO PROVIDE AN EXCEPTION TO LICENSURE FOR CERTAIN VETERINARIANS WITH AN ACTIVE LICENSE IN GOOD STANDING FROM ANOTHER STATE FOR THE PRACTICE OF VETERINARY MEDICINE ON ANIMALS IN A COLLECTION OF A PUBLICLY OWNED ZOO, TO PROVIDE CONDITIONS AND TO PROVIDE A TIME LIMIT FOR THE EXEMPTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2104, Idaho Code, be, and the same is hereby amended to read as follows:

54-2104. LICENSE A PREREQUISITE TO PRACTICE -- EXCEPTIONS. (1) No person may practice veterinary medicine in the state who is not an actively licensed veterinarian or the holder of a valid temporary permit issued by the board.

(2) This chapter shall not be construed to prohibit:

(a) A veterinarian employed by the federal, state or local government from performing his official duties specifically required under any lawful act or statute, except that this exemption shall not apply to such persons not actively engaged in performing or fulfilling their official duties and responsibilities.

(b) A person who is a regular student currently enrolled and in good standing in an accredited or approved school of veterinary medicine, veterinary science department or an educational institution accredited by a national or regional accrediting agency recognized by the Idaho state board of education or the United States department of education from performing duties or actions assigned by his instructors, or from working under the direct supervision of an actively licensed veterinarian during a school vacation period. The unsupervised or unauthorized practice of veterinary medicine by a student, even though on the premises of an accredited or approved school of veterinary medicine, veterinary science department, an educational institution accredited by a national or regional accrediting agency recognized by the Idaho state board of education or the United States department of education or at a veterinary medical facility, is prohibited.

(c) A person who is a regular student currently enrolled and in good standing in a nonaccredited or nonapproved educational institution, that holds a valid certificate of registration issued by the Idaho state board of education, from performing duties or actions assigned by his instructors. This exemption does not include surgery or the administration of controlled substances or legend/prescription drugs, unless specifically allowed by state or federal law, rule or regulation. The unsupervised or unauthorized personal practice of veterinary medicine by a student on the premises of a nonaccredited or nonapproved educational institution is prohibited.

(d) Idaho extension personnel from performing their official duties.

(e) A veterinarian holding a current, active license, in good standing, in another state, from consulting with a licensed veterinarian in this state.

(f) Any merchant or manufacturer from selling nonprescription and noncontrolled medicines, biologics, feed, medicated feed, appliances or other products for the prevention or treatment of animal and poultry diseases. Such merchants or manufacturers shall not, either directly or indirectly, attempt to diagnose a symptom or disease in order to advise treatment, use of drugs, medicines, appliances or products.

(g) A farmer, rancher or feedlot operator, including custom ranch or feedlot operators, and their regular employees, from caring for and treating animals within their possession or control, when such animals have been consigned by their legal owner and except where the ownership or possession of the animal was transferred or the employment changed to circumvent this chapter.

(h) The owner of an animal or his regular employees from caring for and treating the animals belonging to such owner, or livestock owners or regular employees pregnancy testing their own or employer's cattle or the exchange of services for which no monetary compensation is paid between owners or their regular employees, except where the ownership or possession of the animal was transferred or the employment changed

to circumvent this chapter, and provided that only an actively licensed veterinarian may immunize or treat an animal for diseases which require the use of a vaccine that is restricted by state or federal law, rules or regulations, or as otherwise provided by board rule. Notwithstanding the provisions of this paragraph, a veterinarian/client/patient relationship, as defined by rules, must exist when controlled substances or legend/prescription drugs are administered, distributed, dispensed or prescribed.

(i) A member of a faculty of an accredited or approved school of veterinary medicine, a veterinary science department, or an educational institution accredited by a national or regional accrediting agency recognized by the Idaho state board of education or the United States department of education, from performing his regular functions. The unsupervised or unauthorized personal practice of veterinary medicine, by a faculty member on the premises of any of the above institutions, is prohibited.

(j) Any person from selling or applying any pesticide, insecticide, or herbicide.

(k) A person lecturing or giving instructions or demonstrations at an accredited or approved school of veterinary medicine, veterinary science department or an educational institution accredited or approved by a national or regional accrediting agency recognized by the Idaho state board of education or the United States department of education, or in connection with an approved continuing education course or seminar.

(l) A member of a faculty of a nonaccredited or nonapproved educational institution, who holds a valid certificate of registration issued by the Idaho state board of education, from performing his regular functions. This exemption does not include surgery or the administration of controlled substances or legend/prescription drugs, unless specifically allowed by state or federal law, rule or regulation. The unsupervised or unauthorized personal practice of veterinary medicine by a faculty member on the premises of a nonaccredited or nonapproved educational institution is prohibited.

(m) Individuals employed as instructors or researchers by, or enrolled as students in, any bona fide medical research institution from conducting experiments and scientific research on animals:

(i) In the development of pharmaceuticals, biologicals, serums for treating human or animal ailments; or

(ii) In the development of methods of treatment or techniques for the diagnosis or treatment of human or animal ailments; or

(iii) When engaged in the study and development of methods and techniques directly or indirectly applicable to the practice of veterinary medicine, so long as such research is conducted in compliance with applicable state and federal laws, rules and regulations.

(n) Any person from performing artificial insemination of domestic animals as governed by chapter 8, title 25, Idaho Code.

(o) Any person from horseshoeing or hoof trimming bovine, equine and farm animals.

(p) An allied health professional actively licensed and in good standing in any state from participating in a medical procedure involving an animal, provided that such participation is in his licensed field of medicine and under the indirect supervision of an actively licensed veterinarian.

(q) Any person from the gratuitous treatment of animals in an emergency as a neighborly act.

(r) Any state or federal livestock inspector from performing his official duties specifically required under any lawful act or statute, and provided that this exemption shall not apply to such persons not

actively engaged in performing or fulfilling their official duties and responsibilities.

(s) A certified euthanasia agency from operating as a CEA as defined by law and rules.

(t) A certified euthanasia technician from performing those duties as defined by law and rules.

(u) Any person from utilizing cotton swabs, gauze, dental floss, dentifrice or toothbrushes to clean an animal's teeth.

(v) A certified veterinary technician from practicing veterinary technology under appropriate supervision, as defined by the rules of the board.

(w) An assistant or veterinary technician from performing acts pertaining to the practice of veterinary medicine under appropriate supervision, as defined by the rules of the board.

(x) The personal representative, executor or sole surviving heir of a licensed veterinarian from continuing to operate the veterinary medical practice of the deceased for a period of not more than three (3) years following death. This exception only applies where during such three (3) year period:

(i) Good faith efforts are being made to sell the veterinary medical practice; and

(ii) All the decisions pertaining to the diagnosis, care and treatment of the patients are made by an actively licensed veterinarian.

(y) A veterinarian with an active license in good standing from another state from practicing veterinary medicine on animals in the collection of a publicly owned zoo that is either licensed by the United States department of agriculture (USDA) as an exhibitor or is accredited by the association of zoos and aquariums (AZA), but only when the Idaho licensed veterinarian who regularly attends to these animals is unavailable or unqualified to render the services required. This exemption from licensure only applies after the out-of-state veterinarian notifies the board in writing: (1) where he will be practicing in Idaho; and (2) the expected duration of the practice. After the out-of-state veterinarian completes his services under this section, he must so notify the board in writing of that fact. Unless expressly extended by the board in its sound discretion, an exemption under this section is limited to a period of one (1) year from the initial notification date.

(3) Nothing in this section shall be construed as limiting the board's authority to provide other exemptions or exceptions to the requirements for licensing, under its rulemaking authority, as the board may find necessary or appropriate.

Approved March 16, 2011.

CHAPTER 81  
(H.B. No. 78)

AN ACT

RELATING TO EDUCATION AND THE MASTERY ADVANCEMENT PILOT PROGRAM; AMENDING SECTION 33-1621, IDAHO CODE, TO REVISE PROVISIONS RELATING TO PROGRAM PARTICIPANTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-1621, Idaho Code, be, and the same is hereby amended to read as follows:

33-1621. PROGRAM PARTICIPANTS. (1) No more than twenty-one (21) school districts and no more than three (3) charter schools may participate in the program. Participating districts shall be determined through an application process established by the state department of education.

(2) ~~The program shall be divided into three (3) geographical regions of the state in the following manner:~~

~~(a) Region I shall be comprised of Idaho high school activities association regions I and II;~~

~~(b) Region II shall be comprised of Idaho high school activities association region III; and~~

~~(c) Region III shall be comprised of Idaho high school activities association regions IV, V and VI.~~

~~(3) Participating school districts shall reflect the disparate sizes of school districts within this state. Participating school districts shall be selected in the following manner:~~

~~(a) Any school district and any charter school desiring to participate in the program shall submit an application to the state department of education by September 1, 2010. Such application shall be developed by the state department of education and shall be made available to the state's school districts and charter schools by July 15, 2010. From the applicants, the department shall select:~~

~~(i) Three (3) school districts, one (1) from each program region, that have grades 1-12 enrollment of more than seven thousand (7,000) students;~~

~~(ii) Six (6) school districts, two (2) from each program region, that have grades 1-12 enrollment of between four thousand (4,000) and six thousand nine hundred ninety-nine (6,999) students;~~

~~(iii) Six (6) school districts, two (2) from each program region, that have grades 1-12 enrollment of between one thousand (1,000) and three thousand nine hundred ninety-nine (3,999) students;~~

~~(iv) Six (6) school districts, two (2) from each program region, that have grades 1-12 enrollment of less than one thousand (1,000) students; and~~

~~(v) Three (3) charter schools, one (1) from each program region.~~

~~(b) The state department of education shall notify selected program applicants by December 1, 2010.~~

~~(c) School districts and charter schools selected for the program will be expected to participate for the full six (6) years of the program. Provided however, that any school district or charter school selected for the program may request to the state department of education to opt out of the program. The department may grant such request at its discretion.~~

(43) No participating school district shall be required to implement the program on a districtwide basis. It shall be left to the discretion of each participating district to determine which schools in the district shall participate.

Approved March 16, 2011.

CHAPTER 82  
(H.B. No. 80)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING CHAPTER 13, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-1312A, IDAHO CODE, TO DEFINE WHEN CORPORATE OFFICERS ARE UNEMPLOYED; AMENDING CHAPTER 13, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-1352A, IDAHO CODE, TO ALLOW CORPORATIONS TO EXEMPT CORPORATE OFFICERS FROM UNEMPLOYMENT INSURANCE COVERAGE; AND AMENDING SECTION 72-1361, IDAHO CODE, TO PROVIDE A CORRECT STATUTORY CITATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 13, Title 72, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 72-1312A, Idaho Code, and to read as follows:

72-1312A. CORPORATE OFFICER -- EMPLOYMENT. (1) A corporate officer meeting the requirements of section 72-1312, Idaho Code, whose claim for benefits is based on any wages with a corporation in which the corporate officer or a family member of the corporate officer has an ownership interest shall be:

(a) Not "unemployed" and ineligible for benefits in any week during the corporate officer's term of office with the corporation, even if wages are not being paid.

(b) "Unemployed" in any week the corporate officer is not employed by the corporation for a period of indefinite duration because of circumstances beyond the control of the corporate officer or a family member of the corporate officer with an ownership interest in the corporation, and the period of "unemployment" extends at least through the corporate officer's benefit year end date. If at any time during the benefit year the corporate officer resumes or returns to work for the corporation, it shall be a rebuttable presumption that the corporate officer's unemployment was due to circumstances within the corporate officer's control or the control of a family member with an ownership interest in the corporation, and all benefits paid to the corporate officer during the benefit year shall be considered an overpayment for which the corporate officer shall be liable for repayment.

(2) For purposes of this section, "family member" is a person related by blood or marriage as parent, stepparent, grandparent, spouse, brother, sister, child, stepchild, adopted child or grandchild.

SECTION 2. That Chapter 13, Title 72, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 72-1352A, Idaho Code, and to read as follows:

72-1352A. CORPORATE OFFICERS -- EXEMPTION FROM COVERAGE -- NOTIFICATION -- REINSTATEMENT. (1) A corporation that is a public company, other than those covered in sections 72-1316A, 72-1322D and 72-1349C, Idaho Code, may elect to exempt from coverage pursuant to this chapter any bona fide corporate officer who is voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation, is a shareholder of the corporation, exercises substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor.

(2) A corporation that is not a public company, other than those covered in sections 72-1316A, 72-1322D and 72-1349C, Idaho Code, may elect to

exempt from coverage pursuant to this chapter any bona fide corporate officer, without regard to the corporate officer's performance of manual labor, if the corporate officer is a shareholder of the corporation, voluntarily agrees to be exempted from coverage and exercises substantial control in the daily management of the corporation.

(3) For purposes of this section, a "public company" is a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 or 15 of the Securities and Exchange Act of 1934 or section 8 of the Investment Company Act of 1940, or any successor statute.

(4) To make the election, a corporation with qualifying corporate officers pursuant to subsection (1) or (2) of this section must register with the department each qualifying corporate officer it elects to exempt from coverage. The registration must be in a format prescribed by the department and be signed and dated by the corporate officer being exempted from coverage. Registration forms received and approved by the department on or before December 15 shall become effective the first day of the next calendar year and shall remain in effect for two (2) consecutive calendar years. Exemptions from coverage shall not be retroactive and the corporation requesting the exemption shall not be eligible for a refund or credit for contributions paid for corporate officers before the effective date of the exemption.

(5) A corporation may elect to reinstate coverage for one (1) or more corporate officers previously exempted pursuant to this section. Reinstatement requires written notice from the corporation to the department in a format prescribed by the department. Reinstatement requests received by the department on or before December 15 shall become effective the first day of the calendar year following the end of the exemption's two (2) year effective date. Coverage shall not be reinstated retroactively.

SECTION 3. That Section 72-1361, Idaho Code, be, and the same is hereby amended to read as follows:

72-1361. APPEALS TO THE DEPARTMENT AND TO THE COMMISSION. Upon appeal from a denial of a claim for refund or credit, determination of amounts due upon failure to report, determination of rate of contribution, determination of coverage, determination of chargeability, or jeopardy determination, the director may transfer the appeal directly to an appeals examiner pursuant to section 72-1368(6), Idaho Code, or he may issue a redetermination affirming, reversing or modifying the initial determination. A redetermination shall become final unless, within fourteen (14) days after notice as provided in section 72-1368(5), Idaho Code, an appeal is filed by an interested party with the department in accordance with the department's rules. Appeal procedures shall be governed by the provisions of section 72-1368(4), (6), (7), (8), (9) and (11), Idaho Code. The party appealing shall have the burden of proving each issue appealed by clear and convincing evidence. The provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, regarding contested cases and judicial review of contested cases are inapplicable to proceedings involving interested employers under this chapter.

Approved March 16, 2011.

CHAPTER 83  
(H.B. No. 81)

AN ACT

RELATING TO COSMETICIANS; AMENDING SECTION 54-816, IDAHO CODE, TO REVISE PROVISIONS AND TO PROVIDE ADDITIONAL PROVISIONS RELATING TO THE BOARD OF COSMETOLOGY'S AUTHORITY TO DISCIPLINE AND TO SANCTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-816, Idaho Code, be, and the same is hereby amended to read as follows:

54-816. REFUSAL, REVOCATION OR SUSPENSION OF LICENSE -- SANCTIONS. The board may ~~either~~ refuse to issue or renew, or may suspend or revoke, any license, or may otherwise sanction or impose education, training or supervision on any licensee, for any one (1) of the following causes:

- (1) Conviction of a felony evidenced by a certified copy of the record of the court of conviction;
- (2) Malpractice or incompetency;
- (3) Continued practice by a person knowingly having an infectious or contagious disease;
- (4) Advertising by means of knowingly false or deceptive statements;
- (5) Habitual intoxication or addiction to the use of morphine, cocaine, or other habit-forming drugs;
- (6) ~~Immoral or u~~Unprofessional conduct;
- (7) Where the application is fraudulently made or the license fraudulently obtained;
- (8) The violation of any of the provisions of this chapter, or rules adopted pursuant thereto;
- (9) Has had a license, certificate or registration to practice cosmetology suspended or revoked in any jurisdiction; or
- (10) Failed to comply with a board order entered in a disciplinary matter.

Approved March 16, 2011.

CHAPTER 84  
(H.B. No. 82)

AN ACT

RELATING TO THE IDAHO REAL ESTATE APPRAISERS ACT; AMENDING SECTION 54-4113, IDAHO CODE, TO GRANT THE REAL ESTATE APPRAISER BOARD THE AUTHORITY TO COLLECT CONTINUING EDUCATION PROVIDER APPLICATION FEES AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-4113, Idaho Code, be, and the same is hereby amended to read as follows:

54-4113. FEES -- ISSUANCE OF LICENSES OR CERTIFICATES. (1) Every person applying for examination or reexamination under this chapter shall pay a fee equal to that charged by the national examining entity. If the result of the examination of any applicant shall be satisfactory to the board, under its rules, it shall issue to such applicant a license or certificate setting forth the fact that he is a state licensed or certified real estate appraiser

and authorized to practice his profession in this state. The fee for obtaining a license or certificate under the provisions of this chapter shall be an amount not to exceed five hundred dollars (\$500). The annual fee for renewal or reinstatement of a license or certificate shall be an amount not to exceed five hundred dollars (\$500), which shall be paid to the bureau. The board shall adopt all fees by rule.

(2) In addition to those fees described above in this section, the board may collect from applicants for licensure or certification and holders of state licenses or certificates of appraisal and remit to the appropriate agency or instrumentality of the federal government, any additional fees as may be required to render Idaho state licensed residential, certified residential and general real estate appraisers eligible to perform appraisals in connection with federally-related transactions.

(3) The board may collect continuing education provider application fees in an amount not to exceed one hundred dollars (\$100) as established by board rule.

Approved March 16, 2011.

CHAPTER 85  
(H.B. No. 113)

AN ACT

RELATING TO PROPERTY TAX; AMENDING SECTION 63-701, IDAHO CODE, TO REVISE A DEFINITION; AMENDING SECTION 63-706, IDAHO CODE, TO REMOVE PROVISIONS RELATING TO PROCEDURES ASSOCIATED WITH COUNTY ASSESSORS' APPROVAL, MODIFICATION OR DISAPPROVAL OF CERTAIN CLAIMS FOR PROPERTY TAX REDUCTION AND PROCEDURES RELATING TO ACTION BY THE COUNTY BOARD OF EQUALIZATION ASSOCIATED WITH SUCH CLAIMS; AMENDING SECTION 63-707, IDAHO CODE, TO REMOVE A PROVISION RELATING TO APPROVAL OF CERTAIN CLAIMS BY THE BOARD OF EQUALIZATION, TO REVISE PROVISIONS RELATING TO THE TIME IN WHICH THE PROPERTY TAX REDUCTION ROLL SHALL BE CERTIFIED TO THE COUNTY AUDITOR AND TO THE STATE TAX COMMISSION, TO PROVIDE THAT THE PROPERTY TAX REDUCTION ROLL SHALL BE ACCOMPANIED BY A COPY OF THE CLAIM FORMS, TO REVISE THE TIME IN WHICH CLAIMANTS SHALL HAVE TO MAKE WRITTEN PROTEST TO THE TAX COMMISSION RELATING TO THE COMMISSION'S INTENT TO DISAPPROVE ALL OR A PORTION OF A CLAIM AND TO REVISE THE TIME IN WHICH THE TAX COMMISSION SHALL HAVE TO PROVIDE WRITTEN NOTICE OF DISAPPROVAL TO A CLAIMANT OR A PERSON OR ENTITY ACTING ON BEHALF OF THE CLAIMANT; AMENDING SECTION 63-715, IDAHO CODE, TO REMOVE REFERENCE TO THE APPROVAL OF ELECTIONS OF DEFERRALS OF PAYMENT OF PROPERTY TAXES BY THE COUNTY BOARD OF EQUALIZATION; AND AMENDING SECTION 63-716, IDAHO CODE, TO REMOVE REFERENCE TO APPROVAL OF DEFERRALS OF PAYMENTS OF PROPERTY TAXES BY THE COUNTY BOARD OF EQUALIZATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-701, Idaho Code, be, and the same is hereby amended to read as follows:

63-701. DEFINITIONS. As used in this chapter:

(1) "Claimant" means a person who has filed an application under section 63-602G, Idaho Code, and has filed a claim under the provisions of sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1, or before April 15, of the year in which the claimant first filed a claim on the homestead in question, a claimant must be an owner of the homestead and on January 1 of said year a claimant must be:

- (a) Not less than sixty-five (65) years old; or
- (b) A child under the age of eighteen (18) years who is fatherless or motherless or who has been abandoned by any surviving parent or parents; or
- (c) A widow or widower; or
- (d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or
- (e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States department of veterans affairs; or
- (f) A person, as specified in 42 U.S.C. 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or
- (g) Blind.

(2) "Homestead" means the dwelling, owner-occupied by the claimant as described in this chapter and used as the primary dwelling place of the claimant and may be occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home. It may consist of a part of a multidwelling or multipurpose building and part of the land upon which it is built. "Homestead" does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead.

(3) "Household" means the claimant and the claimant's spouse. The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (8) (b) of this section.

(4) "Household income" means all income received by the claimant and, if married, all income received by the claimant's spouse, in a calendar year.

(5) "Income" means the sum of federal adjusted gross income as defined in the Internal Revenue Code, as defined in section 63-3004, Idaho Code, and to the extent not already included in federal adjusted gross income:

- (a) Alimony;
- (b) Support money;
- (c) Nontaxable strike benefits;
- (d) The nontaxable amount of any individual retirement account, pension or annuity, (including railroad retirement benefits, all payments received under the federal social security act except the social security death benefit as specified in this subsection, state unemployment insurance laws, and veterans disability pensions and compensation, excluding any return of principal paid by the recipient of an annuity and excluding rollovers as provided in section 402 or 403 of the Internal Revenue Code);
- (e) Nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities;
- (f) Worker's compensation; and
- (g) The gross amount of loss of earnings insurance.

It does not include gifts from nongovernmental sources or inheritances. To the extent not reimbursed, the cost of medical care as defined in section 213(d) of the Internal Revenue Code, incurred or paid by the claimant and, if married, the claimant's spouse, may be deducted from income. To the extent not reimbursed, personal funeral expenses, including prepaid funeral expenses and premiums on funeral insurance, of the claimant and

claimant's spouse only, may be deducted from income up to an annual maximum of five thousand dollars (\$5,000) per claim. "Income" does not include veterans disability pensions received by a person described in subsection (1) (e) who is a claimant or a claimant's spouse if the disability pension is received pursuant to a service-connected disability of a degree of forty percent (40%) or more. "Income" does not include dependency and indemnity compensation or death benefits paid to a person described in subsection (1) of this section by the United States department of veterans affairs and arising from a service-connected death or disability. "Income" does not include lump sum death benefits made by the social security administration pursuant to 42 U.S.C. section 402(i). Documentation of medical expenses may be required by the county assessor, ~~board of equalization~~ and state tax commission in such form as the county assessor, ~~board of equalization~~ or state tax commission shall determine. "Income" shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant and/or the claimant's spouse does not file a federal tax return, the claimant's and/or the claimant's spouse's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant and/or the claimant's spouse filed a federal tax return, as determined by the county assessor. The county assessor, ~~board of equalization~~ or state tax commission may require documentation of income in such form as each shall determine, including, but not limited to: copies of federal or state tax returns and any attachments thereto; and income reporting forms such as the W-2 and 1099.

For determining income for certain married individuals living apart, the provisions of sections 2(c) and 7703(b) of the Internal Revenue Code shall apply.

(6) "Occupied" means actual use and possession.

(7) "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate or who is a person entitled to file a claim under section 63-702, Idaho Code. "Owner" shall also include any person who:

(a) Is the beneficiary of a revocable or irrevocable trust which is the owner of such homestead and under which the claimant or the claimant's spouse has the primary right of occupancy of the homestead; or

(b) Is a partner of a limited partnership, member of a limited liability company or shareholder of a corporation if such entity holds title in fee simple or holds a certificate of motor vehicle title and if the person holds at least a five percent (5%) ownership in such entity, as determined by the county assessor; or

(c) Has retained or been granted a life estate.

"Owner" includes a vendee in possession under a land sale contract. Any partial ownership shall be considered as ownership for determining initial qualification for property tax reduction benefits; however, the amount of property tax reduction under section 63-704, Idaho Code, and rules promulgated pursuant to section 63-705, Idaho Code, shall be computed on the value of the claimant's partial ownership. "Partial ownership," for the purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person or where the homestead is held by an entity, as set forth in this subsection, but more than one (1) person has the right of occupancy of such homestead. A person holding either partial title in fee simple or holding a certificate of motor vehicle title together with another person but who does not occupy the dwelling as his primary dwelling place, shall not be considered an owner for purposes of this section, if such person is a cosignatory of a note secured by the dwelling in question and at least one (1) of the other cosignatories of the note occupies the dwelling as his primary dwelling place. The combined community property interests of both spouses shall not be considered partial ownership so long as the combined commu-

nity property interests constitute the entire ownership of the homestead, including where the spouses are occupying a homestead owned by an entity, as set forth in this subsection, and the spouses have the primary right of occupancy of the homestead. The proportional reduction required under this subsection shall not apply to community property interests. Where title to property was held by a person who has died without timely filing a claim for property tax reduction, the estate of the deceased person shall be the "owner," provided that the time periods during which the deceased person held such title shall be attributed to the estate for the computation of any time periods under subsection (8) (a) or (8) (b) of this section.

(8) (a) "Primary dwelling place" means the claimant's dwelling place on January 1 or before April 15 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates to be his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 or before April 15 and:

- (i) At least six (6) months during the prior year; or
- (ii) The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or
- (iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant for less than one (1) year. The county assessor may require written or other proof of the foregoing in such form as the county assessor may determine.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. Payment of utilities shall not be payment of a consideration to occupy the dwelling. A claimant's spouse who resides in a care facility shall be deemed to reside at the claimant's primary dwelling place and to be a part of the claimant's household. A care facility is a hospital, nursing facility or intermediate care facility for people with intellectual disabilities as defined in section 39-1301, Idaho Code, or a facility as defined in section 39-3302(14), Idaho Code, or a dwelling other than the one upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection and security.

SECTION 2. That Section 63-706, Idaho Code, be, and the same is hereby amended to read as follows:

63-706. TIME REQUIREMENTS FOR FILING CLAIM. ~~(1) Any claim for property tax reduction to be granted under the provisions of sections 63-701 through 63-710, Idaho Code, shall be filed in the office of the county assessor between January 1 and April 15 of each year. The county assessor shall examine each claim and determine whether it is in conformity with section 63-701, Idaho Code, and shall accordingly approve, modify or disapprove the claim in total at the time the application is received. Additionally, the county assessor shall notify the claimant, or the person or entity acting on behalf of the claimant, in writing by May 1 if his claim has been modified or has been disapproved. The notice of modification or disapproval shall declare that the claimant, or the person or entity acting on behalf of the claimant, may appeal the assessor's decision to the county board of equalization, and~~

~~shall state the time and place that the county board of equalization shall meet for such purposes.~~

~~(2) All claims filed with the county assessor shall be completed by him and forwarded to the county commissioners, which shall convene as a board of equalization, any other provision of law notwithstanding, on or before May 15, and shall approve all claims approved by the county assessor, and shall approve the action of the county assessor in modifying or disapproving all other claims unless an appeal has been filed with the board of equalization prior to May 15. In considering any appeal of the assessor's decision in modifying or disapproving a claim, the board of equalization may affirm the assessor's decision, may modify the assessor's decision, or may reject the assessor's decision and proceed to approve all or any part of the claim as submitted to the assessor originally.~~

~~(3) No informality on the part of the board of equalization shall invalidate any action of the board. The decision of the board of equalization shall be final, except that within thirty (30) days the claimant, or any person or entity acting on behalf of the claimant, may appeal to the district court on matters of law, and may appeal the decision of the board of equalization when the board has acted arbitrarily. The claimant, or the person or entity acting on behalf of the claimant, shall be notified immediately, in writing, of the board of equalization's action on his appeal to it.~~

SECTION 3. That Section 63-707, Idaho Code, be, and the same is hereby amended to read as follows:

63-707. PROCEDURE AFTER CLAIM APPROVAL. (1) ~~Immediately after claims have been approved by the board of equalization,~~ The county assessor shall prepare a property tax reduction roll, which shall be in addition to the property roll, the subsequent property roll and missed property rolls which property tax reduction roll shall show:

- (a) The name of the taxpayer;
- (b) The description of the property for which a reduction in property taxes is claimed, suitably detailed to meet the requirements of the individual county;
- (c) The assessor's best estimate of current market value, and any prorated net taxable value of the eligible portion of the property's current market value for assessment purposes; and
- (d) The amount of tax reduction for which the applicant is eligible as determined by the income of the claimant and, if married, the claimant's spouse, pursuant to sections 63-704 and 63-705, Idaho Code.

(2) ~~As soon as possible, but in any event by no later than the fourth Monday of June 1,~~ the property tax reduction roll shall be certified to the county auditor and to the state tax commission in the manner prescribed by rules promulgated by the state tax commission. The property tax reduction roll shall be accompanied by a copy of the claim forms ~~for disapproved claims, when requested by the state tax commission and a copy of the approved claims form.~~

(3) (a) As soon as possible, but in any event by no later than the fourth Monday of October, the county auditor shall complete the property tax reduction roll by adding the following information:

- (i) The current year's levy for the code area in which the property is situated;
- (ii) The amount of property tax reduction claimed based on the current year's market value for assessment purposes and the current year's levy; and
- (iii) The current year's market value for assessment purposes.

(b) As soon as possible, but in any event no later than the fourth Monday of October, the county auditor shall certify the completed property tax

reduction roll to the state tax commission in the manner prescribed by rules promulgated by the state tax commission.

(4) The state tax commission shall determine the total number of claims to be allowed in each county, the dollar amount of each claim allowed, and the total dollar amount for all claims for each county. These amounts shall be certified to the county auditor and tax collector by the state tax commission by no later than the third Monday in November.

(5) The state tax commission may audit each and every claim submitted to it, and, any other provision of law notwithstanding, may utilize income tax returns filed by the claimant or by the claimant's spouse to determine the income of the claimant or the claimant's spouse.

(6) If it is determined by the state tax commission that a claim is erroneous, the tax commission shall disapprove so much of the claim as necessary in order to conform with statutory standards. The tax commission shall provide the claimant, or the person or entity acting on behalf of the claimant, written notice of the tax commission's intent to disapprove all or a portion of the claim. The claimant, or the person or entity acting on behalf of the claimant, shall have ~~fourteen~~ twenty-eight (1428) days to make written protest to the tax commission of the intended action. The claimant, or the person or entity acting on behalf of the claimant, may submit additional information and may request an informal hearing with the commission. If the claimant, or the person or entity acting on behalf of the claimant, fails to make written protest within ~~fourteen~~ twenty-eight (1428) days, the tax commission shall provide written notice of disapproval to the claimant, or the person or entity acting on behalf of the claimant, by the ~~fourth~~ second Monday of October and to the county auditor of the county from which the claim was received. Any claimant, or person or entity acting on behalf of the claimant, whose claim is disapproved in whole or in part by the state tax commission may:

- (a) File a claim with the county commissioners for a special cancellation pursuant to section 63-711, Idaho Code;
- (b) Appeal such disapproval by the state tax commission to the board of tax appeals or to the district court of the county of residence of the taxpayer within thirty (30) days.

SECTION 4. That Section 63-715, Idaho Code, be, and the same is hereby amended to read as follows:

63-715. PROCEDURES -- APPEALS. Elections for deferral of payment of property tax shall be subject to the provisions of section 63-706, Idaho Code, and ~~if approved by the county board of equalization,~~ shall be included on the property tax reduction roll and processed and reviewed as provided in section 63-707, Idaho Code, for claims for property tax relief.

SECTION 5. That Section 63-716, Idaho Code, be, and the same is hereby amended to read as follows:

63-716. DEFERRAL -- INTEREST -- LIEN -- PRIORITY. (1) Upon approval by ~~both the county board of equalization and the state tax commission,~~ payment of any amount of property tax due for the year to which the election relates, after application of the property tax relief available under sections 63-701 through 63-710, Idaho Code, and subject to the limitation in section 63-717(2), Idaho Code, in regard to the qualified property subject to the election, shall be deferred until the deferral is terminated under section 63-718, Idaho Code.

(2) During the period of deferral, interest shall accrue on the amount deferred at the annual rate of six percent (6%) annually.

(3) The lien imposed by section 63-206, Idaho Code, shall continue to be a lien on the property in the amount of deferred taxes and interest thereon.

The state tax commission shall file with the county recorder of the county in which the property is located a notice of lien for deferred property taxes. Notwithstanding the provisions of section 63-206, Idaho Code, the lien for deferred taxes and interest shall not be a first and prior lien, but shall take its priority from the date and time of filing of the notice of lien.

Approved March 16, 2011.

CHAPTER 86  
(H.B. No. 121)

AN ACT

RELATING TO EXEMPTIONS FROM ATTACHMENT; REPEALING SECTION 11-204, IDAHO CODE, RELATING TO EXEMPTION IN FAVOR OF MARRIED WOMAN; AMENDING CHAPTER 2, TITLE 11, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 11-204, IDAHO CODE, TO PROVIDE THAT ALL REAL AND PERSONAL PROPERTY OF ANY MARRIED PERSON AT THE TIME OF HIS OR HER MARRIAGE, OR WHICH HE OR SHE SUBSEQUENTLY ACQUIRES AS SEPARATE PROPERTY, AND ALL NONCOMMUNITY RENTS, ISSUES AND PROFITS THEREOF, ARE EXEMPT FROM EXECUTION FOR ANY SEPARATE DEBTS INCURRED BY HIS OR HER SPOUSE; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 11-204, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 2, Title 11, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 11-204, Idaho Code, and to read as follows:

11-204. EXEMPTION IN FAVOR OF MARRIED PERSON. All real and personal property of any married person at the time of his or her marriage, or which he or she subsequently acquires as separate property, and all noncommunity rents, issues and profits thereof, are exempt from execution for any separate debts incurred by his or her spouse.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 16, 2011.

CHAPTER 87  
(H.B. No. 135)

AN ACT

RELATING TO THE GOVERNOR'S IDAHO LEWIS AND CLARK TRAIL COMMITTEE FUND;  
AMENDING SECTION 67-8601, IDAHO CODE, TO REMOVE CERTAIN USE OF MONEYS IN  
THE FUND.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-8601, Idaho Code, be, and the same is hereby amended to read as follows:

67-8601. GOVERNOR'S IDAHO LEWIS AND CLARK TRAIL COMMITTEE FUND. There is hereby created the governor's Idaho Lewis and Clark trail committee fund in the state treasury. Moneys in the fund may consist of donations, ticket sale proceeds, contributions, appropriations, grants, gifts, bequests or other sources and shall be utilized in support of the efforts of the advisory board to preserve the Lewis and Clark trail ~~and other needs related directly to overseeing and coordinating the bicentennial commemoration of the Lewis and Clark corps of discovery.~~

Approved March 16, 2011.

CHAPTER 88  
(H.B. No. 143)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-404, IDAHO CODE, TO PROVIDE FOR NONRESIDENT DISABLED COMBINATION LICENSES FOR AMERICAN VETERANS PARTICIPATING IN HUNTS IN ASSOCIATION WITH QUALIFIED ORGANIZATIONS; AMENDING SECTION 36-407, IDAHO CODE, TO PROVIDE THAT CERTAIN LICENSES SHALL BE ISSUED TO NONRESIDENT DISABLED AMERICAN VETERANS PARTICIPATING IN HUNTS IN ASSOCIATION WITH QUALIFIED ORGANIZATIONS AND TO DEFINE A TERM; AMENDING SECTION 36-409, IDAHO CODE, TO PROVIDE FOR NONRESIDENT DISABLED AMERICAN VETERAN GAME TAGS; AND AMENDING SECTION 36-416, IDAHO CODE, TO PROVIDE FOR FEES FOR NONRESIDENT DISABLED COMBINATION LICENSES, TO PROVIDE A QUALIFICATION, TO PROVIDE FOR CERTAIN NONRESIDENT TAGS, TO PROVIDE A QUALIFICATION AND TO CORRECT A CODIFIER'S ERROR.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 36-404, Idaho Code, be, and the same is hereby amended to read as follows:

36-404. CLASSES OF LICENSES. The licenses required by the provisions of this title shall be of eight (8) classes. Classes one (1) through five (5) and eight (8) in this section may be purchased or obtained only by persons who meet residency requirements under the provisions of section 36-202(s) and (t), Idaho Code, or who are valid holders of a lifetime license certificate.

Class 1: Adult Combination -- Hunting -- Fishing -- Trapping Licenses. Licenses to be issued only to persons who are residents of the state of Idaho.

Class 2: Junior Hunting -- Trapping -- Youth Small Game Licenses.

(a) Junior hunting license. Licenses to be issued only to persons who are residents of the state of Idaho and are between twelve (12) and seventeen (17) years of age, inclusive. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a

controlled hunt permit; however, said persons shall not hunt until they are twelve (12) years of age.

(b) Junior trapping licenses. Licenses to be issued only to persons who are residents of the state of Idaho and are seventeen (17) years of age or younger.

(c) Youth small game licenses. Licenses to be issued only to qualified persons who are residents of the state of Idaho and are ten (10) or eleven (11) years of age to hunt upland game birds (including turkeys), migratory game birds, cottontail rabbits, huntable furbearers, and unprotected and predatory birds and animals of this state while accompanied in the field by an adult licensed to hunt in the state of Idaho. Provided, that a license may be issued to qualified persons who are nine (9) years of age to allow the application for a controlled hunt turkey permit; however, said persons shall not hunt until they are ten (10) years of age.

Class 3: Junior Combination -- Fishing Licenses. Licenses to be issued only to persons who are residents of the state of Idaho between fourteen (14) and seventeen (17) years of age, inclusive.

Class 4: Senior Resident Combination License. Licenses to be issued only to persons over sixty-five (65) years of age who have been bona fide residents of the state of Idaho for a continuous period of not less than five (5) years last preceding application.

Class 5: Resident Lifetime Combination -- Hunting -- Fishing License. Licenses to be issued only to persons who are valid holders of a lifetime license certificate.

Class 6: Nonresident Combination -- Hunting -- Fishing -- Trapping -- Junior Mentored Hunting -- Youth Small Game -- Youth Hunter Education Graduate -- Disabled Combination License for American Veteran Participating in a Hunt in Association with a Qualified Organization -- Licenses. Licenses required of persons who are nonresidents.

Class 7: Duplicate License -- Tag. A license or tag to be issued as a replacement for an original license or tag lost or mutilated. Said license or tag shall be issued in the same class and type as the original and upon issuance of such duplicate license or tag the original license or tag shall become null and void.

Class 8: Resident Hunting and Fishing License with Tags, Permits and Stamps. Licenses to be issued only to persons who meet residency requirements under the provisions of section 36-202(s) and (t), Idaho Code.

SECTION 2. That Section 36-407, Idaho Code, be, and the same is hereby amended to read as follows:

36-407. NONRESIDENT COMBINATION, FISHING, HUNTING, AND TRAPPING LICENSES -- FEES -- RIGHTS UNDER. Licenses of the sixth class shall be issued to nonresidents in the several kinds and for fees as follows:

(a) Nonresident Hunting License. A license issued only to a person twelve (12) years of age or older entitling said person to pursue, hunt, or kill game birds, small game animals, unprotected birds and animals and predatory birds and animals and to purchase game tags as provided in section 36-409(b), Idaho Code. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a controlled hunt permit; however, said persons shall not hunt until they are twelve (12) years of age. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(b) Nonresident Season Fishing License. A license entitling a person to fish in the public waters of the state. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(c) Nonresident Trapping License. A license entitling a person to trap fur-bearing, unprotected, and predatory animals. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code, pro-

viding the state of residence of said person grants similar trapping license privileges to residents of Idaho.

(d) Nonresident Nongame License. A license entitling a person to carry a shotgun or rifle for the protection of livestock, or to pursue, hunt and kill unprotected birds and animals and predatory birds and animals of this state. A license of this kind may be had by a nonresident person who is twelve (12) years of age or older upon payment of a fee as specified in section 36-416, Idaho Code. This license shall be valid only during the period of January 1 to August 31 of the calendar year in which issued, unless verified by the director that the licensee requires such a license to authorize him to carry a shotgun or rifle for the protection of livestock, in which case said license shall be valid until December 31 of the year in which issued.

(e) Nonresident Small Game Hunting License. A license issued only to a person twelve (12) years of age or older, entitling the person to hunt upland game birds (to include turkeys), migratory game birds, cottontail rabbits, huntable furbearers, and unprotected and predatory birds and animals of this state. A person holding this license shall purchase the appropriate required tags and permits, and may not hunt pheasants in an area during the first five (5) days of the pheasant season in that area. A license of this type may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(f) Falconry Meet Permit. The director may issue a special permit for a regulated meet scheduled for a specific number of days upon payment of a fee as specified in section 36-416, Idaho Code. Only trained raptors may be used under the special permit issued under the provisions of this subsection.

(g) Daily Fishing License -- Resident May Purchase. A license entitling a person to fish in the waters of the state on a day-to-day basis. A license of this kind may be had by a resident or nonresident person (the provisions of section 36-405, Idaho Code, notwithstanding), upon payment of a fee as specified in section 36-416, Idaho Code, for the first effective day and a fee as specified in section 36-416, Idaho Code, for each consecutive day thereafter.

(h) Nonresident Three Day Fishing License with Steelhead or Salmon Permit. A license entitling a nonresident to fish in the waters of the state for a period of three (3) consecutive days for any fish, including steelhead trout or anadromous salmon during an open season for those fish may be had upon payment of a fee as specified in section 36-416, Idaho Code. The three (3) day license holder may fish for any species of fish, steelhead trout and anadromous salmon subject to the limitations prescribed in rules promulgated by the commission. A nonresident may purchase as many of the licenses provided in this subsection as he desires provided that the nonresident is otherwise eligible to do so.

(i) Nonresident Junior Fishing License. A license entitling a nonresident who is less than eighteen (18) years of age to fish in the waters of this state may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(j) Nonresident Combination Licenses. A license entitling the person to hunt and fish for game animals, game birds, fish and unprotected and predatory animals of the state may be had by a person twelve (12) years of age or older upon payment of a fee as specified in section 36-416, Idaho Code. A license may be issued to a qualified person who is eleven (11) years of age to allow the application for a controlled hunt permit; however, the person shall not hunt until he is twelve (12) years of age.

(k) Nonresident Junior Mentored Hunting License. A license entitling a nonresident between twelve (12) and seventeen (17) years of age, inclusive, to hunt game animals, upland game birds (including turkeys), migratory game birds, cottontail rabbits, and unprotected and predatory birds and animals of this state only when accompanied in the field by the holder of an adult Idaho hunting license. A person holding this license shall purchase the ap-

propriate required tags as provided in section 36-409(b), Idaho Code, and permits. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a controlled hunt permit; however, said persons shall not hunt until they are twelve (12) years of age. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(l) Nonresident Youth Small Game Licenses -- Hunting. A license entitling a nonresident of ten (10) or eleven (11) years of age to hunt upland game birds (including turkeys), migratory game birds, cottontail rabbits, huntable furbearers, and unprotected and predatory birds and animals of this state only while accompanied in the field by the holder of an adult Idaho hunting license may be had upon payment of a fee as specified in section 36-416, Idaho Code. Provided, that a license may be issued to qualified persons who are nine (9) years of age to allow the application for a controlled hunt turkey permit; however, said persons shall not hunt until they are ten (10) years of age.

(m) Youth Hunter Education Graduate Licenses -- Hunting -- Resident May Purchase. A license entitling a person between ten (10) and seventeen (17) years of age, inclusive, to hunt upland game birds (except turkeys), migratory game birds, cottontail rabbits, huntable furbearers, and unprotected and predatory birds and animals of this state only when accompanied in the field by the holder of an adult Idaho hunting license. A person holding this license shall purchase the appropriate required permits. A license of this kind may be issued to a resident or nonresident person, notwithstanding the provisions of section 36-405, Idaho Code, upon payment of a fee as specified in section 36-416, Idaho Code.

(n) Nonresident Disabled American Veteran. A license entitling a person to participate in a hunt in association with a qualified organization. "Qualified organization," as used in association with these licenses, shall be as defined in section 36-408(7), Idaho Code.

SECTION 3. That Section 36-409, Idaho Code, be, and the same is hereby amended to read as follows:

36-409. GAME TAGS -- PERMITS -- FEES -- PENALTY. (a) Resident Game Tags. A resident who has obtained a permit to hunt, as provided in section 36-401, Idaho Code, or has purchased or obtained a license to hunt, as provided in section 36-406, Idaho Code, upon payment of the fees provided herein shall be eligible to receive a resident game tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear, wolf, sandhill crane or turkey in accordance with the laws of this state and rules promulgated by the commission; provided further, that any person who holds a senior resident combination license or any person who holds a junior combination or hunting license or any disabled American veteran who holds a disabled combination license, may be issued a bear, deer, elk, or turkey tag for a fee as specified in section 36-416, Idaho Code; provided further, that resident game tags may be issued only to those persons who meet residency requirements of subsection (s) of section 36-202, Idaho Code. In the event an emergency is declared to open a season to protect private property as provided in section 36-106(e)6.(B), Idaho Code, the affected landowner or his designee shall be eligible to receive a resident deer, elk or antelope tag without charge; provided further, that resident game tags may be issued only to persons who qualify as residents pursuant to section 36-202, Idaho Code.

(b) Nonresident Game Tags. A nonresident who has purchased a license to hunt, as provided in section 36-407(a) or (k), Idaho Code, or has obtained a license to hunt, as provided in section 36-406(e), Idaho Code, or a resident who has purchased or obtained a license to hunt, as provided in section 36-406, Idaho Code, upon payment of the fees provided herein, shall be

eligible to receive a nonresident tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear, wolf, sandhill crane or turkey in accordance with the laws of this state and rules promulgated by the commission; provided further that a nonresident who has purchased a license to hunt, as provided in section 36-407(k), Idaho Code, shall be eligible to receive a junior mentored deer, elk, bear, or turkey tag for a fee as specified in section 36-416, Idaho Code.

(c) Game Tags Required. The appropriate tag must be had for the hunting or taking of each and every one of the aforementioned wildlife. Provided, however, that the requirements for a wolf tag, a mountain lion tag or a bear tag, as to different periods of time and areas of the state, shall be determined and specified by the commission. Provided further, that the commission may promulgate rules to allow a nonresident deer or elk tag to be used to hunt and kill either a bear, wolf or a mountain lion during the open season for deer or elk in that area, unit or zone as may be specified by the commission. All of said tags are to bear and have serial numbers.

(d) Game Tag to Be Validated and Attached to Carcass. As soon as any person kills any wildlife for which a tag is required, said tag, belonging to him, must be validated and attached to said wildlife in a manner provided by commission rule.

(e) Archery Permits. In addition to meeting the license and tag requirements provided in this chapter, any person participating in any controlled or general game season which has been specifically designated as an archery hunt must have in his possession an archery hunt permit which may be purchased for a fee as specified in section 36-416, Idaho Code.

(f) Muzzleloader Permit. In addition to meeting the license and tag requirements provided in this chapter, any person participating in any controlled or general game season which has been specifically designated as a muzzleloader hunt must have in his possession a muzzleloader permit which may be purchased for a fee as specified in section 36-416, Idaho Code.

(g) Hound Hunter Permit -- Resident -- Nonresident. Any person using a dog for the purpose of hunting or for taking, as defined in section 36-202, Idaho Code, big game or furbearing animals must have in his possession a valid hound hunter permit which may be purchased by resident and nonresident license holders for a fee as specified in section 36-416, Idaho Code.

(h) Nonresident Bird of Prey Capture Permit. The commission may, under rules as it may prescribe, issue a nonresident bird of prey capture permit. This capture permit may be purchased by any licensed, nonresident falconer for capturing birds of prey in Idaho. The fee for the permit shall be as specified in section 36-416, Idaho Code, and the permit shall be issued under the condition that the nonresident's home state allows reciprocal raptor capturing privileges for Idaho falconers.

(i) Wildlife Management Area (WMA) Upland Game Bird Permit. The commission may, under rules as it may prescribe, issue a wildlife management area upland game bird permit that must be purchased by all persons over sixteen (16) years of age prior to hunting stocked upland game birds on state wildlife management areas designated by the commission. The fee for the permit shall be as specified in section 36-416, Idaho Code.

(j) Bear Baiting Permit. The commission may, under rules as it may prescribe, issue a bear baiting permit. Any person placing or using bait as may be allowed by rule for the purpose of attracting bear must have in his possession a valid bear baiting permit which may be purchased by a license holder for a fee as specified in section 36-416, Idaho Code.

(k) Migratory Bird Harvest Information Program Permit. The commission may, as provided by federal laws or regulations and under rules as it may prescribe, issue a migratory bird harvest information program permit that must be purchased by all persons prior to hunting migratory game birds as required by federal law or regulations. The fee for the permit shall be as specified in section 36-416, Idaho Code.

(l) Dog Field Trial Permit. The commission may, under rules as it may prescribe, issue a dog field trial permit to any person using birds for dog field trials or training as may be allowed by rule. The permit may be purchased for a fee as specified in section 36-416, Idaho Code.

(m) Idaho Nursing Home Facility Resident Fishing Permit. The commission may, under rules as it may prescribe, issue an Idaho nursing home facility resident fishing permit that must be purchased by an Idaho nursing home facility to allow residents of its facility to fish during the open season. Facilities eligible to purchase this permit are: intermediate care facilities providing twenty-four (24) hour skilled nursing care, assisted living facilities providing twenty-four (24) hour extensive assistance and skilled nursing facilities providing twenty-four (24) hour skilled nursing. By purchasing this permit the facility assumes full responsibility for and control over the facility residents while using the permit. All laws, rules and proclamations apply to the use of this permit and it is the responsibility of the facility to assure compliance with all laws, rules and proclamations. In case of a violation the facility shall be held accountable and any citations shall be issued to the facility. The permit may be purchased for a fee as specified in section 36-416, Idaho Code.

(n) Disabled American Veteran Game Tags. Any nonresident disabled American veteran participating in a hunt in association with a qualified organization may be issued a bear, deer, elk or turkey tag for a fee as specified in section 36-416, Idaho Code. "Qualified organization," as used in association with these tags, shall be as defined in section 36-408(7), Idaho Code.

SECTION 4. That Section 36-416, Idaho Code, be, and the same is hereby amended to read as follows:

36-416. SCHEDULE OF LICENSE FEES. (1)

(a) Sport Licenses

License	Resident	Non-Resident
Combination License	\$ 31.75	\$ 238.25
Hunting License	11.00	153.00
Fishing License	24.00	96.50
Sr. Combination License (65 and Older)	10.00	N/A
Sportsman's Pak License	108.50	N/A
Jr. Combination License	15.75	N/A
Jr. Hunting License	5.50	N/A
Jr. Mentored Hunting License	N/A	30.00
Youth Small Game License	5.50	18.25
Youth Hunter Education Graduate Hunting License	3.25	3.25
Jr. Fishing License	12.00	20.00
Disabled Combination License	3.25	N/A 3.25
Disabled Fishing License	3.25	N/A

## Military Furlough Combination

License	15.75	N/A
Military Furlough Fishing		
License	15.75	N/A
Small Game Hunting License	N/A	96.00
3 Day Small Game Hunting		
License	N/A	33.75
Daily Fishing (1st-day)		
License	9.75	11.00
Consecutive Day Fishing		
License	5.00	6.00
3 Day Fishing with Salmon/Steelhead		
Permit	N/A	35.75
Nongame Hunting License	N/A	33.75

For purposes of this subsection, disabled combination licenses provided to nonresidents shall be limited to nonresident disabled American veterans participating in a hunt in association with a qualified organization. "Qualified organization," as used in association with these licenses, shall be as defined in section 36-408(7), Idaho Code.

## (b) Sport Tags

Deer Tag	\$ 18.00	\$ 300.00
Controlled Hunt Deer Tag	18.00	300.00
Jr. or Sr. or Disabled American		
Veteran Deer Tag	9.00	<u>N/A9.00</u>
Jr. Mentored Deer Tag	N/A	22.00
Elk A Tag	29.00	415.00
Elk B Tag	29.00	415.00
Controlled Hunt Elk Tag	29.00	415.00
Jr. or Sr. or Disabled American		
Veteran Elk Tag	14.75	<u>N/A14.75</u>
Jr. Mentored Elk Tag	N/A	38.00
Bear Tag	9.75	184.25
Jr. or Sr. or Disabled American		
Veteran Bear Tag	5.00	<u>N/A5.00</u>
Jr. Mentored Bear Tag	N/A	22.00
Turkey Tag	18.00	78.25
Jr. or Sr. or Disabled American		
Veteran Turkey Tag	9.00	<u>N/A9.00</u>
Jr. Mentored Turkey Tag	N/A	18.00
Mountain Lion Tag	9.75	184.25
Gray Wolf Tag	9.75	184.25
Antelope Tag	29.50	310.00
Moose Tag	165.00	2,100.00

Sheep Tag	165.00	2,100.00
Goat Tag	165.00	2,100.00
Sandhill Crane Tag	18.00	65.75

For purposes of this subsection, Jr. or Sr. or disabled American veteran tags provided to nonresidents shall be limited to nonresident disabled American veterans participating in a hunt in association with a qualified organization. "Qualified organization," as used in association with these tags, shall be as defined in section 36-408(7), Idaho Code.

(c) Sport Permits

Bear Baiting Permit	\$ 11.00	\$ 30.00
Hound Hunter Permit	11.00	168.00
WMA Upland Game Bird Permit	22.00	50.00
Archery Permit	16.50	18.25
Muzzleloader Permit	16.50	18.25
Salmon Permit	11.00	24.00
Steelhead Permit	11.00	24.00
Federal Migratory Bird Harvest Info. Permit	0.00	3.00
Disabled Archery Permit	0.00	0.00
2-Pole Fishing Permit	12.00	13.75
Turkey Controlled Hunt Permit	6.00	6.00
Sage/Sharptail Grouse Permit	3.00	3.00
Disabled Hunt Motor Vehicle Permit	0.00	0.00

(d) Commercial Licenses and Permits

Raptor Captive Breeding Permit	\$ 65.75	\$ 78.75
Falconry Permit	27.25	N/A
Falconry Capture Permit	N/A	168.00
Jr. Trapping License	5.50	N/A
Trapping License	25.00	300.00
Taxidermist-Fur Buyer License		
5 year license	175.00	N/A
1 year license	38.25	168.25
Shooting Preserve Permit	329.75	N/A
Commercial Wildlife Farm License	137.50	N/A
Commercial Fishing License	110.00	265.00

Wholesale Steelhead		
License	165.00	198.25
Retail Steelhead Trout Buyer's		
License	33.00	39.25
(e) Commercial Tags		
Bobcat Tag	\$ 3.00	\$ 3.00
Otter Tag	3.00	3.00
Net Tag	55.00	65.75
Crayfish/Minnow Tag	1.25	3.00
(f) Miscellaneous-Other Licenses		
Duplicate License	\$ 5.50	\$ 6.50
Shooting Preserve License	11.00	22.00
Captive Wolf License	22.00	N/A
(g) Miscellaneous-Other Tags		
Duplicate Tag	\$ 5.50	\$ 6.50
Wild Bird Shooting Preserve		
Tag	5.50	6.50
(h) Miscellaneous-Other Permits-Points-Fees		
Falconry In-State Transfer		
Permit	\$ 5.50	\$ N/A
Falconry Meet Permit	N/A	26.25
Rehab Permit	3.00	3.00
Educational Fishing Permit	0.00	0.00
Live Fish Importation		
Permit	3.00	3.00
Sport Dog and Falconry Training		
Permit	3.00	3.00
Wildlife Transport Permit	3.00	3.00
Scientific Collection		
Permit	50.00	50.00
Private Park Permit	21.75	26.25
Wildlife Import Permit	21.75	26.25
Wildlife Export Permit	11.00	13.25
Wildlife Release Permit	11.00	13.25
Captive Wildlife Permit	21.75	26.25
Fishing Tournament Permit	21.75	25.00
Dog Field Trial Permit	33.00	40.00
Live Fish Transport Permit	21.75	26.25
Controlled Hunt Application		
Fee	4.50	13.00

Fee for Application for the Purchase of		
Controlled Hunt Bonus or Preference		
Points	4.50	4.50
Nursing Home Fishing Permit	33.00	N/A

Approved March 16, 2011.

CHAPTER 89  
(H.B. No. 148)

AN ACT

RELATING TO LOCAL LAND USE PLANNING; AMENDING SECTION 67-6502, IDAHO CODE, TO PROVIDE THAT ONE PURPOSE OF LOCAL LAND USE PLANNING IS TO ENCOURAGE THE PROTECTION OF LAND USES FOR THE PRODUCTION OF FOOD, FIBRE AND MINERALS AS WELL AS THE ECONOMIC BENEFITS THEY PROVIDE TO THE COMMUNITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-6508, IDAHO CODE, TO PROVIDE THAT THE COMPREHENSIVE PLAN SHALL CONSIDER THE COMPATIBILITY OF LAND USES AND TO PROVIDE THAT AGRICULTURE SHALL BE ONE COMPONENT UPON WHICH COMPREHENSIVE PLANS SHALL BE BASED; AMENDING SECTION 67-6511, IDAHO CODE, TO PROVIDE THAT THE GOVERNING BOARD SHALL ANALYZE PROPOSED CHANGES TO ZONING ORDINANCES TO ENSURE THAT THEY ARE NOT IN CONFLICT WITH THE POLICIES OF THE COMPREHENSIVE PLAN; AND AMENDING SECTION 67-6512, IDAHO CODE, TO PROVIDE THAT LOCAL GOVERNMENTS ARE ENCOURAGED TO POST NOTICES OF HEARINGS RELATING TO REQUESTS FOR SPECIAL USE PERMITS ON THEIR OFFICIAL WEBSITES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-6502, Idaho Code, be, and the same is hereby amended to read as follows:

67-6502. PURPOSE. The purpose of this act shall be to promote the health, safety and general welfare of the people of the state of Idaho as follows:

(a) To protect property rights while making accommodations for other necessary types of development such as low-cost housing and mobile home parks.

(b) To ensure that adequate public facilities and services are provided to the people at reasonable cost.

(c) To ensure that the economy of the state and localities is protected.

(d) To ensure that the important environmental features of the state and localities are protected.

(e) To encourage the protection of prime agricultural, forestry and mining lands and land uses for production of food, fibre and minerals, as well as the economic benefits they provide to the community.

(f) To encourage urban and urban-type development within incorporated cities.

(g) To avoid undue concentration of population and overcrowding of land.

(h) To ensure that the development on land is commensurate with the physical characteristics of the land.

(i) To protect life and property in areas subject to natural hazards and disasters.

(j) To protect fish, wildlife and recreation resources.

(k) To avoid undue water and air pollution.

(l) To allow local school districts to participate in the community planning and development process so as to address public school needs and impacts on an ongoing basis.

SECTION 2. That Section 67-6508, Idaho Code, be, and the same is hereby amended to read as follows:

67-6508. PLANNING DUTIES. It shall be the duty of the planning or planning and zoning commission to conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan, hereafter referred to as the plan. The plan shall include all land within the jurisdiction of the governing board. The plan shall consider previous and existing conditions, trends, compatibility of land uses, desirable goals and objectives, or desirable future situations for each planning component. The plan with maps, charts, and reports shall be based on the following components as they may apply to land use regulations and actions unless the plan specifies reasons why a particular component is unneeded.

(a) Property Rights -- An analysis of provisions which may be necessary to ensure that land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values or create unnecessary technical limitations on the use of property and analysis as prescribed under the declarations of purpose in chapter 80, title 67, Idaho Code.

(b) Population -- A population analysis of past, present, and future trends in population including such characteristics as total population, age, sex, and income.

(c) School Facilities and Transportation -- An analysis of public school capacity and transportation considerations associated with future development.

(d) Economic Development -- An analysis of the economic base of the area including employment, industries, economies, jobs, and income levels.

(e) Land Use -- An analysis of natural land types, existing land covers and uses, and the intrinsic suitability of lands for uses such as agriculture, forestry, mineral exploration and extraction, preservation, recreation, housing, commerce, industry, and public facilities. A map shall be prepared indicating suitable projected land uses for the jurisdiction.

(f) Natural Resources -- An analysis of the uses of rivers and other waters, forests, range, soils, harbors, fisheries, wildlife, minerals, thermal waters, beaches, watersheds, and shorelines.

(g) Hazardous Areas -- An analysis of known hazards as may result from susceptibility to surface ruptures from faulting, ground shaking, ground failure, landslides or mudslides; avalanche hazards resulting from development in the known or probable path of snowslides and avalanches, and floodplain hazards.

(h) Public Services, Facilities, and Utilities -- An analysis showing general plans for sewage, drainage, power plant sites, utility transmission corridors, water supply, fire stations and fire fighting equipment, health and welfare facilities, libraries, solid waste disposal sites, schools, public safety facilities and related services. The plan may also show locations of civic centers and public buildings.

(i) Transportation -- An analysis, prepared in coordination with the local jurisdiction(s) having authority over the public highways and streets, showing the general locations and widths of a system of major traffic thoroughfares and other traffic ways, and of streets and the recommended treatment thereof. This component may also make recommendations on building line setbacks, control of access, street naming and numbering, and a proposed system of public or other transit lines and related facilities including rights-of-way, terminals, future corridors, viaducts and grade separations. The component may also include port, harbor, aviation, and other related transportation facilities.

(j) Recreation -- An analysis showing a system of recreation areas, including parks, parkways, trailways, river bank greenbelts, beaches, playgrounds, and other recreation areas and programs.

(k) Special Areas or Sites -- An analysis of areas, sites, or structures of historical, archeological, architectural, ecological, wildlife, or scenic significance.

(l) Housing -- An analysis of housing conditions and needs; plans for improvement of housing standards; and plans for the provision of safe, sanitary, and adequate housing, including the provision for low-cost conventional housing, the siting of manufactured housing and mobile homes in subdivisions and parks and on individual lots which are sufficient to maintain a competitive market for each of those housing types and to address the needs of the community.

(m) Community Design -- An analysis of needs for governing landscaping, building design, tree planting, signs, and suggested patterns and standards for community design, development, and beautification.

(n) Agriculture -- An analysis of the agricultural base of the area including agricultural lands, farming activities, farming-related businesses and the role of agriculture and agricultural uses in the community.

(o) Implementation -- An analysis to determine actions, programs, budgets, ordinances, or other methods including scheduling of public expenditures to provide for the timely execution of the various components of the plan.

(ep) National Interest Electric Transmission Corridors -- After notification by the public utilities commission concerning the likelihood of a federally designated national interest electric transmission corridor, prepare an analysis showing the existing location and possible routing of high voltage transmission lines, including national interest electric transmission corridors based upon the United States department of energy's most recent national electric transmission congestion study pursuant to sections 368 and 1221 of the energy policy act of 2005. "High-voltage transmission lines" means lines with a capacity of one hundred fifteen thousand (115,000) volts or more supported by structures of forty (40) feet or more in height.

Nothing herein shall preclude the consideration of additional planning components or subject matter.

SECTION 3. That Section 67-6511, Idaho Code, be, and the same is hereby amended to read as follows:

67-6511. ZONING ORDINANCE. Each governing board shall, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, establish within its jurisdiction one (1) or more zones or zoning districts where appropriate. The zoning districts shall be in accordance with the policies set forth in the adopted comprehensive plan.

Within a zoning district, the governing board shall where appropriate, establish standards to regulate and restrict the height, number of stories, size, construction, reconstruction, alteration, repair or use of buildings and structures; percentage of lot occupancy, size of courts, yards, and open spaces; density of population; and the location and use of buildings and structures. All standards shall be uniform for each class or kind of buildings throughout each district, but the standards in one (1) district may differ from those in another district.

Ordinances establishing zoning districts shall be amended as follows:

(a) Requests for an amendment to the zoning ordinance shall be submitted to the zoning or planning and zoning commission which shall evaluate the request to determine the extent and nature of the amendment requested. Particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction. An amendment of a zoning ordinance applicable to an owner's lands or

approval of conditional rezoning or denial of a request for rezoning may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

(b) After considering the comprehensive plan and other evidence gathered through the public hearing process, the zoning or planning and zoning commission may recommend and the governing board may adopt or reject an ordinance amendment pursuant to the notice and hearing procedures provided in section 67-6509, Idaho Code, provided that in the case of a zoning district boundary change, and notwithstanding jurisdictional boundaries, additional notice shall be provided by mail to property owners or purchasers of record within the land being considered, and within three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be impacted by the proposed change as determined by the commission. Notice shall also be posted on the premises not less than one (1) week prior to the hearing. When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of posted or mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board subject to applicable procedures.

(c) The governing board shall analyze proposed changes to zoning ordinances to ensure that they are not in conflict with the policies of the adopted comprehensive plan. If the request is found by the governing board to be in conflict with the adopted plan, or would result in demonstrable adverse impacts upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction, the governing board may require the request to be submitted to the planning or planning and zoning commission or, in absence of a commission, the governing board may consider an amendment to the comprehensive plan pursuant to the notice and hearing procedures provided in section 67-6509, Idaho Code. After the plan has been amended, the zoning ordinance may then be considered for amendment pursuant to section 67-6511(b), Idaho Code.

(d) If a governing board adopts a zoning classification pursuant to a request by a property owner based upon a valid, existing comprehensive plan and zoning ordinance, the governing board shall not subsequently reverse its action or otherwise change the zoning classification of said property without the consent in writing of the current property owner for a period of four (4) years from the date the governing board adopted said individual property owner's request for a zoning classification change. If the governing body does reverse its action or otherwise change the zoning classification of said property during the above four (4) year period without the current property owner's consent in writing, the current property owner shall have standing in a court of competent jurisdiction to enforce the provisions of this section.

SECTION 4. That Section 67-6512, Idaho Code, be, and the same is hereby amended to read as follows:

67-6512. SPECIAL USE PERMITS, CONDITIONS, AND PROCEDURES. (a) As part of a zoning ordinance each governing board may provide by ordinance adopted, amended, or repealed in accordance with the notice and hearing

procedures provided under section 67-6509, Idaho Code, for the processing of applications for special or conditional use permits. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed use, and when it is not in conflict with the plan. Denial of a special use permit or approval of a special use permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with requirements established thereby.

(b) Prior to granting a special use permit, at least one (1) public hearing in which interested persons shall have an opportunity to be heard shall be held. At least fifteen (15) days prior to the hearing, notice of the time and place, and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction. Each local government is encouraged to post such notice on its official websites, if one is maintained. Notice may also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice shall be posted on the premises not less than one (1) week prior to the hearing. Notwithstanding jurisdictional boundaries, notice shall also be provided to property owners or purchasers of record within the land being considered, three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the commission. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board.

(c) When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site.

(d) Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those:

- (1) Minimizing adverse impact on other development;
- (2) Controlling the sequence and timing of development;
- (3) Controlling the duration of development;
- (4) Assuring that development is maintained properly;
- (5) Designating the exact location and nature of development;
- (6) Requiring the provision for on-site or off-site public facilities or services;
- (7) Requiring more restrictive standards than those generally required in an ordinance;
- (8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.

(e) Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects of the proposed special use. A special use permit shall not be considered as establishing a

binding precedent to grant other special use permits. A special use permit is not transferable from one (1) parcel of land to another.

Approved March 16, 2011.

CHAPTER 90  
(H.B. No. 157)

AN ACT

RELATING TO IDAHO STATE UNIVERSITY; REPEALING SECTION 33-3008, IDAHO CODE, RELATING TO A CERTAIN TRAINING OR MODEL SCHOOL.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-3008, Idaho Code, be, and the same is hereby repealed.

Approved March 16, 2011.

CHAPTER 91  
(H.B. No. 167)

AN ACT

RELATING TO COSMETICIANS; AMENDING SECTION 54-802, IDAHO CODE, TO REVISE A DEFINITION; AND AMENDING SECTION 54-808, IDAHO CODE, TO REVISE PROVISIONS RELATING TO REGULATIONS FOR DOMESTIC SCHOOLS OF COSMETOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-802, Idaho Code, be, and the same is hereby amended to read as follows:

54-802. DEFINITIONS. For the purpose of this chapter, the following definitions shall apply:

(1) "Cosmetology" shall constitute any one (1) or combination of the following practices when done upon the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments:

(a) Cutting, trimming, arranging, dressing, curling, waving by any method, cleansing, singeing, bleaching, coloring, or similar work upon the hair.

(b) Noninvasive care of the skin of the face and body by application of cosmetic preparations, antiseptics, tonics, lotions, creams and essential oils to cleanse, massage, exfoliate, hydrate and stimulate; makeup application; pore extraction; use of chemical exfoliants approved for professional esthetic use; particle exfoliation; use of any mechanical or electrical apparatus or appliance designed for nonmedical care of the skin; the temporary removal of superfluous hair by means of lotions, creams, waxing, tweezing or depilatories, and tinting of eyebrows and eyelashes.

(c) Manicuring, pedicuring the nails, and the application of artificial nails.

(2) "Registered cosmetologist" shall mean any person licensed to practice cosmetology.

(3) "Nail technology" shall constitute any one (1) or more of the following practices when done upon the human body:

(a) Manicuring, pedicuring the nails, and the application of all forms of artificial nails.

(b) Massage of the hands and feet.

(4) "Nail technician" shall mean any licensed person whose practice of cosmetology is limited to nail technology.

(5) "Nail technology instructor" shall mean a nail technologist who is licensed to teach nail technology or any practice thereof in a school of cosmetology.

(6) "Apprentice" shall mean any person registered with the board to engage in the learning or acquiring of any or all of the practices of cosmetology in a licensed cosmetological establishment, and while so learning performs or assists in any of the practices of cosmetology.

(7) "Student" shall mean any person engaged in the learning or acquiring of any or all of the practices of cosmetology in a licensed school of cosmetology, and while so learning performs or assists in any of the practices of cosmetology.

(8) "Instructor" shall mean a cosmetologist who is licensed to teach cosmetology or any practices thereof in a school of cosmetology, school or college of barbering, or cosmetology establishment meeting the requirements for apprenticeship training.

(9) "~~Student~~-iInstructor trainee" shall mean a registered cosmetologist who is in a school of cosmetology to receive training to teach cosmetology.

(10) "Cosmetological establishment" shall mean any licensed place or part thereof other than a school of cosmetology wherein cosmetology is practiced.

(11) "School of cosmetology" shall mean any licensed place or part thereof wherein cosmetology is taught to students.

(12) "Board" means the Idaho board of cosmetology.

(13) "Department" means the Idaho department of self-governing agencies.

(14) "Chapter" as used herein refers to chapter 8, title 54, Idaho Code.

(15) "Electrologist" means any person licensed to practice electrology and who is skilled in the permanent removal of unwanted hair.

(16) "Electrolysis or electrology" means the permanent removal of hair by destroying the hair producing cells of the skin and vascular system using equipment and devices approved by and registered with the United States food and drug administration.

(17) "Esthetics" means noninvasive care of the skin of the face and body by application of cosmetic preparations, antiseptics, tonics, lotions, creams and essential oils to cleanse, massage, exfoliate, hydrate and stimulate; makeup application; pore extraction; use of chemical exfoliants approved for professional esthetic use; particle exfoliation; use of any mechanical or electrical apparatus or appliance designed for nonmedical care of the skin; the temporary removal of superfluous hair by means of lotions, creams, waxing, tweezing or depilatories, and tinting of eyebrows and eyelashes.

(18) "Esthetician" means any person licensed to practice esthetics.

(19) "Esthetics instructor" shall mean an esthetician who is licensed to teach esthetics or any practice thereof in a school of cosmetology approved to teach esthetics.

(20) "Electrologist instructor" shall mean an electrologist who is licensed to teach electrology or any practices thereof in a school of cosmetology approved to teach electrology.

(21) "Student electrologist instructor" shall mean an electrologist who is in a school of cosmetology approved to teach electrology to receive training to teach electrology.

(22) "Makeover or glamour photography business" means any business engaged in the offering of photographic services to the general public and whose employees engage in the facial application of cosmetic products or the arranging of the hair of customers in connection with the sale, or attempted sale, of photographic services.

(23) "Retail cosmetics dealer" means a fixed retail business which offers cosmetic products for sale at retail to members of the general public

and whose employees engage in the facial application of cosmetic products to customers in connection with the sale, or attempted sale, of the products without compensation from the customer other than the regular price of the merchandise.

(24) "Demonstration, competition or production" means an organized event of limited duration where cosmetology services may be performed, if sponsored by a salon, school of cosmetology or cosmetology-related organization.

(25) "Haircutting" means cutting, trimming, arranging, dressing, curling, cleansing, singeing or similar work upon the hair.

(26) "Haircutter" means any licensed person whose practice of cosmetology is limited to haircutting.

SECTION 2. That Section 54-808, Idaho Code, be, and the same is hereby amended to read as follows:

54-808. REGULATIONS FOR SCHOOLS. Every domestic school of cosmetology must be licensed under the provisions of this chapter and shall meet the following standards and provisions:

(1) Employ and maintain at least one (1) licensed instructor for every twenty (20) students or fraction thereof with an student instructor not trainee counting as an student instructor for purposes of the student-instructor ratio, so long as there is a licensed instructor on the premises and available at all times;

(2) Possess sufficient apparatus and equipment for the proper and full teaching of all subjects of its curriculum;

(3) Keep a daily attendance record for each student;

(4) Maintain regular class and instruction hours, establish grades, and hold monthly examinations;

(5) Prescribe a school term for training in all phases of the practice of cosmetology;

(6) Provide applicable curriculums embracing subjects covering the scientific fundamentals for cosmetology, nail technology, esthetics, electrology, instructors and haircutting as follows:

(a) The curriculum for cosmetology shall include hygiene, bacteriology, histology of the hair, skin, muscles, nails and nerves, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, hair, glands and nails, massaging and manipulating the muscles of the body, permanent waving, haircutting and arranging, dressing, coloring, bleaching and tinting of the hair, a study of electricity as applied to cosmetology, and the Idaho laws and rules governing the practice of cosmetology;

(b) The curriculum for nail technology shall include hygiene, bacteriology, histology of the hands and feet, skin, muscles, nails and nerves, structure of the hands and feet, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, glands and nails, massaging and manipulating the muscles of the hands and feet, a study of electricity as applied to nail technology, and the Idaho laws and rules governing the practice of nail technology;

(c) The curriculum for esthetics shall include hygiene, bacteriology, histology of the skin, muscles and nerves, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, glands and nails, massaging and manipulating the muscles of the body, a study of electricity as applied to cosmetology, and the Idaho laws and rules governing the practice of esthetics;

(d) The curriculum for electrology shall include hygiene, bacteriology, histology of the hair, skin, muscles, nails and nerves, structure of the body, elementary chemistry relating to sterilization and anti-

septics, diseases of the skin, hair, glands and nails, hypertrichosis, permanent removal of unwanted hair, a study of electricity as applied to electrology including the use and study of galvanic current, and the use and study of both automatic and manual high frequency current, and the Idaho laws and rules governing the practice of electrology;

(e) The curriculum for instructors shall include fundamentals of adult education, communication, preparation of lesson plans, practical and theoretical presentation and demonstration, use of teaching aids, measurement and evaluation, and the Idaho laws and rules governing cosmetology and electrology, in addition to teaching the acts prescribed in section 54-802, Idaho Code;

(f) The curriculum for haircutting shall include hygiene, bacteriology, histology of the hair, skin, muscles and nerves, structure of the head and neck, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, hair and glands, massaging and manipulating of the muscles of the head and neck, haircutting and arranging, the study of electricity as applied to haircutting and Idaho laws and rules governing the practice of haircutting;

(7) Denote with clarity that the establishment is a school and that work is done by students. Such fact shall be made clear to the patron by signs conspicuously posted in the school and the adjoining shop, if any;

(8) All instructors must be licensed instructors in this state;

(9) Such school shall not permit any student or apprentice to receive instruction unless licensed under the provisions of this chapter;

(10) Every instructor shall devote his entire time during school or class hours to that of instructing the students and shall not apply his time to that of private or public practice;

(11) School hours for the purpose of instruction shall be offered on not less than a five (5) day week;

(12) Training received in an establishment not meeting the requirements for schools as herein set forth shall receive credit for said training as an apprentice rather than as a student, provided said training meets the requirements for apprentice training;

(13) Training received in electrology in a school shall not be recognized unless the school has been approved for such training by the board and the school meets and maintains the requirements to train electrologists as established by board rules;

(14) Training received in esthetics shall not be recognized unless the school has been approved for such training by the board, and the school meets and maintains the requirements to train estheticians as established by board rules;

(15) Training received in nail technology shall not be recognized unless the school has been approved for such training by the board, and the school meets and maintains the requirements to train nail technicians as established by board rules;

(16) Every school approved by the board shall deliver to the board, a bond to the state of Idaho in a form approved by the board, and renew the same annually, in the sum of twenty-five thousand dollars (\$25,000) executed by a corporate surety company duly authorized to do business in this state, conditioned that such school shall continue to give its courses of instruction, in accordance with the provisions of this chapter, until it has completed all such courses for which students have enrolled, and conditioned that such school shall fully comply with all promises or representations made to enrolled students as an inducement to such students to enroll. Any student so enrolled who may be damaged by reason of the failure of such school to comply with such conditions, shall have a right of action in his or her own name, on such bonds, for such damage;

(17) Training received in haircutting shall not be recognized unless the school has been approved for such training by the board and the school

meets and maintains the requirements to train haircutters as established by board rules.

Approved March 16, 2011.

CHAPTER 92  
(H.B. No. 49)

AN ACT

RELATING TO THE IDAHO RESIDENTIAL CARE ADMINISTRATORS ACT; AMENDING SECTION 54-4206, IDAHO CODE, TO REVISE THE EDUCATION AND EXPERIENCE REQUIREMENTS FOR AN APPLICANT SEEKING LICENSURE AS A RESIDENTIAL CARE FACILITY ADMINISTRATOR AND TO PROVIDE AN EXCEPTION TO THE EXPERIENCE REQUIREMENTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-4206, Idaho Code, be, and the same is hereby amended to read as follows:

54-4206. QUALIFICATIONS FOR EXAMINATION FOR LICENSE. (1) The board shall admit to the examination for licensure as a residential care facility administrator any candidate who submits the required application, pays a fee as determined by the board, submits evidence of good moral character and suitability prescribed by the board and is at least twenty-one (21) years old ~~except;~~ and

~~(a) No applicant for a license shall be admitted to such licensing examination or be granted a license unless such applicant shall submit written evidence of graduation from a high school or of having obtained high school or secondary school equivalency.~~

(b2) Each applicant shall submit evidence satisfactory to the board that he has successfully completed specialized courses or a program of study in the area of residential care facility administration as required and approved by the rules of the board; and

(3) Each applicant shall meet one (1) of the following combinations of education and experience:

(a) A high school diploma or equivalent and eight hundred (800) hours of on-site experience in a residential care facility under the supervision of a licensed administrator;

(b) An associate degree from an accredited college or university or equivalent and four hundred (400) hours of on-site experience in a residential care facility under the supervision of a licensed administrator; or

(c) A bachelor's degree from an accredited college or university and two hundred (200) hours of on-site experience in a residential care facility under the supervision of a licensed administrator.

(24) A candidate who applies for examination under and pursuant to subsection (1) of this section, in lieu of ~~but who does not otherwise meet the educational experience requirements provided for therein in subsection (3) of this section,~~ may submit evidence satisfactory to the board that such applicant has obtained ~~two (2) years of satisfactory practical experience obtained in an internship training program in residential care facility administration as approved by the board or in a related health administration area for each year of high school education~~ medical or health care facility as approved by the board.

Approved March 17, 2011.

CHAPTER 93  
(H.B. No. 65)

AN ACT

RELATING TO THE BOARD OF VETERINARY MEDICINE; AMENDING CHAPTER 21, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-2115A, IDAHO CODE, TO PROVIDE MAXIMUM TIME PERIODS FOR SUSPENSION, REVOCATION AND REAPPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 21, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-2115A, Idaho Code, and to read as follows:

54-2115A. MAXIMUM TIME PERIODS FOR SUSPENSION, REVOCATION AND REAPPLICATION. The board is authorized to enter an order that suspends or revokes an existing license or certification based upon a violation of the provisions of chapter 21, title 54, Idaho Code, or a board rule, for a maximum period of ten (10) years. In the event the board enters an order that denies an application for licensure or certification, the board is authorized to impose a restriction on reapplication for a maximum period of up to ten (10) years.

Approved March 17, 2011.

CHAPTER 94  
(S.B. No. 1017)

AN ACT

RELATING TO EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1351, IDAHO CODE, TO PROVIDE THAT BENEFITS PAID TO A CLAIMANT TERMINATED BECAUSE THEIR EMPLOYER WAS CALLED TO ACTIVE MILITARY DUTY SHALL NOT BE USED AS A FACTOR IN DETERMINING THE TAXABLE WAGE RATE OF THE EMPLOYER.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-1351, Idaho Code, be, and the same is hereby amended to read as follows:

72-1351. EXPERIENCE RATING AND VOLUNTARY TRANSFERS OF EXPERIENCE RATING ACCOUNTS. (1) Subject to the other provisions of this chapter, each eligible and deficit employer's, except cost reimbursement employers, taxable wage rate shall be determined in the manner set forth below for each calendar year:

- (a) (i) Each eligible employer shall be given an "experience factor" which shall be the ratio of excess of contributions over benefits paid on the employer's account since December 31, 1939, to his average annual taxable payroll rounded to the next lower dollar amount for the four (4) fiscal years immediately preceding the computation date, except that when an employer first becomes eligible, his "experience factor" will be computed on his average annual taxable payroll for the two (2) fiscal years or more, but not to exceed four (4) fiscal years, immediately preceding the computation date. The computation of such "experience factor" shall be to six (6) decimal places.
- (ii) Each deficit employer shall be given a "deficit experience factor" which shall be the ratio of excess of benefits paid on the employer's account over contributions since December 31, 1939, to

his average annual taxable payroll rounded to the next lower dollar amount for one (1) or more fiscal years, but not to exceed four (4) fiscal years, for which he had covered employment ending on the computation date; provided, however, that any employer who on any computation date has a "deficit experience factor" for the period immediately preceding such computation date but who has filed all reports, paid all contributions and penalties due on or before the cut-off date, and has during the last four (4) fiscal years paid contributions at a rate of not less than the standard rate applicable for each such year and in excess of benefits charged to his experience rating account during such years, shall have any balance of benefits charged to his account which on the computation date immediately preceding such four (4) fiscal years was in excess of contributions paid, deleted from his account, and the excess benefits so deleted shall not be considered in the computation of his taxable wage rate for the rate years following such four (4) fiscal years. For the rate year following such computation date, he shall be given the standard rate for that year.

(iii) In the event an employer's coverage has been terminated because he has ceased to do business or because he has not had covered employment for a period of four (4) years, and if said employer thereafter becomes a covered employer, he will be considered as though he were a new employer, and he shall not be credited with his previous experience under this chapter for the purpose of computing any future "experience factor."

(iv) Benefits paid to a claimant whose employment terminated because the claimant's employer was called to active military duty shall not be used as a factor in determining the taxable wage rate of that employer.

(b) Schedules shall be prepared listing all eligible employers in inverse numerical order of their experience factors, and all deficit employers in numerical order of their deficit experience factors. There shall be listed on such schedules for each such employer in addition to the experience factor: (i) the amount of his taxable payroll for the fiscal year ending on the computation date, and (ii) a cumulative total consisting of the sum of such employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding him on such schedules.

(c) The cumulative taxable payroll amounts listed on the schedules provided for in paragraph (b) of this subsection shall be segregated into groups whose limits shall be those set out in the table provided in section 72-1350(7), Idaho Code. Each of such groups shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules shall be assigned a taxable wage rate in accordance with section 72-1350, Idaho Code.

(d) (i) If the grouping of rate classes requires the inclusion of exactly one-half (1/2) of an employer's taxable payroll, the employer shall be assigned the lower of the two (2) rates designated for the two (2) classes in which the halves of his taxable payroll are so required.

(ii) If the group of rate classes requires the inclusion of a portion other than exactly one-half (1/2) of an employer's taxable payroll, the employer shall be assigned the rate designated for the class in which the greater part of his taxable payroll is so required.

(iii) If one (1) or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers shall be included in and

assigned the taxable wage rate specified for such class, notwithstanding the provisions of paragraph (c) of this subsection.

(e) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer shall be placed in that position on the schedules which he would have occupied had his taxable payroll amount and/or experience factor as changed been used in determining his position in the first instance, but such change shall not affect the position or rate classification of any other employer listed on the schedules and shall not affect the rate determination for previous years.

(2) For experience rating purposes, all previously accumulated benefit charges to covered employers' accounts, except cost reimbursement employers, shall not be changed except as provided in this chapter. Benefits paid prior to June 30 shall, as of June 30 of each year preceding the calendar year for which a covered employer's taxable wage rate is effective, be charged to the account of the covered employer, except cost reimbursement employers, who paid the largest individual amount of base period wages as shown on the determination used as the basis for the payment of such benefits, except that no charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

(a) If paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer, or who had been discharged for misconduct in connection with such services;

(b) If paid in accordance with the provisions of section 72-1368(10), Idaho Code, and the decision to pay benefits is subsequently reversed;

(c) For that portion of benefits paid to multistate claimants pursuant to section 72-1344, Idaho Code, which exceeds the amount of benefits that would have been charged had only Idaho wages been used in paying the claim;

(d) If paid in accordance with the extended benefit program triggered by either national or state indicators;

(e) If paid to a worker who continues to perform services for such covered employer without a reduction in his customary work schedule, and who is eligible to receive benefits due to layoff or a reduction in earnings from another employer;

(f) If paid to a worker who turns down an offer of suitable work because of participation in a job training program pursuant to the requirements of section 72-1366(8), Idaho Code.

(3) A covered employer whose experience rating account is chargeable, as prescribed by this section, is an interested party as defined in section 72-1323, Idaho Code. A determination of chargeability shall become final unless, within fourteen (14) days after notice as provided in section 72-1368(5), Idaho Code, an appeal is filed by an interested party with the department in accordance with the department's rules.

(4) An experience rating record shall be maintained for each covered employer. The record shall be credited with all contributions which the covered employer has paid for covered employment prior to the cut-off date, pursuant to the provisions of this and preceding acts, and which covered employment occurred prior to the computation date. The record shall also be charged with the amount of benefits paid which are chargeable to the covered employer's account as provided by the appropriate provisions of the employment security law and regulations thereunder in effect at the time such benefits were paid. Nothing in this section shall be construed to grant any covered employer or individual in his service a priority with respect to any claim or right because of amounts paid by such covered employer into the employment security fund.

(5) (a) Whenever any individual or type of organization, whether or not a covered employer within the meaning of section 72-1315, Idaho

Code, in any manner succeeds to, or acquires all or substantially all, of the business of an employer who at the time of acquisition was a covered employer, and in respect to whom the director finds that the business of the predecessor is continued solely by the successor, the separate experience rating account of the predecessor shall, upon the joint application of the predecessor and the successor within the one hundred eighty (180) days after such acquisition and approval by the director, be transferred to the successor employer for the purpose of determining such successor's liability and taxable wage rate and any successor who was not an employer on the date of acquisition shall as of such date become a covered employer as defined in this chapter. Such one hundred eighty (180) day period may be extended at the discretion of the director.

(b) Whenever any individual or type of organization, whether or not a covered employer within the meaning of section 72-1315, Idaho Code, in any manner succeeds to, or acquires, part of the business of an employer who at the time of acquisition was a covered employer, and such portion of the business is continued by the successor, so much of the separate experience rating account of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bears to the payroll of the predecessor in the last four (4) completed calendar quarters immediately preceding the date of transfer, shall, upon the joint application of the predecessor and the successor within one hundred eighty (180) days after such acquisition and approval by the director, be transferred to the successor employer for the purpose of determining such successor's liability and taxable wage rate and any successor who was not an employer on the date of acquisition shall as of such date become a covered employer as defined in this chapter. Such one hundred eighty (180) day period may be extended at the discretion of the director.

(c) (i) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business his taxable wage rate, effective the first day of the calendar quarter immediately following the date of acquisition, shall be a newly computed rate based on the combined experience of the predecessor and successor, the resulting rate remaining in effect the balance of the rate year.

(ii) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his rate shall be the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there were more than one (1) predecessor the successor's rate shall be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition, and shall remain in effect the balance of the rate year.

(d) For purposes of this section, an employer's experience rating account shall consist of the actual contribution, benefit and taxable payroll experience of the employer and any amounts due from the employer under this chapter. When a transferred experience rating account includes amounts due from the employer under this chapter, both the predecessor employer and the successor employer shall be jointly and severally liable for those amounts.

CHAPTER 95  
(S.B. No. 1055)

AN ACT

RELATING TO DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 22-103, IDAHO CODE, TO DELETE A REQUIREMENT THAT THE DIRECTOR SUPPORT A MARKET NEWS SERVICE AND TO DELETE CERTAIN SUBSECTION REFERENCES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-103, Idaho Code, be, and the same is hereby amended to read as follows:

22-103. DUTIES OF DIRECTOR. The director of the department of agriculture shall execute the powers and discharge the duties vested by law in him or in the department, including, but not limited to, the following:

(1) Pursuant to chapter 53, title 67, Idaho Code, hire, assign duties and evaluate the performance of all employees of the department.

(2) Designate employees for special assignment, office or function as the needs of the department may require.

(3) Acquire, generate, develop and disseminate information and data concerning agricultural pursuits, productivity and product quality.

(4) Encourage and promote in every practical manner, the interests of agriculture, horticulture, apiculture, aquaculture, the livestock industries, poultry and fowl raising, wool and fur-bearing animals and their allied industries.

(5) Assist, encourage and promote the organization of farmers' institutes, agricultural, horticultural, management or cooperative societies and organizations for the benefit of agricultural pursuits in this state.

(6) Promote improved methods of production, storage, sales and marketing of agricultural industries.

(7) Establish and promulgate standards of construction, use and sanitation of open and closed receptacles for farm products, and standards for grade or other classification of farm products.

(8) Prescribe and promulgate rules governing marks, brands and labels, and the registration thereof, for use upon receptacles for farm products.

(9) Promote, in the interest of the public, economical and efficient use of products and commodities used in the production of agricultural, horticultural, meats and other products and farm commodities and their distribution.

(10) Cooperate with producers, processors and consumers in devising and maintaining economical and efficient systems of distribution, and to assist in the reduction of waste and expense incidental to the marketing of agricultural products.

~~(11) Support a market news service to gather and diffuse timely information and statistics concerning supply, demand, prevailing prices and commercial movement of agricultural products.~~

~~(12) Cooperate with the secretary, colleges and universities, experiment stations, and other agencies which cooperate in devising, research and development and utilization of improved agricultural production and other activities.~~

(132) Investigate the practices, methods of factors, management techniques of commission merchants, track buyers and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grains, eggs, livestock, vegetables or other products used as human foods, to the end that distribution of such commodities through such factors, commission

merchants, track buyers and others be efficiently and economically accomplished without hardship, waste or fraud.

(143) Enter and inspect any right-of-way of any irrigation canal, railway, public highway, field, orchard, nursery, fruit or vegetable packing house, store room, sales room, storage facility, depot or other place where fruits and vegetables are grown or stored and to inspect fruits, trees, plants, vines, shrubs or other articles within the state, and if such places or articles are infested with pests, insects or their eggs or larvae, or with any contagious or transmittable diseases injurious to plant life, to abate or eradicate the same as a nuisance.

(154) Provide treatment for and prevent the spread of infectious or communicable diseases among bees, livestock, fur-bearing animals or domestic animals through the systematic and periodic inspection, testing or treatment of such bees and animals at the expense of the owner thereof.

(165) Protect the livestock interests of the state from losses due to disease or hazards to animal health and communicable to humans through agricultural products. The director is authorized to regulate, as deemed necessary, commercial livestock truck washing facilities. This includes permitting for the treatment or disposal, at any location, of any wash water generated by the facility. This subsection preempts Idaho department of environmental quality's authority to issue land application permits and to do plan and specification reviews under section 39-118, Idaho Code, for livestock truck wash facilities, but does not affect any other authority of the Idaho department of environmental quality.

(176) Maintain recording of earmarks, eartags or other identifying marks not covered under any other provisions of law.

(187) Purchase, lease, hold, sell, and dispose of real and personal property of the department when, in the judgment of the director, such transactions promote the purposes for which the department is established.

(198) Contract with any state agency, federal agency or agency of another state concerning any matter, program or cooperative effort within the scope and jurisdiction of its authority pursuant to law.

(2019) Assist in the improvement of country life, farm occupations and to cooperate in effectuating equality of opportunity of those employed in agricultural pursuits in the state of Idaho.

(210) Investigate diseases, contamination of livestock and poultry, agricultural, horticultural, and farm products, suspected to be infected or contaminated by bacterial, viral, protozoal, parasitic, chemical, nuclear, botanical or other disease-producing agents, or carrying a residue of any such disease-producing agent or chemical in excess of any tolerance established by federal or state law or regulation and to examine, conduct tests, and issue "hold orders" on any livestock, poultry, agricultural, horticultural or farm products as deemed necessary to effectuate a diagnosis of disease, contamination or chemical level to safeguard and protect animal and man. And additionally, authorize and implement a predator control program on state and private lands using any kind of toxic material or substance suitable for such purpose. Any toxic material or substance shall be approved for use by the director. In order to carry out the provisions of this subsection ~~(21)~~, the director shall prescribe and promulgate rules pursuant to chapter 52, title 67, Idaho Code.

(221) Prescribe by rule an interest charge which may be assessed on all accounts which are thirty (30) days past due from the initial billing date or the assessment due date. The interest rate charged shall not exceed twelve percent (12%) per annum.

(232) To take all steps that are deemed necessary to prevent and control damage or conflicts on federal, state, or other public or private lands caused by predatory animals, rodents, or birds, including threatened or endangered wildlife within the state of Idaho as are established by federal or state law, federal or state regulation, or county ordinance, that are in-

jurious to animal husbandry, agriculture, horticulture, forestry, wildlife and human health and safety.

(243) Administer a range program to provide support, coordination and expertise to Idaho rangeland livestock producers and land and wildlife management agencies for the planning and management of vegetation, grazing permits and other rangeland resources that are of importance to the livestock industry. The program shall also provide technical expertise and support to state and industry entities in reviewing various federal environmental impact statements, federal environmental assessments and other state and federal proposals that impact grazing, vegetation management or other rangeland resources or uses important to the livestock industry.

(254) To administer oaths, certify to all official acts and subpoena any person in this state as a witness; to compel through subpoena the production of books, papers, and records; and to take the testimony of any person on deposition in the same manner as prescribed by law in the procedure before the courts of this state. A subpoena issued by the director shall extend to all parts of the state and may be served by any person authorized to do so. All powers of the director enumerated in this subsection (25) with respect to administering oaths, power of subpoena, and other powers in hearings on complaints shall likewise be applicable to hearings held on applications for the issuance or renewal of licenses.

(265) To appoint, as necessary, committees for the purpose of advising the director on any and all matters relating to agricultural programs within the Idaho department of agriculture.

(276) Cooperate with producers, industry and technology groups, and other agencies to encourage the growth of technology within the state's agricultural industries while protecting, as necessary, the integrity of existing agriculture and agricultural marketing channels.

Approved March 17, 2011.

CHAPTER 96  
(S.B. No. 1108)

AN ACT

RELATING TO EDUCATION; AMENDING SECTION 33-513, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CERTAIN BOARDS OF TRUSTEES' POWERS AND DUTIES RELATING TO PROFESSIONAL PERSONNEL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-514, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CERTAIN CATEGORIES OF CONTRACTS, TO REVISE PROVISIONS RELATING TO RENEWABLE CONTRACTS AND TO REVISE PROVISIONS RELATING TO EVALUATIONS; AMENDING SECTION 33-514A, IDAHO CODE, TO REMOVE LANGUAGE RELATING TO CERTAIN CONTRACTS AND TO PROVIDE PROVISIONS RELATING TO EMPLOYMENT PURSUANT TO CATEGORY A OR B CONTRACTS; AMENDING SECTION 33-515, IDAHO CODE, TO REVISE PROVISIONS RELATING TO RENEWABLE CONTRACTS, TO PROVIDE THAT NO BOARD OF TRUSTEES SHALL HAVE THE AUTHORITY TO ENTER INTO RENEWABLE CONTRACTS, TO PROVIDE EXCEPTIONS, TO PROVIDE FOR THE APPLICATION OF LAW, TO PROVIDE PROVISIONS RELATING TO REASSIGNMENT OF CERTAIN EMPLOYEES, TO REVISE PROVISIONS RELATING TO THE DISCHARGE OF CERTAIN PERSONS, TO DELETE LANGUAGE RELATING TO A DECLARATION AND TO PROVIDE PROVISIONS RELATING TO A GRANDFATHERED RENEWABLE CONTRACT; AMENDING SECTION 33-515A, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SUPPLEMENTAL CONTRACTS; AMENDING CHAPTER 5, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-515B, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO CONTRACT TERMINATION, REDUCED ENROLLMENT AND SEVERANCE PAYMENTS; AMENDING SECTION 33-516, IDAHO CODE, TO REVISE PROVISIONS RELATING TO A CERTAIN RENEWABLE CONTRACT AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION

33-521, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CERTAIN SEVERANCE PAYMENTS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 33-522, IDAHO CODE, TO DELETE PROVISIONS RELATING TO FINANCIAL EMERGENCY AND TO PROVIDE PROVISIONS RELATING TO REDUCTIONS IN FORCE; AMENDING CHAPTER 5, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-523, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO A PRINCIPAL'S PERMISSION IN DETERMINING NEW STAFF; AMENDING CHAPTER 5, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-524, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO SCHOOL DISTRICTS INFORMING EMPLOYEES OF PROFESSIONAL LIABILITY INSURANCE PROVIDERS; AMENDING SECTION 33-1003, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SPECIAL APPLICATIONS OF EDUCATIONAL SUPPORT PROGRAM AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 33-1004G, IDAHO CODE, RELATING TO EARLY RETIREMENT INCENTIVE; AMENDING SECTION 33-1004H, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SCHOOL DISTRICTS EMPLOYING RETIRED TEACHERS AND ADMINISTRATORS; AMENDING SECTION 33-1271, IDAHO CODE, TO REVISE PROVISIONS RELATING TO BOARDS OF TRUSTEES OR DESIGNATED REPRESENTATIVES OF SUCH, PROFESSIONAL EMPLOYEES, LOCAL EDUCATION ORGANIZATIONS OR DESIGNATED REPRESENTATIVES OF SUCH AND NEGOTIATION AGREEMENTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 12, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-1271A, IDAHO CODE, TO PROVIDE FOR LEGISLATIVE FINDINGS RELATING TO EVERGREEN OR CONTINUATION CLAUSES IN CERTAIN CONTRACTS OR AGREEMENTS AND TO PROVIDE THAT IT IS THE INTENT OF THE LEGISLATURE THAT CERTAIN CONTRACTS OR AGREEMENTS SHALL BE SUBJECT TO THE TERMS OF THIS ACT; AMENDING SECTION 33-1272, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-1273, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE SELECTION AND DESIGNATION OF REPRESENTATIVES FOR CERTAIN EMPLOYEES FOR PURPOSES OF NEGOTIATIONS AND TO REVISE PROVISIONS RELATING TO NEGOTIATIONS; AMENDING CHAPTER 12, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-1273A, IDAHO CODE, TO PROVIDE THAT CERTAIN NEGOTIATIONS OR MEETINGS SHALL BE OPEN AND AVAILABLE FOR THE PUBLIC TO ATTEND AND TO PROVIDE FOR APPLICATION OF CERTAIN DISCLOSURE LAWS; AMENDING SECTION 33-1274, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO MEDIATION AND TO PROVIDE PROVISIONS RELATING TO ESTABLISHING COMPENSATION UPON A FAILURE TO AGREE; AMENDING CHAPTER 12, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-1274A, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO PROCEDURE IN THE EVENT CERTAIN PARTIES AGREE AND TO PROVIDE PROVISIONS RELATING TO CERTAIN PARTIES FAILING TO RATIFY AND APPROVE AN AGREEMENT; AMENDING SECTION 33-1275, IDAHO CODE, TO DELETE LANGUAGE RELATING TO MEDIATION, FACT-FINDING AND CERTAIN HEARINGS AND TO PROVIDE PROVISIONS RELATING TO THE TERMS OF CERTAIN AGREEMENTS OR CONTRACTS; AMENDING SECTION 33-1276, IDAHO CODE, TO PROVIDE FOR THE INTENT OF THE ACT, TO PROVIDE THAT EACH SCHOOL DISTRICT BOARD OF TRUSTEES IS ENTITLED TO TAKE CERTAIN ACTION DUE TO SITUATIONS OF EMERGENCY OR ACTS OF GOD AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 33-402, IDAHO CODE, TO REMOVE A REFERENCE TO A FINANCIAL EMERGENCY AND TO MAKE TECHNICAL CORRECTIONS; PROVIDING SEVERABILITY, DECLARING AN EMERGENCY AND PROVIDING EFFECTIVE DATES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-513, Idaho Code, be, and the same is hereby amended to read as follows:

33-513. PROFESSIONAL PERSONNEL. The board of trustees of each school district including any specially chartered district, shall have the following powers and duties:

1. To employ professional personnel, on written contract in form approved by the state superintendent of public instruction, conditioned upon

the provisions of section 33-523, Idaho Code, and a valid certificate being held by such professional personnel at the time of entering upon the duties thereunder. Should the board of trustees fail to enter into written contract for the employment of any such person, the state superintendent of public instruction shall withhold ensuing apportionments until such written contract be entered into. When the board of trustees has delivered a proposed contract for the next ensuing year to any such person, such person shall have a period of time to be determined by the board of trustees in its discretion, but in no event less than ten (10) days from the date the contract is delivered, in which to sign the contract and return it to the board. If the board of trustees does not make a determination as to how long the person has to sign and return the contract, the default time limit shall be twenty-one (21) days after it is delivered to the person. Delivery of a contract may be made only in person or by certified mail, return receipt requested. When delivery is made in person, delivery of the contract must be acknowledged by a signed receipt. When delivery is made by certified mail, delivery must be acknowledged by the return of the certified mail receipt from the person to whom the contract was sent. Should the person willfully refuse to acknowledge receipt of the contract or the contract is not signed and returned to the board in the designated period of time, or if no designated period of time is set by the board, the default time, the board may declare the position vacant.

(a) The board of trustees shall withhold the salary of any teacher who does not hold a teaching certificate valid in this state. No teacher whose salary is withheld pursuant to this provision shall have the right to any amounts owed, notwithstanding the provisions of the Idaho wage claims act or any other provision of law.

(b) The board of trustees It shall not contract to require any teacher to make up time spent in attending any meeting called by the state board of education or by the state superintendent of public instruction; nor while attending regularly scheduled official meetings of the state teachers' association.

2. In the case of school districts other than elementary school districts, to employ a superintendent of schools for a term not to exceed three (3) years, who shall be the executive officer of the board of trustees with such powers and duties as the board may prescribe. The superintendent shall also act as the authorized representative of the district whenever such is required, unless some other person shall be named by the board of trustees to act as its authorized representative. The board of trustees shall conduct an annual, written formal evaluation of the work of the superintendent of the district. The evaluation shall indicate the strengths and weaknesses of the superintendent's job performance in the year immediately preceding the evaluation and areas where improvement in the superintendent's job performance, in the view of the board of trustees, is called for. For all evaluations conducted after June 30, 2012, at least fifty percent (50%) of the evaluation shall be based on objective measure(s) of growth in student achievement, as determined by the board of trustees.

3. To employ through written contract principals who shall hold a valid certificate appropriate to the position for which they are employed, who shall supervise the operation and management of the school in accordance with the policies established by the board of trustees and who shall be under the supervision of the superintendent.

4. To employ assistant superintendents, directors, and principals and other district administrative employees for a term not to exceed two (2) years. Service performed under such contract shall be included in meeting the provisions of section 33-515, Idaho Code, as a teacher and persons eligible for a renewable contract as a teacher holding renewable contract status in Idaho pursuant to section 33-515, Idaho Code, immediately previous to such administrative employment shall retain such eligibility.

The superintendent, the superintendent's designee, or in a school district that does not employ a superintendent, the board of trustees, shall conduct an annual, written evaluation of each such employee's performance. For all evaluations conducted after June 30, 2012, at least fifty percent (50%) of the evaluation shall be based on objective measure(s) of growth in student achievement, as determined by the board of trustees. In addition, input from the parents and guardians of students shall be considered as a factor in the evaluation of principals and any other school-based administrative employees' evaluation.

5. To suspend, grant leave of absence, place on probation or discharge certificated professional personnel for a material violation of any lawful rules or regulations of the board of trustees or of the state board of education, or for any conduct which could constitute grounds for revocation of a teaching certificate. Any certificated professional employee, except the superintendent, may be discharged during a contract term under the following procedures:

- (a) The superintendent or any other duly authorized administrative officer of the school district may recommend the discharge of any certificated employee by filing with the board of trustees written notice specifying the alleged reasons for discharge.
- (b) Upon receipt of such notice the board, acting through their duly authorized administrative official, shall give the affected employee written notice of the allegations and the recommendation of discharge, along with written notice of a hearing before the board prior to any determination by the board of the truth of the allegations.
- (c) The hearing shall be scheduled to take place not less than six (6) days nor more than twenty-one (21) days after receipt of the notice by the employee. The date provided for the hearing may be changed by mutual consent.
- (d) The hearing shall be public unless the employee requests in writing that it be in executive session.
- (e) All testimony at the hearing shall be given under oath or affirmation. Any member of the board, or the clerk of the board, may administer oaths to witnesses or affirmations by witnesses.
- (f) The employee may be represented by legal counsel and/or by a representative of a local or state teachers association.
- (g) The chairman of the board or the designee of the chairman shall conduct the hearing.
- (h) The board shall cause an electronic record of the hearing to be made or shall employ a competent reporter to take stenographic or stenotype notes of all the testimony at the hearing. A transcript of the hearing shall be provided at cost by the board upon request of the employee.
- (i) At the hearing the superintendent or other duly authorized administrative officer shall present evidence to substantiate the allegations contained in such notice.
- (j) The employee may produce evidence to refute the allegations. Any witness presented by the superintendent or by the employee shall be subject to cross-examination. The board may also examine witnesses and be represented by counsel.
- (k) The affected employee may file written briefs and arguments with the board within three (3) days after the close of the hearing or such other time as may be agreed upon by the affected employee and the board.
- (l) Within fifteen (15) days following the close of the hearing, the board shall determine and, acting through their duly authorized administrative official, shall notify the employee in writing whether the evidence presented at the hearing established the truth of the allegations and whether the employee is to be retained, immediately discharged, or discharged upon termination of the current contract.

(m) If the employee appeals the decision of the board of trustees to the district court, the district court may affirm the board's decision or set it aside and remand the matter to the board of trustees upon the following grounds, and shall not set the same aside for any other grounds:

(i) That the findings of fact are not based on any substantial, competent evidence;

(ii) That the board of trustees has acted without jurisdiction or in excess of its authority;

(iii) That the findings by the board of trustees as a matter of law do not support the decision.

(n) The determination of the board of trustees shall be affirmed unless the employee's substantial rights, as that term is used in section 67-5279, Idaho Code, are violated.

6. The board of trustees has the authority to grant any employee's request for a leave of absence. The board may also delegate this authority to the district superintendent or any other individual so designated by the board.

7. The board of trustees has the authority to delegate its authority to the district superintendent or any other individual so designated by the board. If the board delegates this authority to the district superintendent or any other individual, the board shall ratify or nullify the action of placing an employee on a period of suspension, or involuntary leave of absence at the next regularly scheduled board meeting or at a special board meeting should the next regularly scheduled board meeting not be within a period of twenty-one (21) days from the date of such action.

(a) Should an employee of the district be in a position where there is a court order preventing the employee from being in the presence of minors or students, the district may place such an employee on a period of unpaid leave of absence or probation due to the employee's inability to perform the essential functions of the employee's position.

SECTION 2. That Section 33-514, Idaho Code, be, and the same is hereby amended to read as follows:

33-514. ISSUANCE OF ANNUAL CONTRACTS -- SUPPORT PROGRAMS -- CATEGORIES OF CONTRACTS -- OPTIONAL PLACEMENT -- WRITTEN EVALUATION. (1) The board of trustees shall establish criteria and procedures for the supervision and evaluation of certificated employees who are not employed on a renewable contract, as provided for in section 33-515, Idaho Code.

(2) There shall be ~~three~~ two (32) categories of annual contracts available to local school districts under which to employ certificated personnel:

(a) A category 1 ~~A~~ contract is a limited ~~one-year~~ contract as provided in section 33-514A, Idaho Code.

~~(b) A category 2 contract is one (1) year contract for certificated personnel in the first and second or greater years of continuous employment with the same school district. Upon the decision by a local school board not to reemploy the person for the following year, the certificated employee shall be provided a written statement of reasons for non-reemployment by no later than May 25 July 1. Provided however, that no such decision shall be made until after the completion of the written evaluation required by subsection (4) of this section, unless such decision is being made pursuant to a reduction in force. No property rights shall attach to a category 2 A contract and therefore the employee shall not be entitled to a review by the local board of trustees of the reasons or decision not to reemploy.~~

~~(cb) A category 3 contract is for certificated personnel during the third year of continuous employment by the same school district. District procedures shall require at least one (1) evaluation prior to the beginning of the second semester of the school year and the results of~~

~~any such evaluation shall be made a matter of record in the employee's personnel file. When any such employee's work is found to be unsatisfactory a defined period of probation shall be established by the board, but in no case shall a probationary period be less than eight (8) weeks. After the probationary period, action shall be taken by the board as to whether the employee is to be retained, immediately discharged, discharged upon termination of the current contract or reemployed at the end of the contract term under a continued probationary status. Notwithstanding the provisions of sections 67-2344 and 67-2345, Idaho Code, a decision to place certificated personnel on probationary status may be made in executive session and the employee shall not be named in the minutes of the meeting. A record of the decision shall be placed in the employee's personnel file. This procedure shall not preclude recognition of unsatisfactory work at a subsequent evaluation and the establishment of a reasonable period of probation. In all instances, the employee shall be duly notified in writing of the areas of work which are deficient, including the conditions of probation. Each such certificated employee on a category 3 contract shall be given notice, in writing, whether he or she will be reemployed for the next ensuing year. Such notice shall be given by the board of trustees no later than the twenty-fifth day of May of each such year. If the board of trustees has decided not to reemploy the certificated employee, then the notice must contain a statement of reasons for such decision and the employee shall, upon request, be given the opportunity for an informal review of such decision by the board of trustees. The parameters of an informal review shall be determined by the local board~~ B contract is a limited two (2) year contract that may be offered at the sole discretion of the board of trustees for certificated personnel in their fourth or greater year of continuous employment with the same school district. The board of trustees may, at its sole discretion, add an additional year to such a contract upon the expiration of the first year, resulting in a new two (2) year contract. The board of trustees may, at its sole discretion, terminate the second year of a category B contract upon the conclusion of the first year, in the event of a reduction in force. Upon the decision by a board of trustees not to reemploy the person employed on a category B contract for the following year, the certificated employee shall be provided a written statement of reasons for non-reemployment by no later than July 1. The employee shall, upon request, be given the opportunity for an informal review of such decision by the board of trustees. The parameters of an informal review shall be determined by the local board. Provided however, that no such decision shall be made until after the completion of the written evaluation required by subsection (4) of this section, unless such decision is being made pursuant to a reduction in force. No property rights shall attach to a category B contract and therefore the employee shall not be entitled to a formal review by the board of trustees of the reasons or decision not to reemploy.

(3) School districts hiring an employee who has been on renewable contract status as provided in section 33-515, Idaho Code, with another Idaho district or has out-of-state experience which would otherwise qualify the certificated employee for renewable contract status in Idaho, shall have the option to immediately grant renewable contract status, or to place the employee on a category 3 annual A or B contract. Such employment on a category 3 contract under the provisions of this subsection may be for one (1), two (2) or three (3) years A certificated instructional employee hired with previous out-of-state experience shall not be eligible to receive a renewable contract, but may be offered a category A or B contract, based on the employee's years of experience, including out-of-state years of experience as if such years had been worked in Idaho.

(4) There shall be a minimum of ~~two~~ one (21) written evaluations in each of the annual contract years of employment, and at least ~~one~~ (1) evaluation the first portion of which shall be completed before January February 1 of each year, and shall include input from parents and guardians of students as a factor. ~~The provisions of this subsection (4) shall not apply to employees on a category 1 contract~~ A second portion shall be included for all evaluations conducted after June 30, 2012. This second portion shall comprise at least fifty percent (50%) of the total written evaluation and shall be based on objective measure(s) of growth in student achievement. The requirement to provide at least one (1) written evaluation does not exclude additional evaluations that may be performed. No civil action for money damages shall arise for failure to comply with this subsection.

SECTION 3. That Section 33-514A, Idaho Code, be, and the same is hereby amended to read as follows:

33-514A. ~~ISSUANCE OF LIMITED CONTRACT --~~ TRANSITION TO CATEGORY 1 A AND B CONTRACTS. After August 1, the board of trustees may exercise the option of employing certified personnel on a one (1) year limited contract, which may also be referred to as a category 1 contract consistent with the provisions of section 33-514, Idaho Code. Such a contract is specifically offered for the limited duration of the ensuing school year, and no further notice is required by the district to terminate the contract at the conclusion of the contract year (1) Any certificated employee employed pursuant to a category 1 or 2 contract, as defined by sections 33-514 and 33-514A, Idaho Code, as such sections existed on January 31, 2011, who will be offered an employment contract by the same school district for the ensuing school year, shall be employed pursuant to a category A contract.

(2) Any certificated employee employed pursuant to a category 3 contract, as defined in section 33-514, Idaho Code, as such section existed on January 31, 2011, who will be offered an employment contract by the same school district for the ensuing school year, shall be employed pursuant to a category A or B contract, as determined by the board of trustees.

SECTION 4. That Section 33-515, Idaho Code, be, and the same is hereby amended to read as follows:

33-515. ISSUANCE OF RENEWABLE CONTRACTS. (1) During the third full year of continuous employment by the same school district, including any specially chartered district, each certificated employee named in subsection (16) of section 33-1001, Idaho Code, and each school nurse and school librarian shall be evaluated for a renewable contract and shall, upon having been offered a contract for the next ensuing year, having given notice of acceptance of renewal and upon signing a contract for a fourth full year, be placed on a renewable contract status with said school district subject to the provisions included in this chapter It is the intent of the legislature that after January 31, 2011, no new employment contract between a school district and a certificated employee shall result in the vesting of tenure, continued expectations of employment or property rights in an employment relationship. Therefore, no board of trustees shall have the authority to enter into any renewable contract with any certificated or other employee hired by such district, except as specifically addressed by this section and section 33-514(3), Idaho Code. For any certificated employees already holding renewable contract status with a district as of January 31, 2011, the provisions of this section shall apply.

(2) After the third full year of employment and aAt least once annually, the performance of each such certificated employee, school nurse, or school librarian employed pursuant to a grandfathered renewable contract shall be evaluated according to criteria and procedures established by the board

of trustees in accordance with section 33-514(4), Idaho Code, and general guidelines approved by the state board of education. Except as otherwise provided, that person the employee employed pursuant to a grandfathered renewable contract shall have the right to the continued automatic renewal of that employee's employment contract by giving notice, in writing, of acceptance of renewal. Such notice shall be given to the board of trustees of the school district then employing such person not later than the first twentieth day of June preceding the expiration of the term of the current contract July. Except as otherwise provided by this paragraph, the board of trustees shall notify each person entitled to be employed on a grandfathered renewable contract of the requirement that such person must give the notice hereinabove and that failure to do so may be interpreted by the board as a declination of the right to automatic renewal or the offer of another contract. Such notification shall be made, in writing, not later than the fifteenth first day of May July, in each year, except to those persons to whom the board, prior to said date, has sent proposed contracts for the next ensuing year, or to whom the board has given the notice required by this section. These deadlines may not be altered by contract, including any currently existing or future negotiated agreement or master contract entered into pursuant to the professional negotiations act, sections 33-1271 through 33-1276, Idaho Code. Should any existing negotiated agreement or master contract contain such a provision as of January 31, 2011, such provision is declared to be null and void and of no force and effect as of January 31, 2011.

(3) Any contract automatically renewed under the provisions of this section shall be for the same length as the term stated in the current contract and at a salary no lower than that specified therein, to which shall be added such increments as may be determined by the statutory or regulatory rights of such employee by reason of training, service, or performance, except where a board of trustees has declared a financial emergency pursuant to section 33-522, Idaho Code may be renewed for a shorter term, longer term or the same length of term as the length of term stated in the current contract, and at a greater, lesser or equal salary to that stated in the current contract.

(4) Should the board of trustees determine to reassign an administrative employee who, prior to being employed as an administrative employee was employed pursuant to a renewable contract to a nonadministrative position, the board of trustees, at its discretion, shall employ such nonadministrative employee pursuant to a grandfathered renewable contract. Such contract shall be deemed to have continued in place as if the nonadministrative employee was employed by the district pursuant to a renewable contract since January 31, 2011. Such grandfathered renewable contract is subject to the provisions of this section.

(a) If the board of trustees reassigns an administrative employee to a nonadministrative position, the board shall give written notice to the employee which contains a statement of the reasons for the reassignment. The employee, upon written request to the board, shall be entitled to an informal review of that decision. The process and procedure for the informal review shall be determined by the board of trustees.

(4b) Nothing in this section shall prevent the board of trustees from offering a renewed grandfathered renewable contract increasing the salary of any certificated person, or from reassigning an administrative employee to a nonadministrative position with appropriate reduction of salary from the preexisting salary level. In the event the board of trustees reassigns an administrative employee to a nonadministrative position, the board shall give written notice to the employee which contains a statement of the reasons for the reassignment. The employee, upon written request to the board, shall be entitled to an informal review of that decision. The process and procedure for the

~~informal review shall be determined by the local board of trustees who is eligible to receive such a contract.~~

(5) ~~Before a board of trustees can determine not to renew for reasons of an the unsatisfactory report of the performance of any certificated person whose who holds a grandfathered renewable contract would otherwise be automatically renewed, or to renew the contract of any such person at a reduced salary, such person shall be entitled to a reasonable period of probation lasting at least six (6) instructional weeks, following an observation, evaluation or partial evaluation. This period of probation shall be preceded by a written notice from the board of trustees or its designee with reasons for such probationary period and with provisions for adequate supervision and evaluation of the person's performance during the probationary period. Such period of probation shall not affect the person's grandfathered renewable contract status. Consideration of probationary status for certificated personnel is consideration of the status of an employee within the meaning of section 67-2345, Idaho Code, and the consideration and decision to place an employee on probation may be held in executive session. If the consideration results in probationary status, the individual on probation shall not be named in the minutes of the meeting. A record of the decision shall be placed in the teacher's personnel file.~~

(6) ~~If the board of trustees takes action to immediately discharge or discharge upon termination of the current contract a certificated person whose contract would otherwise be automatically renewed, or to renew the contract of any such person at a reduced salary, the action of the board shall be consistent with the procedures specified in section 33-513(5), Idaho Code, and furthermore, the board shall notify the employee in writing whether there is just and reasonable cause not to renew the contract or to reduce the salary of the affected employee, and if so, what reasons it relied upon in that determination.~~

(7) ~~If the board of trustees takes action after the declaration of a financial emergency pursuant to section 33-522, Idaho Code, and such action is directed at more than one (1) certificated employee and, if mutually agreed to by both parties, a single informal review shall be conducted. Without mutual consent of both parties, the board of trustees shall use the following procedure to conduct a single due process hearing within sixty-seven (67) days of the declaration of financial emergency pursuant to section 33-522(2), Idaho Code, or on or before June 22, whichever shall occur first:~~

~~(a) The superintendent or any other duly authorized administrative officer of the school district may recommend the change in the length of the term stated in the current contract or reduce the salary of any certificated employee by filing with the board of trustees written notice specifying the purported reasons for such changes.~~

~~(b) Upon receipt of such notice, the board of trustees, acting through its duly authorized administrative official, shall give the affected employees written notice of the reductions and the recommendation of the change in the length of the term stated in the current contract or the reduction of salary, along with written notice of a hearing before the board of trustees prior to any determination by the board of trustees.~~

~~(c) The hearing shall be scheduled to take place not less than six (6) days nor more than fourteen (14) days after receipt of the notice by the employees. The date provided for the hearing may be changed by mutual consent.~~

~~(d) The hearing shall be open to the public.~~

~~(e) All testimony at the hearing shall be given under oath or affirmation. Any member of the board, or the clerk of the board of trustees, may administer oaths to witnesses or affirmations by witnesses.~~

- ~~(f) The employees may be represented by legal counsel and/or by a representative of a local or state education association.~~
- ~~(g) The chairman of the board of trustees or the designee of the chairman shall conduct the hearing.~~
- ~~(h) The board of trustees shall cause an electronic record of the hearing to be made or shall employ a competent reporter to take stenographic or stenotype notes of all the testimony at the hearing. A transcript of the hearing shall be provided at cost by the board of trustees upon request of the employee.~~
- ~~(i) At the hearing the superintendent or other duly authorized administrative officer shall present evidence to substantiate the reduction contained in such notice.~~
- ~~(j) The employees may produce evidence to refute the reduction. Any witness presented by the superintendent or by the employees shall be subject to cross-examination. The board of trustees may also examine witnesses and be represented by counsel.~~
- ~~(k) The affected employees may file written briefs and arguments with the board of trustees within three (3) days after the close of the hearing or such other time as may be agreed upon by the affected employees and the board of trustees.~~
- ~~(l) Within seven (7) days following the close of the hearing, the board of trustees shall determine and, acting through its duly authorized administrative official, shall notify the employees in writing whether the evidence presented at the hearing established the need for the action taken.~~

The due process hearing pursuant to this subsection (7) shall not be required if the board of trustees and the local education association reach an agreement on issues agreed upon pursuant to section 33-522(3), Idaho Code unless the decision to discharge upon termination has been made as part of a reduction in force, or the decision to immediately discharge has been made pursuant to section 33-515B, Idaho Code.

(87) If the board of trustees, for reasons other than unsatisfactory service, for the ensuing contract year, determines to change the length of the term stated in the current contract, or reduce the salary or not renew the contract of a certificated person whose contract would otherwise be is being automatically renewed, nothing herein shall require any due process proceedings or probationary period.

(8) If the board of trustees, for reason of a reduction in force, for the ensuing contract year determines not to renew the grandfathered renewable contract of a certificated person whose contract would otherwise be automatically renewed, nothing herein shall require any probationary period.

SECTION 5. That Section 33-515A, Idaho Code, be, and the same is hereby amended to read as follows:

33-515A. SUPPLEMENTAL CONTRACTS. (1) In addition to the provisions of sections 33-514, ~~33-514A~~ and 33-515, Idaho Code, a board of trustees may enter into supplemental contracts to provide extra duty assignments for certificated employees. An extra duty assignment is, and supplemental contracts may be used for, an assignment which is not part of a certificated employee's regular teaching duties. Any such supplemental extra duty contract shall be separate and apart from an annual, a category A, B or a grandfathered renewable or a limited one (1) year contract, and no property rights shall attach to a supplemental extra duty contract. The supplemental extra duty contract shall be in a form approved by the state superintendent of public instruction.

~~(2) If a board of trustees determines not to reissue a supplemental contract, the board shall give written notice to the employee describing reasons for the decision not to reissue. The employee, upon written request~~

~~to the board, shall be entitled to an informal review. The process and procedure for the informal review shall be determined by the local board of trustees. Within fifteen (15) days following the meeting with the employee, the board shall notify the employee of its final decision in the matter. Should a school district provide for additional procedures, nothing in this statute shall be interpreted to limit those procedures~~ In addition to the provisions of sections 33-514 and 33-515, Idaho Code, a board of trustees may enter into supplemental contracts to provide extra day assignments for certificated employees. An extra day assignment is an assignment of days of service in addition to the standard contract length used for the majority of certificated employees of the district. Such additional days may or may not be in service of the same activities of the employee's regular teaching duties. Any such contract shall be separate and apart from a category A, B or a grandfathered renewable contract and no property rights shall attach to a supplemental extra day contract. The supplemental extra day contract shall be in a form approved by the state superintendent of public instruction.

SECTION 6. That Chapter 5, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-515B, Idaho Code, and to read as follows:

33-515B. REDUCED ENROLLMENT -- CONTRACT TERMINATION AND SEVERANCE STIPEND. (1) Each certificated employee contract shall include a provision allowing the board of trustees to terminate the contract in the event of a reduction in student enrollment of greater than one percent (1%). The percent of certificated employees that may be so terminated shall be limited to the percent that enrollment decreased beyond said one percent (1%) reduction. The enrollment figures used for such calculations shall be the same as those used for the calculation of emergency levies pursuant to section 33-805, Idaho Code.

(2) The school district shall notify those employees whose contracts are being terminated by no later than October 1. Such termination shall be effective as of a date specified by the board of trustees, but shall be no earlier than two (2) weeks after the date that the employee received notification, and no later than the end of the current term. No other notification, hearing or other process shall be required to terminate the contracts of employees pursuant to this section.

(3) Selection of which employee contracts are to be terminated shall be at the sole discretion of the board of trustees, provided however, that the board of trustees shall not use seniority or contract status as a factor in making such determinations.

(4) Employees whose contracts are terminated under the provisions of this section shall receive a severance payment from the school district equal to ten percent (10%) of the moneys that had yet to be earned under the contract for the remainder of the school year.

(5) School districts shall furnish the state department of education with a list of employees whose contracts were terminated pursuant to this section, the dates on which such terminations were effective and the percentage of salary that had yet to be earned under the contract for the remainder of the school year. The state department of education shall calculate the salary-based apportionment and state-paid employee benefit amounts for each such employee, and, after reducing this allocation to account for the percent of the employee's salary that had already been earned for the school year, distribute ten percent (10%) of the remaining allocation to the school district as a reimbursement for severance payments made, from moneys appropriated to the educational support program.

SECTION 7. That Section 33-516, Idaho Code, be, and the same is hereby amended to read as follows:

33-516. RIGHT TO RENEWABLE CONTRACT WHEN DISTRICT IS DIVIDED, CONSOLIDATED OR REORGANIZED. If, by reason of the division of a school district, including any specially chartered district, or by reason of the consolidation of such a district with another district, or other districts, or by reason of the reorganization of such a district, the position held by any teacher entitled to a grandfathered renewable contract is transferred from the control of one (1) board of trustees to the control of a new or different board of trustees, the right to automatic renewal is not thereby lost, and such new or different board of trustees shall be subject to all of the provisions of this chapter with respect to such teacher in the same manner as if such teacher were its employee and had been its employee during the time such teacher was actually employed by the board of trustees from whose control the position was transferred.

SECTION 8. That Section 33-521, Idaho Code, be, and the same is hereby amended to read as follows:

33-521. EMPLOYEE SEVERANCE IN CONSOLIDATED DISTRICT. The board of trustees of any school district newly formed within the last twelve (12) months through the consolidation of two (2) or more school districts may offer a one (1) time severance payment to a maximum of ten percent (10%) of the employees that were previously employed by the separate school districts. Such severance offers shall be made entirely at the discretion of the board of trustees, and shall not be bound by custom, seniority or contractual commitment. Employees are under no obligation to accept a severance offer. Any employee accepting a severance payment shall not be eligible for reemployment by the school district for a one (1) year period thereafter.

The severance payment shall consist of fifty-five percent (55%) of the salary-based apportionment funds allocated for the employee in the last year, plus any applicable state paid employee benefits. ~~Such severance shall be reduced by one-half (1/2) for any employee who is simultaneously receiving a disbursement of early retirement incentive funds, pursuant to section 33-1004G, Idaho Code.~~ The state department of education shall reimburse eligible school districts for one hundred percent (100%) of such costs, upon application by the school district.

SECTION 9. That Section 33-522, Idaho Code, be, and the same is hereby amended to read as follows:

33-522. FINANCIAL EMERGENCY REDUCTIONS IN FORCE. ~~(1) Prior to declaring a financial emergency, the board of trustees shall hold a public meeting for the purpose of receiving input concerning possible solutions to the financial problems facing the school district.~~

~~(2) If the state department of education certifies that one (1) or more of the conditions in paragraph (a), (b) or (c) of this subsection are met, then the board of trustees may declare a financial emergency if it determines that the condition in paragraph (f) of this subsection is also met. Alternatively, the board of trustees may declare a financial emergency if it determines that either of the conditions in paragraph (d) or (e) of this subsection are met and the state department of education certifies that the condition set forth in paragraph (f) of this subsection is also met.~~

~~(a) Any of the base salary multipliers in section 33-1004E, Idaho Code, are reduced by one and one-half percent (1 1/2%) or more from any prior fiscal year.~~

~~(b) The minimum instructional salary provision in section 33-1004E, Idaho Code, is reduced by one and one-half percent (1 1/2%) or more from any prior fiscal year.~~

~~(c) The amount of total general fund money appropriated per support unit is reduced by greater than three percent (3%) from the original general fund appropriation per support unit of any prior fiscal year.~~

~~(d) The amount of property tax revenue to be collected by the school district that may be used for any general fund purpose, with the exception of any emergency levy funds, is reduced from the prior fiscal year, and the amount of said reduction represents more than five percent (5%) of the school district's general fund budget for combined state and local revenues from the prior fiscal year.~~

~~(e) The school district's general fund has decreased by at least three percent (3%) from the previous year's level due to a decrease in funding or natural disaster, but not as a result of a drop in the number of support units or the index multiplier calculated pursuant to section 33-1004A, Idaho Code, or a change in the emergency levy.~~

~~(f) The school district's unrestricted general fund balance, which excludes funds restricted by state or federal law and considering both anticipated expenditures and revenue, is less than five and one-half percent (5 1/2%) of the school district's unrestricted general fund budget at the time the financial emergency is declared or for the fiscal year for which the financial emergency is declared.~~

~~(3) Upon its declaration of a financial emergency, the board of trustees shall:~~

~~(a) Have the power to reopen the salary and benefits compensation aspects of the negotiated agreement, including the length of the certificated employee contracts and the amount of compensation and benefits; and~~

~~(b) If the parties to the negotiated agreement mutually agree, reopen other matters contained within the negotiated agreement directly affecting the financial circumstances in the school district.~~

~~If the board of trustees exercises the power provided in this subsection consistent with the requirements of subsection (2) of this section, both the board of trustees and the local education association shall meet and confer in good faith for the purpose of reaching an agreement on such issues.~~

~~(4) If, after the declaration of a financial emergency pursuant to subsection (2) of this section, both parties have met and conferred in good faith and an agreement has not been reached, the board of trustees may impose its last, best offer, following the outcome of the due process hearing held pursuant to section 33-515(7), Idaho Code.~~

~~(5) A financial emergency declared pursuant to subsection (2) of this section shall be effective for only one (1) fiscal year at a time and shall not be declared by the board of trustees for a second consecutive year, unless so qualified by additional reductions pursuant to the conditions listed in subsection (2) of this section.~~

~~(6) The time requirements of sections 33-514(2) and 33-515(2), Idaho Code, shall not apply in the event a financial emergency is declared pursuant to subsection (2) of this section. The decision to institute a reduction in force, and the selection of employee(s) subject to such reduction, shall be at the sole discretion of the board of trustees, except for the following limitation: The decision as to which employee(s) shall be subject to such reduction shall be made without consideration of employee seniority or contract status.~~

SECTION 10. That Chapter 5, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-523, Idaho Code, and to read as follows:

33-523. PRINCIPALS TO DETERMINE NEW STAFFING. The legislature finds that in order to fairly evaluate the performance of principals based on the growth in student performance at their schools, it is necessary to grant them

more control over the hiring and assignment of certificated employees to their schools. To this end, no certificated employee shall be transferred to a principal's school without the principal's permission, unless the transfer is being made due to shifting student population levels, nor shall a certificated individual who the board of trustees wishes to hire be assigned to the principal's school without the principal's permission. As a consequence of this requirement, no new certificated individual shall be considered hired, nor shall a contract be issued to such individual, until a principal has given permission for the assignment to their school. In the case of a transfer that is being made due to shifting student population levels, the principal shall be provided with a choice of at least two (2) individuals to be transferred for each position to be filled, unless there is only one (1) individual whose certificates or endorsements qualify them for the position. For the purposes of this section, the term "principal" also means the head of school of a public charter school.

SECTION 11. That Chapter 5, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-524, Idaho Code, and to read as follows:

33-524. **LIABILITY INSURANCE.** The legislature finds and declares:

(1) Educators make decisions everyday that may affect their families' financial future and therefore finds a need for educators to have accessible information about providers of professional liability insurance for educators.

(2) School districts seek to protect their employees from harmful liability and are also in the best position to inform employees about protections available to them.

(3) All employees of a school district shall be informed of all of their options in regards to professional liability insurance for educators. To that end school districts shall disclose to all employees a professional liability insurance for educators provider list. Districts shall encourage employees who have interaction with students to have such insurance although no employee is required to carry such insurance.

(4) School districts shall create a list for such disclosure. Any provider authorized by the state shall be added to the school district's list by request, if the insurance provided is underwritten by a licensed insurance company with an A.M. Best rating of B+ or better. No provider shall be denied if the provider is properly authorized within the state and meets the provisions of this section.

(5) Providers are required to submit complete and accurate information regarding their insurance to each school district in the state by June 30 in order for information to be included on the list for the ensuing school year. School districts receiving information regarding insurance after June 30 shall not be required to include the information in the list of insurance options.

(6) "Complete and accurate information" is defined as name of provider, business mailing address, telephone number and website information.

(7) School districts shall provide name of provider, business mailing address, telephone number and website information to all employees. School districts shall not endorse any provider, product or service.

(8) School districts are hereby required to provide all employees with a list of insurance options on the first day all teachers and staff are required to report back to school for the start of the school year. All employees shall be required to sign a form indicating that they have received information about their insurance options. School districts shall require employees to review and sign the disclosure each year he or she is employed with the district. Disclosure forms shall list the names of insurance providers disclosed to employees and remain on file with the school district. The dis-

closure forms shall be held for a period of three (3) years and shall be accessible to the public by request.

(9) School districts are required to provide substitute teachers and pre-service teachers with a list of insurance options prior to their first day of teaching in the school district. Substitute teachers and pre-service teachers will be required to sign a form indicating that they have received information about their insurance options. This form shall list the names of insurance providers disclosed to employees.

(10) Each school district shall have an updated list available upon request from an employee of that district. School districts may post such information on a staff website or the intranet.

(11) For the purposes of this section, "providers" refers to any provider of professional liability insurance for educators. "Employees" refers to all certificated and noncertificated staff in a school district. "List" refers to the document containing a description of all providers offering professional liability insurance for educators to employees of the school district. "Form" refers to a document to be signed by school district employees who acknowledge such disclosure.

SECTION 12. That Section 33-1003, Idaho Code, be, and the same is hereby amended to read as follows:

33-1003. SPECIAL APPLICATIONS OF EDUCATIONAL SUPPORT PROGRAM. (1) ~~Decrease in Average Daily Attendance. -- Any school district which has a decrease in total average daily attendance of one percent (1%) of its average daily attendance in the then current school year from the total average daily attendance used for determining the allowance in the educational support program for the school year immediately preceding, the allowance of funds from the educational support program may be based on the average daily attendance of the school year immediately preceding, less one percent (1%). When this provision is applied, the decrease in average daily attendance shall be proportionately distributed among the various categories of support units that are appropriate for the district.~~

(2) Application of Support Program to Separate Schools/Attendance Units in District.

(a) Separate Elementary School. -- Any separate elementary school shall be allowed to participate in the educational support program as though the school were the only elementary school operated by the district.

(b) Hardship Elementary School. -- Upon application of the board of trustees of a school district, the state board of education is empowered to determine that a given elementary school or elementary schools within the school district, not otherwise qualifying, are entitled to be counted as a separate elementary school as defined in section 33-1001, Idaho Code, when, in the discretion of the state board of education, special conditions exist warranting the retention of the school as a separate attendance unit and the retention results in a substantial increase in cost per pupil in average daily attendance above the average cost per pupil in average daily attendance of the remainder of the district's elementary grade school pupils. An elementary school operating as a previously approved hardship elementary school shall continue to be considered as a separate attendance unit, unless the hardship status of the elementary school is rescinded by the state board of education.

(c) Separate Secondary School. -- Any separate secondary school shall be allowed to participate in the educational support program as though the school were the only secondary school operated by the district.

(d) Elementary/Secondary School Attendance Units. -- Elementary grades in an elementary/secondary school will be funded as a separate attendance unit if all elementary grades served are situated more than

ten (10) miles distance from both the nearest like elementary grades within the same school district and from the location of the office of the superintendent of schools of such district, or from the office of the chief administrative officer of such district if the district employs no superintendent of schools. Secondary grades in an elementary/secondary school will be funded as a separate attendance unit if all secondary grades served are located more than fifteen (15) miles by an all-weather road from the nearest like secondary grades operated by the district.

(e) Hardship Secondary School. -- Any district which operated two (2) secondary schools separated by less than fifteen (15) miles, but which district was created through consolidation subsequent to legislative action pursuant to chapter 111, laws of 1947, and which school buildings were constructed prior to 1935, shall be entitled to count the schools as separate attendance units.

(f) Minimum Pupils Required. -- Any elementary school having less than ten (10) pupils in average daily attendance shall not be allowed to participate in the state or county support program unless the school has been approved for operation by the state board of education.

(32) Remote Schools. -- The board of trustees of any Idaho school district which operates and maintains a school which is remote and isolated from the other schools of the state because of geographical or topographical conditions may petition the state board of education to recognize and approve the school as a remote and necessary school. The petition shall be in form and content approved by the state board of education and shall provide such information as the state board of education may require. Petitions for the recognition of a school as a remote and necessary school shall be filed annually at least ninety (90) days prior to the date of the annual meeting of the board of trustees as established in section 33-510, Idaho Code.

Within forty-five (45) days after the receipt of a petition for the recognition of a remote and necessary school, the state board of education shall either approve or disapprove the petition and notify the board of trustees of its decision. Schools which the state board of education approves as being necessary and remote shall be allowed adequate funding within the support program for an acceptable educational program for the students of the school. In the case of a remote and necessary secondary school, grades 7-12, the educational program shall be deemed acceptable when, in the opinion of the state board of education, the accreditation standard relating to staff size, established in accordance with section 33-119, Idaho Code, has been met. The final determination of an acceptable program and adequate funding in the case of a remote and necessary elementary school shall be made by the state board of education.

(43) Support Program When District Boundaries are Changed.

(a) In new districts formed by the division of a district, the support program computed for the district, divided in its last year of operation, shall be apportioned to the new districts created by the division, in the proportion that the average daily attendance of pupils, elementary and secondary combined, residing in the area of each new district so created, is to the average daily attendance of all pupils, elementary and secondary combined, in the district divided in its last year of operation before the division.

(b) When boundaries of districts are changed by excision or annexation of territory, the support program of any district from which territory is excised for the last year of operation before such excision shall be divided, and apportioned among the districts involved, as prescribed in ~~subsection (4) paragraph (a)~~ of this subsection.

(c) In new districts formed by consolidation of former districts after January 1, 2007, the support program allowance, for a seven (7) year period following the formation of the new district, shall not be less than

the combined support program allowances of the component districts in the last year of operation before consolidation. After the expiration of this period, the state department of education shall annually calculate the number of support units that would have been generated had the previous school districts not consolidated. All applicable state funding to the consolidated district shall then be provided based on a support unit number that is halfway between this figure and the actual support units, provided that it cannot be less than the actual support units.

SECTION 13. That Section 33-1004G, Idaho Code, be, and the same is hereby repealed.

SECTION 14. That Section 33-1004H, Idaho Code, be, and the same is hereby amended to read as follows:

33-1004H. EMPLOYING RETIRED TEACHERS AND ADMINISTRATORS. (1) Notwithstanding the provisions of section 33-514, 33-1271 or 33-1273, Idaho Code, school districts may employ certificated school teachers and administrators who are receiving retirement benefits from the public employee retirement system of Idaho, except those who received benefits under the early retirement program previously provided in section 33-1004G, Idaho Code, by the state in positions requiring such certification, as at-will employees. Any employment contract between the retiree and the school district shall be separate and apart from the collective bargaining agreement of the school district.

(2) Retirees employed under this section shall accrue one (1) day per month of sick leave, with no annual sick leave accumulation unless additional sick leave is negotiated between the candidate and the school district at the time of employment. No sick leave accrued under this section qualifies for unused sick leave benefits under section 33-1228, Idaho Code.

(3) School districts are not required to provide health insurance or life insurance benefits to persons employed under this section. Post-termination benefits may be negotiated between the school district and the certificated employee at the time of rehiring but in no event can the parties affect or attempt to affect the provisions governing the public employee retirement system.

SECTION 15. That Section 33-1271, Idaho Code, be, and the same is hereby amended to read as follows:

33-1271. SCHOOL DISTRICTS -- PROFESSIONAL EMPLOYEES -- NEGOTIATION AGREEMENTS. The board of trustees of each school district, including specially chartered districts, or the designated representative(s) of such district, is hereby empowered to and shall, upon its own initiative or upon the request of a local education organization representing a majority of the professional employees, enter into a negotiation agreement request negotiations with the local education organization or the designated representative(s) of such organization on behalf of the professional employees employed by the school district and negotiate with such party in good faith on those matters specified in any such negotiation agreement between the local board of trustees and the local education organization related to compensation of professional employees. A request for negotiations may be initiated by either party to such negotiation agreement the local education organization or entity seeking to be designated the local education organization, or the board of trustees.

(1) Accurate records or minutes of the proceedings shall be kept, and shall be available for public inspection at the offices of the board of education during normal business hours.

(2) Joint ratification of all final offers of settlement shall be made in open meetings and notice of the ratification activity shall be provided to the parties to the agreement.

(3) As the subject matter of negotiations is compensation provided through public funding, all negotiation sessions of the parties shall be conducted in open session, with all members of the public able to attend.

SECTION 16. That Chapter 12, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-1271A, Idaho Code, and to read as follows:

33-1271A. EXISTING AGREEMENTS. The legislature finds the inclusion of evergreen or continuation clauses in master contracts or negotiated agreements to be against the public policy of the state of Idaho. Such clauses purport to bind in perpetuity the actions of future elected boards of trustees, subvert the ability of the people to direct their own affairs through the free election of trustees, and are contrary to the tenets of a free republic. Therefore, it is the intent of the legislature that any master contract or negotiated agreement, by any name or title, existing as a result of negotiations between a board of trustees and a local education organization shall be subject to the terms of this act, regardless of any evergreen or continuation clause included in such contract or agreement.

SECTION 17. That Section 33-1272, Idaho Code, be, and the same is hereby amended to read as follows:

33-1272. DEFINITIONS. Definition of terms as used in this act:

1. "Professional employee" means any certificated employee of a school district, including charter districts; provided, however, that superintendents, supervisors or principals may be excluded from the professional employee group if a negotiation agreement between the board and local education organization so specifies.

2. "Local education organization" means any local district organization duly chosen and selected by a majority of the professional employees as their representative organization for negotiations under this act. For the purposes of this definition, "majority" shall mean one (1) certificated professional employee more than fifty percent (50%) or greater of the professional employees in the district.

3. "Negotiations" means meeting and conferring in good faith in open session by a local board of trustees and the authorized local education organization, or the respective designated representatives of both parties, for the purpose of reaching an agreement, ~~upon matters and conditions subject to negotiations as specified in a negotiation agreement between said parties related to the compensation of professional employees.~~

4. "Compensation" means salary and benefits for the professional employee.

5. "Benefits" includes employee insurance, leave time and sick leave benefits.

SECTION 18. That Section 33-1273, Idaho Code, be, and the same is hereby amended to read as follows:

~~33-1273. SCHOOL DISTRICTS -- PROFESSIONAL EMPLOYEES -- NEGOTIATIONS DESIGNATION OF THE LOCAL EDUCATION ORGANIZATION -- DESIGNATION OF REPRESENTATIVES -- OBLIGATION TO NEGOTIATE.~~ (1) The local education organization selected by a majority of the qualifying professional employees shall be the exclusive representative for all professional employees in that district for purposes of negotiations.

(a) At the commencement of each school year, the local education association identified in the agreement from the prior year, if such existed, shall certify to the board of trustees that the local education association has been selected and designated as the local education organization for the professional employees of the district. This certification shall be provided in writing on a form agreed upon between the parties as one (1) of the options detailed below. The purpose of such certification is to provide the district's administration and board with notice of the appropriate entity for the administration and board to work with relating to personnel matters.

(b) Within ten (10) days of the date a request for negotiations is initiated by either the local education organization or the board of trustees or its designee, the local education organization must provide proof that it has been duly chosen by a majority of the professional employees of the district as their representative organization for negotiations under this act. Such proof may be:

(i) A list of certificated professional employees, who would be subject to the agreement, who are members of the local education organization as of the date that the request for negotiations is initiated; or

(ii) Other evidence that the professional employees have chosen and selected the local education organization as their representative organization as of the date that the request for negotiations is initiated.

(c) If the local education organization or entity seeking to be declared the local education organization cannot provide evidence that the majority of the professional employees have chosen and selected it as the representative organization, the district shall have no obligation or authority to enter into negotiations as provided in this act.

(2) The individual or individuals selected to negotiate for the professional employees shall be a member of the organization designated to represent the professional employees and shall be a certificated professional employee of the local school district. However, in the event a local board of trustees chooses to designate any individual(s) other than the superintendent or elected trustee(s) of the school district as its representative(s) for negotiations, the local educational organization is authorized to designate any individual(s) of its choosing to act as its representative(s) for negotiations. A local board of trustees or its designated representative(s) shall negotiate matters covered by a negotiations agreement pursuant to section 33-1272, Idaho Code, only with the local education organization or its designated representative(s).

(3) Should there be no entity that qualifies as a local education organization by May 10, the board has no obligation or authority to negotiate as required under this act, and may establish compensation for professional employees for the ensuing school year as it deems appropriate.

SECTION 19. That Chapter 12, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-1273A, Idaho Code, and to read as follows:

33-1273A. NEGOTIATIONS IN OPEN SESSION. Any other provision of law notwithstanding, including any provisions to the contrary in section 67-2345, Idaho Code, all negotiations or meetings allowed or required pursuant to this act shall be in open session and shall be open and available for the public to attend. In addition, all documentation exchanged between the parties during negotiations, including all offers, counteroffers and meeting minutes shall be subject to public writings disclosure laws.

SECTION 20. That Section 33-1274, Idaho Code, be, and the same is hereby amended to read as follows:

~~33-1274. APPOINTMENT OF MEDIATORS --- COMPENSATION MEDIATION -- ESTABLISHMENT OF COMPENSATION TERMS UPON FAILURE TO AGREE.~~ (1) In the event the parties in negotiations are not able to come to an agreement upon items submitted for negotiations under a negotiations agreement between the parties, one or more mediators may be appointed. The issue or issues in dispute shall be submitted to mediation at the request of either party in an effort to induce the representatives of the board and the local education organization to resolve the conflict. The procedures for appointment of and compensation for the mediators shall be determined by both parties compensation for professional employees by May 10, if agreed to by both parties, a mediator may be appointed. The issue or issues in dispute shall be submitted to mediation in an effort to induce the representatives of the board of trustees and the local education organization to resolve the conflict. The procedure for appointment of and compensation for the mediator shall be determined by both parties. Mediation is nonbinding, and the recommendation or recommendations of the mediator, if any, shall not be construed as having any force or effect.

(2) If no agreement regarding compensation has been reached by the parties on or before June 10, the board of trustees, at a meeting held no later than June 22, shall establish compensation for professional employees for the ensuing school year as it deems appropriate.

(3) If the board of trustees establishes compensation pursuant to subsection (2) of this section, no hearing need be held by the board.

(4) The dates of June 10 and June 22 are not arbitrary or discretionary dates that may be modified by agreement of the parties. The only instance in which the days may be extended is if June 10 or June 22 fall on a Sunday. In such situation the board of trustees may, at its discretion, extend these days to June 11 or June 23.

SECTION 21. That Chapter 12, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-1274A, Idaho Code, and to read as follows:

33-1274A. PROCEDURES UPON AGREEMENT. (1) In the event the parties in negotiations agree regarding compensation of professional employees at any time prior to June 10, such agreement shall be placed in writing by the persons who negotiated on behalf of the board of trustees and the local education organization. Such written agreement shall be offered for approval and ratification by the local education organization at an open meeting on or before June 15. If such written agreement is approved and ratified by the local education organization on or before June 15, it shall thereafter be approved or disapproved by the board of trustees at a board meeting held on or before June 22.

(2) Should the local education association or the board of trustees fail to ratify and approve the written agreement as provided for in this section, the board of trustees shall establish other compensation terms, as independently determined by the board and not controlled by the terms which failed ratification, for professional employees as provided in section 33-1274, Idaho Code.

SECTION 22. That Section 33-1275, Idaho Code, be, and the same is hereby amended to read as follows:

~~33-1275. FACT-FINDERS -- APPOINTMENT -- HEARINGS TERMS OF AGREEMENTS.~~ 1. If mediation fails to bring agreement on all negotiable issues, the issues which remain in dispute may be submitted to fact-finding by

~~request of either party. One or more fact-finders shall be appointed by the parties by mutual agreement. If such agreement cannot be reached within thirty (30) days of the request for such appointment, the state superintendent of public instruction shall make such appointment. The fact-finder shall have authority to establish procedural rules, conduct investigations and hold hearings during which each party to the dispute shall be given an opportunity to present its case with supporting evidence (1) All negotiated agreements or master contracts, by any name or title, entered into pursuant to the provisions of this act, shall have a term of July 1 through June 30 of the ensuing fiscal year. The board of trustees shall not have the authority to enter into any agreement negotiated under the provisions of this act that has any clause or provision which allows for such agreement to be in any force or effect for multiple years or indefinitely, or otherwise does not expire on its own terms on or before June 30 of the ensuing fiscal year.~~

~~2. Within thirty (30) days following designation of the fact-finder, he shall submit a report in writing to the respective representatives of the board and the professional employees, setting forth findings of fact and recommendations on the issues submitted (2) Any agreement or contract previously entered pursuant to the provisions of sections 33-1271 through 33-1276, Idaho Code, shall be deemed to expire as of June 30, 2011, regardless of any evergreen, continuation or other clause included in such contract which provides for continuation beyond June 30, 2011. In addition, any term of any existing agreement which conflicts with the current provisions of title 33, Idaho Code, is hereby declared void and unenforceable from the date of July 1, 2011.~~

SECTION 23. That Section 33-1276, Idaho Code, be, and the same is hereby amended to read as follows:

33-1276. INTENT OF ACT. Nothing contained herein is intended to or shall conflict with, or abrogate, the powers or duties and responsibilities vested in the legislature, state board of education, and the board of trustees of school districts by the laws of the state of Idaho. Each school district board of trustees is entitled, ~~without negotiation or reference to any negotiated agreement,~~ to take action that may be necessary to carry out its responsibility due to situations of emergency or acts of God.

SECTION 24. That Section 33-402, Idaho Code, be, and the same is hereby amended to read as follows:

33-402. NOTICE REQUIREMENTS.

~~(1) (a) (b) (c) (d) (e) (f) (g) (2) a b c d e (3) (4) (5)~~  
 (61) Notice of annual meeting of elementary school districts as provided for in section 33-510, Idaho Code, and of intent to discontinue a school, as provided for in section 33-511, Idaho Code, and annual budget hearing as provided for in section 33-801, Idaho Code, shall be given by posting ~~(2)~~ for not less than ten (10) days, and publishing once in a newspaper as provided in section 60-106, Idaho Code, published within the district, or, if there be none, then in a newspaper as provided in section 60-106, Idaho Code, published in the county in which such district lies. If more than one (1) newspaper is printed and published in said district or county, then in the newspaper most likely to give best general notice of the election within said district; provided that if no newspaper is published in the said district or county, then in a newspaper as provided in section 60-106, Idaho Code, most likely to give best general notice of the election within the district. If a financial emergency has been declared pursuant to section 33-522, Idaho Code, the notice of annual meeting and the notice of the annual budget hearing shall be posted pursuant to subsection (2) of this section, for not less than five (5) days, and by such further notice as shall provide reasonable

~~notice to the patrons of the school district if publication in a newspaper is not feasible.~~

(72) Notices calling for bids for the acquisition, use, or disposal of real and personal property as provided for in section 33-601, Idaho Code, and contracting for transportation services as provided for in section 33-1510, Idaho Code, shall be given in a newspaper of general circulation as required by chapter 1, title 60, Idaho Code, except that the notice for contracting for transportation services shall be made not less than four (4) weeks before the date of opening bids.

(83) Proof of posting notice shall be upon the affidavit of the person posting the same; and proof of publication shall be upon the affidavit of the publisher of the newspaper or newspapers respectively. Such affidavits shall be filed with the board by the clerk responsible for the posting and the publishing of said notice.

SECTION 25. 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 the remaining portions of this act.

SECTION 26. An emergency existing therefor, which emergency is hereby declared to exist, Sections 1, 2, 3, 4, 5, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of this act shall be in full force and effect on and after passage and approval. Sections 6, 10, 11 and 12, shall be in full force and effect on and after July 1, 2011.

Approved March 17, 2011.

CHAPTER 97  
(S.B. No. 1110)

AN ACT

RELATING TO EDUCATION; AMENDING CHAPTER 10, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-1004I, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO PAY FOR PERFORMANCE, HARD TO FILL POSITIONS, LEADERSHIP AWARDS AND TO PROVIDE FOR DISTRIBUTION OF MONEYS; TO PROVIDE THAT NOTHING IN THIS ACT SHALL PREVENT THE LEGISLATURE FROM ADJUSTING COMPONENTS OF CERTAIN FUNDING FORMULAS PURSUANT TO THE NEEDS OF PUBLIC SCHOOLS AND THE CONSTITUTIONAL REQUIREMENT THAT THE STATE MAINTAIN A BALANCED BUDGET; PROVIDING SEVERABILITY; AND PROVIDING EFFECTIVE DATES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 10, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-1004I, Idaho Code, and to read as follows:

33-1004I. PAY FOR PERFORMANCE -- HARD TO FILL POSITIONS -- LEADERSHIP AWARDS. (1) In addition to the moneys provided pursuant to the calculations for salary-based apportionment, the following amounts shall be distributed and paid, from the moneys appropriated to the educational support program, subject to the criteria contained in this section:

(a) For fiscal year 2013, an amount equal to five hundred seven (507) multiplied by the per statewide support unit value of salary-based apportionment and discretionary funds shall be distributed pursuant to subsection (2) of this section.

(b) For fiscal year 2014, an amount equal to six hundred eighty (680) multiplied by the per statewide support unit value of salary-based apportionment and discretionary funds shall be distributed pursuant to subsections (2), (3) and (4) of this section, in the following proportions:

- (i) Seventy-four and one-tenth percent (74.1%) pursuant to subsection (2) of this section;
- (ii) Seven and four-tenths percent (7.4%) pursuant to subsection (3) of this section;
- (iii) Eighteen and one-half percent (18.5%) pursuant to subsection (4) of this section.

(c) For fiscal year 2015 and each fiscal year thereafter, an amount equal to six hundred eighty (680) multiplied by the per statewide support unit value of salary-based apportionment and discretionary funds shall be distributed pursuant to subsections (2), (3) and (4) of this section, plus fifty percent (50%) of any moneys appropriated for increased pay for certificated staff beyond the amount needed to fund the base and minimum instructional salaries, pursuant to section 33-1004E, Idaho Code, that were in effect during fiscal year 2009. Such distributions made pursuant to subsections (2), (3) and (4) of this section shall be made according to the allocations established in subsection (1) (b) of this section.

(d) The provision in subsection (1) (c) of this section that directs that fifty percent (50%) of certain moneys be distributed pursuant to subsections (2), (3) and (4) of this section shall be effective until such time as fifteen percent (15%) of the total moneys appropriated for certificated staff salaries are being distributed pursuant to this section. After this allocation is attained, fifteen percent (15%) of the total moneys appropriated for certificated staff salaries shall be distributed pursuant to subsections (2), (3) and (4) of this section. Such distributions made pursuant to subsections (2), (3) and (4) of this section shall be made according to the allocations established in subsection (1) (b) of this section.

(e) For the purposes of this subsection, the term "statewide support units" shall mean the total number of support units calculated for the purposes of distributing salary-based apportionment in the current fiscal year.

(f) In the event of a reduction in the moneys appropriated for certificated staff salaries, the calculations established pursuant to subsections (1) (b) through (d) of this section shall be performed in reverse.

(2) Share-based pay for performance bonuses for student achievement growth and excellence.

(a) Certificated employees shall be awarded state shares based on the performance of whole schools.

- (i) Growth -- Utilizing a state longitudinal data system for students, the state department of education shall develop a system for measuring individual student growth. Such system shall compare spring student scores on the state-mandated summative achievement tests ("spring test") from one year to the next, and establish percentile rankings for individual student growth by comparing students with an identical spring test score in the previous year with each other in the current year. A separate growth percentile shall be established for each student for each subject in which the spring test is given in consecutive grades. The median student growth percentile, based on measuring all eligible students, shall be the growth score for each school. All certificated employees at a school with a median growth score in the following ranked quartiles shall be awarded state shares as follows:

	Instructional	Administrative
1st Highest Quartile	1.00 shares	2.00 shares
2nd Highest Quartile	0.50 shares	1.00 shares
3rd Highest Quartile	0.25 shares	0.50 shares
4th Highest Quartile	0.00 shares	0.00 shares

(ii) Excellence -- The state department of education shall develop a system for comparing and ranking school spring test scores based on standardized scores, utilizing all grades and subjects tested. Based on each school's median standardized score, all certificated employees of a school in the following ranked quartiles shall be awarded state shares as follows:

	Instructional	Administrative
1st Highest Quartile	0.50 shares	1.00 shares
2nd Highest Quartile	0.25 shares	0.50 shares
3rd Highest Quartile	0.00 shares	0.00 shares
4th Highest Quartile	0.00 shares	0.00 shares

(iii) No certificated instructional employee shall receive more than one (1.00) share, the results of the quartile award tables for growth and excellence notwithstanding. No certificated administrative employee shall receive more than two (2.00) shares, the results of the quartile award tables for growth and excellence notwithstanding.

(iv) Students whose spring test results are excluded from the school's results for federal accountability purposes shall be excluded from school growth and excellence calculations.

(v) For schools that do not administer the spring test, or for which no spring test growth calculation is possible, the school and its certificated employees shall be included with the school to which the students matriculate.

(vi) For certificated employees assigned more than one (1) school, state shares shall be earned pro rata, based on the percentage of the employee's time assigned to each school at the time that students take their spring tests. In addition, for part-time employees, state shares shall be earned pro rata, based on such employee's full-time equivalency status.

(vii) The number of schools in each quartile shall be based on the number of certificated employees employed at the schools, with as close to twenty-five percent (25%) of such employees falling within each quartile as possible.

(viii) For certificated employees not assigned to a specific school, all new employment contracts signed on or after July 1, 2011, shall provide that at least five percent (5%) of the total available compensation be based on growth in student achievement, as determined by the board of trustees. Such percentage shall increase to ten percent (10%) of the total available compensation for contracts signed on or after July 1, 2015, and fifteen percent (15%) for contracts signed on or after July 1, 2019.

(b) Local shares shall be awarded to certificated employees based on performance. Each board of trustees shall develop a plan for awarding local pay for performance shares in consultation with certificated employees. Local share awards to certificated instructional employees shall be based on the performance of groups of such employees, unless there is only one (1) such employee in the school district. No employee shall receive more than one (1.00) local share. For part-time employ-

ees, local shares shall be earned pro rata, based on such employee's full-time equivalency status. Local share awards shall be based on one (1) or more of the following measures:

- (i) Student test scores;
- (ii) Student graduation rate;
- (iii) Student dropout rate;
- (iv) Percent of graduates attending postsecondary education or entering military service;
- (v) Making federally approved adequate yearly progress;
- (vi) Number of students successfully completing dual credit or advanced placement classes;
- (vii) Percent of students involved in extracurricular activities;
- (viii) Class projects;
- (ix) Portfolios;
- (x) Successful completion of special student assignments;
- (xi) Parental involvement;
- (xii) Teacher-assigned grades; and
- (xiii) Student attendance rate.

For any school district in which the board of trustees fails to adopt a plan for awarding local pay for performance shares by September 1, local shares awarded for performance in that school year shall be identical to the number of state shares awarded for each certificated employee.

(c) Individual pay for performance bonuses shall be calculated as follows:

- (i) Divide the moneys available for pay for performance bonuses by the total number of state shares earned by certificated employees statewide.
- (ii) To determine the amount of pay for performance bonus funds to distribute to each school district, multiply the result of subparagraph (i) of this subsection by the number of state shares earned by certificated employees in the school district.
- (iii) To establish the value of a share in each school district, the school district shall divide the funds distributed by the state department of education pursuant to subparagraph (ii) of this subsection by the total number of state and local shares earned by all certificated employees who earned at least a fraction of both a state and local share.
- (iv) Multiply the total number of state and local shares earned by each certificated employee of the school district who earned at least a fraction of a state and local share by the result of subparagraph (iii) of this subsection. Certificated employees who do not earn at least a fraction of both a state and local share shall not be eligible to receive a pay for performance bonus. Pay for performance bonuses shall be paid by school districts to qualifying certificated employees in a lump sum by no later than December 15 following the spring test of the prior school year.

(3) Hard to fill position bonuses.

(a) The state board of education shall designate certificates and endorsements held by certificated instructional staff for hard to fill position bonuses. The board shall rank the certificates or endorsements to be so designated based on the relative difficulty of school districts' ability to recruit and retain such personnel. No additional certificates or endorsements may be added to the rankings beyond the first such certificate or endorsement that causes the number of certificates or endorsements to equal or exceed one-third (1/3) of the total certificates and endorsements held by certificated instructional public school employees in the state. The board shall review and alter such rankings and designations at least once every two (2) years based

on market conditions. Any changes in rankings and designations shall be made by the board by no later than March 31 of the previous school year, and school districts shall be promptly notified of any changes.

(b) School district boards of trustees may choose to designate certificates and endorsements held by certificated instructional employees for hard to fill position bonuses, provided such certificates and endorsements have been so designated by the state board of education as provided in subsection (3)(a) of this section. School boards of trustees choosing to make such designations shall rank the certificates and endorsements based on the relative difficulty of recruiting and retaining such personnel. No additional certificates or endorsements may be added to the rankings beyond the first such certificate or endorsement that causes the number of the district's full-time equivalent employees utilizing such certificates and endorsements to equal or exceed ten percent (10%) of the certificated instructional positions employed by the district; provided however, the number of such employees who may be designated shall not be less than one (1). The amount distributed for utilization by each district shall be based on each district's share of the total certificated instructional employees statewide. Funds so distributed shall be paid solely to certificated instructional personnel holding the certifications and endorsements designated by the local school board, in amounts that shall be determined at the discretion of the local board, which may vary between, but not within, individual certificate and endorsement areas; provided however, no award shall exceed twice the statewide average bonus paid per certificated instructional employee pursuant to subsection (2) of this section.

(c) School districts may apply to the state board of education to waive the requirement that a certificate or endorsement designated by the school district for hard to fill position bonuses first be designated for such by the state board of education. The state board of education may grant such a waiver for good and rational cause.

(d) In order to receive a hard to fill position bonus, an individual must actually be providing instruction or service within the designated certificate or endorsement area.

(e) If an individual qualifies for a hard to fill position bonus in more than one (1) certificate or endorsement, the individual shall be allocated and paid on a full-time equivalency basis, based on the relative time spent in each of the qualifying areas.

(f) School district boards of trustees choosing to utilize hard to fill position bonus funds shall designate a new list of certificates and endorsements for such bonuses for each school year by no later than June 11 of the previous school year. The new list may be identical to the list from the previous school year, subject to the current ten percent (10%) limitation requirements.

(g) If the board of trustees determines that it will be unable to attract a qualified candidate to serve in a hard to fill position, even with the addition of such bonus funds, the board may use such funds to pay for the training and coursework needed by a currently unqualified employee or other individual to gain such qualification. If such payment is authorized, the amount paid for an individual in a fiscal year shall not exceed twice the statewide average bonus paid per certificated instructional employee pursuant to subsection (2) of this section. The individual for whom training and coursework is paid in such manner must earn a passing grade for the training and coursework that is paid by the school district and must work for the school district at least one (1) year in the designated certificate or endorsement area for each fiscal year in which the school district made payments for training and coursework, or repay the funds.

(h) Hard to fill position bonuses shall be paid by school districts to qualifying certificated instructional employees by no later than December 15, in a lump sum payment.

(4) Leadership awards.

(a) School district boards of trustees may designate up to twenty-five percent (25%) of their certificated instructional employees for leadership awards. Such awards shall recognize excellence, be valid only for the fiscal year for which the awards are made and require one (1) or more of the following additional duties:

- (i) Teacher or other instructional staff mentoring;
  - (ii) Content leadership;
  - (iii) Lead teacher;
  - (iv) Peer teaching coach;
  - (v) Content specialist;
  - (vi) Remedial instructor;
  - (vii) Curriculum development;
  - (viii) Assessment development;
  - (ix) Data analysis;
  - (x) Grant writing;
  - (xi) Special program coordinator;
  - (xii) Research project;
  - (xiii) Teaching professional development course;
  - (xiv) Service on local/state/national education committee or task force;
  - (xv) Providing leadership to a professional learning community;
- and
- (xvi) Earning national board certification.

Duties related to student activities and athletics shall not be eligible for leadership awards.

(b) Local school district boards of trustees shall require that the employee work additional time as a condition of the receipt of a leadership award.

(c) Local school district boards of trustees may grant multiple leadership awards with multiple additional duties. No employee, however, shall receive leadership awards in excess of twice the statewide average bonus paid per certificated instructional employee pursuant to subsection (2) of this section.

(d) Leadership awards shall be paid by school districts to qualifying certificated instructional employees in a lump sum payment upon completion of the additional duty.

(e) Employees with fewer than three (3) years of experience shall not be eligible for leadership awards. The term "experience" shall be as used for certificated instructional staff in section 33-1004A, Idaho Code.

(f) Notwithstanding the provisions of subsection (4) (a) through (e) of this section, employees who earned national board certification prior to July 1, 2011, and who are no longer receiving payments for earning such certification pursuant to section 33-1004E, Idaho Code, due to the repeal of the provision providing for such payments, shall be paid two thousand dollars (\$2,000) per year from the moneys allocated pursuant to this subsection (4) until all moneys that would have been paid under the previous provisions of section 33-1004E, Idaho Code, have been paid.

(5) School districts may shift moneys between the allocations for subsections (3) and (4) of this section. The ten percent (10%) limitation established in subsection (3) of this section and the twenty-five percent (25%) limitation established in subsection (4) of this section shall be adjusted accordingly.

(6) All distributions of moneys to school districts shall be made as part of the third payment to school districts required by section 33-1009, Idaho Code.

(7) School districts shall not enter into any contract that discriminates against those receiving a bonus award pursuant to this section.

(8) The state department of education may require reports of information as needed to implement the provisions of this section and provide reports to the governor, the legislature and the public.

(9) For the purposes of this section, the term "school district" also means "public charter school," and the term "board of trustees" also means "board of directors."

SECTION 2. Nothing in this act shall prevent the Legislature from adjusting any component of any public school funding formula in any fiscal year, pursuant to the needs of public schools and the constitutional requirement that the state of Idaho maintain a balanced budget.

SECTION 3. 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 the remaining portions of this act.

SECTION 4. Sections 1, 2 and 3 of this act shall be in full force and effect on and after July 1, 2012.

Approved March 17, 2011.

CHAPTER 98  
(S.B. No. 1018)

AN ACT

RELATING TO THE DIVISION OF HUMAN RESOURCES; AMENDING SECTION 67-5309, IDAHO CODE, TO REVISE PROVISIONS RELATING TO RULES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5309, Idaho Code, be, and the same is hereby amended to read as follows:

67-5309. RULES OF THE DIVISION OF HUMAN RESOURCES AND THE PERSONNEL COMMISSION. The administrator of the division of human resources shall have the power and authority to adopt, amend, or rescind such rules as may be necessary for proper administration of this chapter. Such rules shall include:

(a) A rule requiring the administrator, after consulting with each department to develop, adopt, and make effective, a job classification system for positions covered by this chapter, based upon an analysis of the duties and responsibilities of the positions. The job classification shall include an appropriate title for each class, and a description of duties and responsibilities of positions in the classes and the requirements of minimum training, experience and other qualifications, suitable for the performance of duties of the position.

(b) A rule describing the relevant labor markets and benchmark job classifications used in the administrator's salary surveys.

(c) A rule requiring that all classes of positions which are common to the departments concerned shall have the same titles, minimum requirements and compensation ranges.

(d) A rule providing for review by the administrator of the personnel system including classifications and compensation policies and procedures.

(e) A rule that, notwithstanding the procedure for examination and ranking of eligibles on a register provided in subsection (f) of this section, an agency may appoint an individual directly into an entrance or promotional probation if the division of vocational rehabilitation, Idaho commission for the blind and visually impaired or the industrial commission certifies, with the concurrence of division of human resources staff, that the individual (1) has a disability or handicap as defined under state or federal law; (2) is qualified to perform the essential functions of a particular classified position with or without reasonable accommodation; and (3) lacks competitiveness in the examination process due to the disability or handicap. The probationary period as provided in subsection (j) of this section shall be the sole examination for such individuals.

(f) A rule requiring fair and impartial selection of appointees to all positions other than those defined as nonclassified in this chapter, on the basis of open competitive merit examinations or evaluations. An application for an examination will be accepted after the closing date of the examination from a person who was serving in the armed forces, or undergoing service-connected hospitalization up to one (1) year following discharge. The application must be submitted within one hundred twenty (120) days of separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of the examination. A disabled veteran may file an application at any time up until a selection has been made for any position for which the division maintains a register as a source for future job openings or for which a register is about to be established, provided he or she has not already been examined twice for the same position and grade for which application is made, does not have current eligibility on that register, or is not serving in a competitive position in the same grade for which application is made. Examinations may be assembled or unassembled and may include various examining techniques such as rating of training and experience, written tests, oral interviews, recognition of professional licensing, performance tests, investigations and any other measure of ability to perform the duties of the position. Examinations shall be scored objectively. Five (5) percentage points shall be added to the earned rating of any veteran as defined in section 65-502, Idaho Code, and the widow or widower of any veteran as defined in section 65-502, Idaho Code, as long as he or she remains unmarried. Pursuant to section 65-504, Idaho Code, ten (10) percentage points shall be added to the earned rating of any disabled veteran as defined in section 65-502, Idaho Code, the widow or widower of any disabled veteran as long as he or she remains unmarried or the spouse of any eligible disabled veteran who cannot qualify for any public employment because of a service-connected disability. Employment registers shall be established in order of final score except that the names of all five (5) and ten (10) percentage point preference eligibles resulting from any merit system or civil service examination shall be placed on the register in accordance with their augmented rating. Certification of eligibility for appointment to vacancies shall be in accordance with a formula which limits selection by the hiring department from among the twenty-five (25) top ranking available eligibles plus the names of all individuals with scores identical to the twenty-fifth ranking eligible on the register. A register with at least five (5) eligibles shall be adequate. Selective certification shall be permitted when justified by the hiring department, under rules to be made by the division defining adequate justification based on the duties and requirements of the positions. Such examinations need not be held until after the rules have been adopted, the service classified and a pay plan established, but shall be held not later than one (1) year after departments commence participation in the personnel system.

(g) A rule that, whenever practicable, a vacancy in a classified position shall be filled by the promotion of a qualified employee of the agency in which the vacancy occurs. An interagency promotion shall be made through competitive examination and all qualified state employees shall have the opportunity to compete for such promotions. If an employee's name appears within certifiable range on a current register for a higher class of position, he shall be eligible for a transfer and promotion.

(h) A rule for development and maintenance of a system of service ratings and the use of such ratings by all departments in connection with promotions, demotions, retentions, separations and reassignments. The rule shall require that an evaluation of each classified employee shall be made after each two thousand eighty (2,080) hour period of credited state service, and that a copy of the evaluation shall be filed with the division.

(i) A rule prohibiting disqualification of any person from taking an examination, from appointment to a position, from promotion, or from holding a position because of race or national origin, color, sex, age, political or religious opinions or affiliations, and providing for right of appeal.

(j) A rule establishing a probation period not to exceed one thousand forty (1,040) hours of credited state service for all appointments and promotions, except that peace officers as defined in section 19-5101, Idaho Code, shall be subject to a probation period of two thousand eighty (2,080) hours of credited state service, and for the appointing authority to provide the employee and the administrator a performance evaluation indicating satisfactory or unsatisfactory performance not later than thirty (30) days after the expiration of the probationary period. The rule shall provide that if the appointing authority fails to provide a performance evaluation within thirty (30) days after the expiration of the probationary period, the employee shall be deemed to have satisfactorily completed the probation unless the appointing authority receives approval from the administrator to extend the probationary period for good cause for an additional specified period not to exceed one thousand forty (1,040) hours of credited state service. If an employee is performing in an unsatisfactory manner during the entrance probationary period, the appointing authority shall ask the employee to resign, and if no resignation is submitted, shall terminate the employment of such employee without the right of grievance or appeal.

(k) A rule concerning provisional appointments.

(l) A rule concerning temporary appointments.

(m) A rule governing the employment of consultants and persons retained under independent contract.

(n) A rule for the disciplinary dismissal, demotion, suspension or other discipline of employees only for cause with reasons given in writing. Such rule shall provide that any of the following reasons shall be proper cause for the disciplinary dismissal, demotion or suspension of any employee in the state classified service:

1. Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes and rules of the employee's department, or rules of the administrator or the division.
2. Inefficiency, incompetency, or negligence in the performance of duties, or job performance that fails to meet established performance standards.
3. Physical or mental incapability for performing assigned duties.
4. Refusal to accept a reasonable and proper assignment from an authorized supervisor.
5. Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the employee's department.
6. Intoxication on duty.
7. Careless, negligent, or improper use or unlawful conversion of state property, equipment or funds.

8. Use of any influence which violates the principles of the merit system in an attempt to secure a promotion or privileges for individual advantage.

9. Conviction of official misconduct in office, or conviction of any felony, or conviction of any other crime involving moral turpitude.

10. Acceptance of gifts in exchange for influence or favors given in the employee's official capacity.

11. Habitual pattern of failure to report for duty at the assigned place and time.

12. Habitual improper use of sick leave privileges.

13. Unauthorized disclosure of confidential information from official records.

14. Absence without leave.

15. Misstatement or deception in the application for the position.

16. Failure to obtain or maintain a current license or certificate lawfully required as a condition for performing the duties of the job.

17. Prohibited participation in political activities.

(o) A rule to establish procedures for maintenance of a record of the employment history and appropriate information relating to performance of all employees under the personnel system. For the purposes of this rule, the state shall be considered one (1) employer.

(p) Rules to provide for recruitment programs in cooperation with department heads and the employment security agency in keeping with current employment conditions and labor market trends.

(q) Rules to establish procedures for examinations as necessary for the purpose of maintaining current registers from which to fill employment vacancies.

(r) Other rules not inconsistent with the foregoing provisions of this section as may be necessary and proper for the administration and enforcement of this chapter.

(s) A rule concerning "project exempt" appointments.

(t) Rules relating to leave for state employees from official duties including, but not limited to, sick leave, military leave, jury duty, leaves of absence without compensation and such other forms of absence from performance of duties in the course of state employment as may be necessary.

(u) A rule providing up to twenty-five percent (25%) shift differential pay based on local market practices.

(v) A rule to establish guidelines for awarding employee suggestion awards set forth in sections 59-1603 and 67-5309D, Idaho Code.

(w) A rule to establish the reimbursement of moving expenses for a current or newly-hired state employee.

(x) A rule to allow, at the request of the hiring agency, temporary and acting appointment service time to count toward fulfilling entrance probationary requirements as established in subsection 67-5309 (j), Idaho Code of this section.

(y) A rule to allow, at the request of the hiring agency, acting appointment service time to count toward fulfilling promotional probationary requirements as established in subsection (j) of this section.

Approved March 22, 2011.

CHAPTER 99  
(S.B. No. 1019)

AN ACT

RELATING TO THE DEPARTMENT OF COMMERCE; AMENDING SECTION 67-4703, IDAHO CODE, TO REMOVE CERTAIN PROVISIONS RELATING TO THE POWERS AND DUTIES OF THE DEPARTMENT OF COMMERCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-4703, Idaho Code, be, and the same is hereby amended to read as follows:

67-4703. POWERS AND DUTIES. The department of commerce shall have the power and it shall be its duty to engage in advertising the state of Idaho, its resources, both developed and undeveloped, its tourist resources and attractions, its agricultural, mining, lumbering and manufacturing resources, its health conditions and advantages, its scenic beauty and its other attractions and advantages; and in general either directly, indirectly or by contract do anything and take any action which will promote and advertise the resources and products of the state of Idaho, develop its resources and industries, promote tourist travel to and within the state of Idaho, and further the welfare and prosperity of its citizens.

The department shall also have the following duties when it deals with promoting economic development and tourism within the state:

(1) Survey and investigate the social, economic and physical resources of the state, including land, water, minerals, facilities for power, transportation, communications, recreation, health, education and other resources and facilities; endeavor to aid the legislature and the citizens of the state of Idaho in formulating a program for the development and utilization of these resources and facilities, and for balancing our agricultural, timber and mining economy with industrial capacity. It shall cooperate with local and regional agencies within the state. It shall cooperate with like agencies of other states, with agencies maintained by private persons or corporations, and with agencies established or employed by the United States to promote the development of the country and the welfare of its people.

(2) To develop and promote a comprehensive international marketing plan for Idaho's products.

(3) To collect and compile reliable data for general dissemination which will tend to the development of the state of Idaho by inducing people and capital to come within our borders.

(4) Keep accurate records and preserve all data collected by it, and from time to time prepare and submit to the governor and the legislature, reports, programs, recommendations and plans for the comprehensive, long-range development, conservation and use of all the resources of the state of Idaho. It shall make such special investigations as to resources, facilities, and other matters as may be required by the governor or the legislature.

(5) Coordinate those activities of local, state, federal and private agencies and departments when they deal with the promotion of Idaho's economic resources.

(6) To require and receive from the various executive departments and public officials of the state of Idaho such information as may be required by the division to enable it to fulfill its functions and carry out the purposes of this act.

(7) Administer and perform any other related functions or activities assigned by the governor or the legislature.

- (8) Enter into interagency agreements with other state agencies in developing economic and community plans and programs.
- (9) Provide technical assistance to other state agencies upon request.
- (10) Contract with universities, consultants and other public and private agencies to develop plans and programs.
- (11) ~~Serve as a clearinghouse for information, data, and other materials which may be used in developing Idaho's economy.~~
- ~~(12) Prepare a comprehensive economic development strategy.~~
- ~~(13) Collect and compile reliable economic data for general dissemination.~~
- (14) Petition for and receive moneys such as grants or gifts, to be used for state or local planning and economic development activities.

Approved March 22, 2011.

CHAPTER 100  
(S.B. No. 1020)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1302, IDAHO CODE, TO REVISE THE DEFINITION OF MILITARY SERVICE; AMENDING SECTION 59-1302, IDAHO CODE, TO REVISE THE DEFINITION OF EMPLOYEE AND THE DEFINITION OF SALARY; AMENDING SECTION 59-1302, IDAHO CODE, TO REVISE THE DEFINITION OF DISABLED AND THE DEFINITION OF MILITARY SERVICE; DECLARING AN EMERGENCY, PROVIDING RETROACTIVE APPLICATION AND PROVIDING EFFECTIVE DATES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 59-1302, Idaho Code, be, and the same is hereby amended to read as follows:

59-1302. DEFINITIONS. (1) As used in this chapter, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context.

(2) "Active member" means any employee who is not establishing the right to receive benefits through his or her employer's participation in any other retirement system established for Idaho public employees, if such participation is mandated by applicable Idaho statutes other than this chapter. In no case will an employee be entitled to any benefit under this chapter for public service if such employee is establishing retirement benefit entitlements by other Idaho statutes or federal statutes other than military service or social security for that same service.

(3) "Accumulated contributions" means the sum of amounts contributed by a member of the system, together with regular interest credit thereon.

(4) "Actuarial equivalent" means a benefit equal in value to another benefit, when computed upon the basis of the actuarial tables in use by the system.

(5) "Actuarial tables" means such tables as shall have been adopted by the board in accordance with recommendations of the actuary.

(5A) "Alternate payee" means a spouse or former spouse of a member who is recognized by an approved domestic retirement order as having a right to all or a portion of the accrued benefits in the retirement system with respect to such member.

(5B) "Approved domestic retirement order" means a domestic retirement order which creates or recognizes the existence of an alternate payee's right or assigns to an alternate payee the right to all or a portion of the accrued benefits of a member under the retirement system, which directs

the system to establish a segregated account or disburse benefits to an alternate payee, and which the executive director of the retirement system has determined meets the requirements of sections 59-1319 and 59-1320, Idaho Code.

(5C) "Average monthly salary" means the member's average salary during the base period as calculated pursuant to rules adopted by the retirement board.

(5D) (a) "Base period" means the period of fifty-four (54) consecutive calendar months during which the member earned:

- (i) The highest average salary; and
- (ii) Membership service of at least one-half (1/2) the number of months in the period, excluding months of service attributable to:
  - A. Military service;
  - B. Service qualifying as minimum benefit pursuant to section 59-1342(5), Idaho Code; and
  - C. Worker's compensation income benefits.

(b) Effective October 1, 1993, the consecutive calendar months shall be forty-eight (48). Effective October 1, 1994, the consecutive calendar months shall be forty-two (42).

(c) Entitlement to a base period shall not vest until the effective date of that base period. The retirement benefits shall be calculated on the amounts, terms and conditions in effect at the date of the final contribution by the member.

(d) If no base period exists for a member, the member's average monthly salary shall be determined by the board, using standards not inconsistent with those established in this subsection.

(e) To assure equitable treatment for all members, salary increments inconsistent with usual compensation patterns may be disallowed by the board in determining average monthly salary and base period.

(6) "Beneficiary" means the person who is nominated by the written designation of a member, duly executed and filed with the board, to receive the death benefit.

(7) "Calendar year" means twelve (12) calendar months commencing on the first day of January.

(7A) "Contingent annuitant" means the person designated by a member under certain retirement options to receive benefit payments upon the death of the member. The person so designated must be born and living on the effective date of retirement.

(8) "Credited service" means the aggregate of membership service, prior service and disabled service.

(9) "Date of establishment" means July 1, 1965, or a later date established by the board or statute.

(10) "Death benefit" means the amount, if any, payable upon the death of a member.

(11) "Disability retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for disability retirement.

(12) "Disabled" means:

(a) That the member is prevented from engaging in any occupation or employment for remuneration or profit as a result of bodily injury or disease, either occupational or nonoccupational in cause, but excluding disabilities resulting from service in the armed forces of any country, or from an intentionally self-inflicted injury; and

(b) That the member will likely remain so disabled permanently and continuously during the remainder of the member's life.

It is not necessary that a person be absolutely helpless or entirely unable to do anything worthy of compensation to be considered disabled. If the person is so disabled that substantially all the avenues of employment are reasonably closed to the person, that condition is within the meaning of "dis-

abled." In evaluating whether a person is disabled, medical factors and non-medical factors including, but not limited to, education, economic and social environment, training and usable skills may be considered.

Refusal to submit to a medical examination ordered by the board before the commencement of a disability retirement allowance or at any reasonable time thereafter shall constitute proof that the member is not disabled. The board shall be empowered to select for such medical examination one (1) or more physicians or surgeons who are licensed to practice medicine and perform surgery. The fees and expenses of such examination shall be paid from the administration account of the fund. No member shall be required to undergo such examination more often than once each year after he has received a disability retirement allowance continuously for two (2) years.

(12A) "Disabled service" means the total number of months elapsing from the first day of the month next succeeding the final contribution of a member prior to receiving a disability retirement allowance to the first day of the month following the date of termination of such disability retirement allowance. During such period, the member shall remain classified in the membership category held during the month of final contribution. The total number of months of disabled service credited for a person first becoming disabled after the effective date of this chapter shall not exceed the excess, if any, of three hundred sixty (360) over the total number of months of prior service and membership service.

(12B) "Domestic retirement order" means any judgment, decree, or order, including approval of a property settlement agreement which relates to the provision of marital property rights to a spouse or former spouse of a member, and is made pursuant to a domestic relations law, including the community property law of the state of Idaho or of another state.

(13) "Early retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for early retirement.

(14) (A) "Employee" means:

(a) Any person who normally works twenty (20) hours or more per week for an employer or a school teacher who works half-time or more for an employer and who receives salary for services rendered for such employer; or

(b) Elected officials or appointed officials of an employer who receive a salary; or

(c) A person who is separated from service with less than five (5) consecutive months of employment and who is reemployed or reinstated by the same employer within thirty (30) days.

(B) "Employee" does not include employment as:

(a) A person rendering service to an employer in the capacity of an independent business, trade or profession; or

(b) A person whose employment with any employer does not total five (5) consecutive months; or

(c) A person provided sheltered employment or made-work by a public employer in an employment or industries program maintained for the benefit of such person; or

(d) An inmate of a state institution, whether or not receiving compensation for services performed for the institution; or

(e) A student enrolled in an undergraduate, graduate, or professional-technical program at and employed by a state college, university, community college or professional-technical center when such employment is predicated on student status; or

(f) A person making contributions to the United States civil service commission under the United States Civil Service System Retirement Act except that a person who receives separate remuneration for work currently performed for an employer and the United States government may

elect to be a member of the retirement system in accordance with rules of the board; or

(g) A person not under contract with a school district or charter school, who on a day to day basis works as a substitute teacher replacing a contracted teacher and is paid a substitute wage as established by district policy or who, on a day to day basis works as a substitute assistant replacing a staff instruction assistant or a staff library assistant and is paid a substitute wage as established by district policy; or

(h) A person occupying a position that does not exceed eight (8) consecutive months in a calendar year with a city, county or irrigation district when the city, county or irrigation district has certified, in writing to the system, the position is (i) seasonal or casual; and (ii) affected by weather and the growing season, including parks, golf course positions and irrigation positions; or

(i) A person in a position that (i) is eligible for participation in an optional retirement program established under section 33-107A or 33-107B, Idaho Code, or (ii) would be eligible for participation in an optional retirement program established under section 33-107A or 33-107B, Idaho Code, if the person was not working less than half-time or less than twenty (20) hours per week.

(15) "Employer" means the state of Idaho, or any political subdivision or governmental entity, provided such subdivision or entity has elected to come into the system. Governmental entity means any organization composed of units of government of Idaho or organizations funded only by government or employee contributions or organizations who discharge governmental responsibilities or proprietary responsibilities that would otherwise be performed by government. All governmental entities are deemed to be political subdivisions for the purpose of this chapter.

(15A) "Final contribution" means the final contribution made by a member pursuant to sections 59-1331 through 59-1334, Idaho Code.

(16) "Firefighter" means an employee, including paid firefighters hired on or after October 1, 1980, whose primary occupation is that of preventing and extinguishing fires as determined by the rules of the board.

(17) "Fiscal year" means the period beginning on July 1 in any year and ending on June 30 of the next succeeding year.

(18) "Fund" means the public employee retirement fund established by this chapter.

(19) "Funding agent" means any bank or banks, trust company or trust companies, legal reserve life insurance company or legal reserve life insurance companies, or combinations thereof, any thrift institution or credit union or any investment management firm or individual investment manager selected by the board to hold and/or invest the employers' and members' contributions and pay certain benefits granted under this chapter.

(20) "Inactive member" means a former active member who is not an employee and is not receiving any form of retirement allowance, but for whom a separation benefit has not become payable.

(20A) "Lifetime annuity" means periodic monthly payments of income by the retirement system to an alternate payee.

(20B) "Lump sum distribution" means a payment by the retirement system of the entire balance in the alternate payee's segregated account, together with regular interest credited thereon.

(21) "Member" means an active member, inactive member or a retired member.

(22) "Membership service" means military service which occurs after the commencement of contributions payable under sections 59-1331 through 59-1334, Idaho Code, and service with respect to which contributions are payable under sections 59-1331 through 59-1334, Idaho Code, which, except for benefit calculations described in sections 59-1342 and 59-1353, Idaho

Code, includes service transferred to a segregated account under an approved domestic retirement order.

(23) "Military service" means any period of active duty service in the armed forces of the United States including the national guard and reserves, under the provisions of title 10, title 32, and title 37, United States code, which commences less than ninety (90) days after the person ceases to be an employee and ends less than ninety (90) days before the person again becomes an employee. Provided, if a member fails to again become an employee ~~due to being killed as a result of his death~~ while in active duty service, the member shall be entitled to military service through the date of death. In no event shall military service include:

(a) Any period ended by dishonorable discharge or during which termination of such service is available but not accepted; or

(b) Any active duty service in excess of five (5) years if at the convenience of the United States government, or in excess of four (4) years if not at the convenience of the United States government, provided additional membership service may be purchased as provided in section 59-1362, Idaho Code.

(24) (a) "Police officer" for retirement purposes shall be as defined in section 59-1303, Idaho Code.

(b) "POST" means the Idaho peace officer standards and training council established in chapter 51, title 19, Idaho Code.

(25) "Prior service" means any period prior to July 1, 1965, of military service or of employment for the state of Idaho or any political subdivision or other employer of each employee who is an active member or in military service or on leave of absence on the date of establishment, provided, however, an employee who was not an active member or in military service or on leave of absence on the date of establishment shall receive credit for the member's service prior to July 1, 1965, on the basis of recognizing two (2) months of such service for each month of membership service. For the purpose of computing such service, no deduction shall be made for any continuous period of absence from service or military service of six (6) months or less.

(26) "Regular interest" means interest at the rate set from time to time by the board.

(27) "Retired member" means a former active member receiving a retirement allowance.

(28) "Retirement" means the acceptance of a retirement allowance under this chapter upon termination of employment.

(29) "Retirement board" or "board" means the board provided for in sections 59-1304 and 59-1305, Idaho Code, to administer the retirement system.

(30) "Retirement system" or "system" means the public employee retirement system of Idaho.

(31) (A) "Salary" means:

(a) The total salary or wages paid to a person who meets the definition of employee by an employer for personal services performed and reported by the employer for income tax purposes, including the cash value of all remuneration in any medium other than cash.

(b) The total amount of any voluntary reduction in salary agreed to by the member and employer where the reduction is used as an alternative form of remuneration to the member.

(B) Salary in excess of the compensation limitations set forth in section 401(a) (17) of the Internal Revenue Code shall be disregarded for any person who becomes a member of the system on or after July 1, 1996. The system had no limitations on compensation in effect on July 1, 1993. The compensation limitations set forth in section 401(a) (17) of the Internal Revenue Code shall not apply for an "eligible employee." For purposes of this subsection, "eligible employee" is an individual who was a member of the system before July 1, 1996.

(C) "Salary" does not include:

(a) Contributions by employers to employee held medical savings accounts, as those accounts are defined in section 63-3022K, Idaho Code.

(b) Lump sum payments inconsistent with usual compensation patterns made by the employer to the employee only upon termination from service including, but not limited to, vacation payoffs, sick leave payoffs, early retirement incentive payments and bonuses.

(31A) "Segregated account" means the account established by the retirement system for the alternate payee of a member who is not a retired member. It shall include the months of credited service and accumulated contributions transferred from the member's account.

(32) "Separation benefit" means the amount, if any, payable upon or subsequent to separation from service.

(33) "Service" means being shown on an employer's payroll as an employee receiving a salary. For each calendar month, service is credited only when a member is an employee as defined in subsection (14) (A) of this section and is employed for fifteen (15) days or more during the calendar month. Employment of fourteen (14) days or less during any calendar month shall not be credited. No more than one (1) month of service shall be credited for all service in any month.

(34) "Service retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for service retirement.

(35) "State" means the state of Idaho.

(36) "Vested member" means an active or inactive member who has at least five (5) years of credited service, except that a member, who at the time of his separation from service:

(a) Held an office to which he had been elected by popular vote or having a term fixed by the constitution, statute or charter or was appointed to such office by an elected official; or

(b) Was the head or director of a department, division, agency, statutory section or bureau of the state; or

(c) Was employed on or after July 1, 1965, by an elected official of the state of Idaho and occupied a position exempt from the provisions of chapter 53, title 67, Idaho Code; and

(d) Was not covered by a merit system for employees of the state of Idaho,

is vested without regard to the length of credited service.

(37) The masculine pronoun, wherever used, shall include the feminine pronoun.

SECTION 2. That Section 59-1302, Idaho Code, be, and the same is hereby amended to read as follows:

59-1302. DEFINITIONS. (1) As used in this chapter, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context.

(2) "Active member" means any employee who is not establishing the right to receive benefits through his or her employer's participation in any other retirement system established for Idaho public employees, if such participation is mandated by applicable Idaho statutes other than this chapter. In no case will an employee be entitled to any benefit under this chapter for public service if such employee is establishing retirement benefit entitlements by other Idaho statutes or federal statutes other than military service or social security for that same service.

(3) "Accumulated contributions" means the sum of amounts contributed by a member of the system, together with regular interest credit thereon.

(4) "Actuarial equivalent" means a benefit equal in value to another benefit, when computed upon the basis of the actuarial tables in use by the system.

(5) "Actuarial tables" means such tables as shall have been adopted by the board in accordance with recommendations of the actuary.

(5A) "Alternate payee" means a spouse or former spouse of a member who is recognized by an approved domestic retirement order as having a right to all or a portion of the accrued benefits in the retirement system with respect to such member.

(5B) "Approved domestic retirement order" means a domestic retirement order which creates or recognizes the existence of an alternate payee's right or assigns to an alternate payee the right to all or a portion of the accrued benefits of a member under the retirement system, which directs the system to establish a segregated account or disburse benefits to an alternate payee, and which the executive director of the retirement system has determined meets the requirements of sections 59-1319 and 59-1320, Idaho Code.

(5C) "Average monthly salary" means the member's average salary during the base period as calculated pursuant to rules adopted by the retirement board.

(5D) (a) "Base period" means the period of fifty-four (54) consecutive calendar months during which the member earned:

- (i) The highest average salary; and
- (ii) Membership service of at least one-half (1/2) the number of months in the period, excluding months of service attributable to:
  - A. Military service;
  - B. Service qualifying as minimum benefit pursuant to section 59-1342(5), Idaho Code; and
  - C. Worker's compensation income benefits.

(b) Effective October 1, 1993, the consecutive calendar months shall be forty-eight (48). Effective October 1, 1994, the consecutive calendar months shall be forty-two (42).

(c) Entitlement to a base period shall not vest until the effective date of that base period. The retirement benefits shall be calculated on the amounts, terms and conditions in effect at the date of the final contribution by the member.

(d) If no base period exists for a member, the member's average monthly salary shall be determined by the board, using standards not inconsistent with those established in this subsection.

(e) To assure equitable treatment for all members, salary increments inconsistent with usual compensation patterns may be disallowed by the board in determining average monthly salary and base period.

(6) "Beneficiary" means the person who is nominated by the written designation of a member, duly executed and filed with the board, to receive the death benefit.

(7) "Calendar year" means twelve (12) calendar months commencing on the first day of January.

(7A) "Contingent annuitant" means the person designated by a member under certain retirement options to receive benefit payments upon the death of the member. The person so designated must be born and living on the effective date of retirement.

(8) "Credited service" means the aggregate of membership service, prior service and disabled service.

(9) "Date of establishment" means July 1, 1965, or a later date established by the board or statute.

(10) "Death benefit" means the amount, if any, payable upon the death of a member.

(11) "Disability retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for disability retirement.

(12) "Disabled" means:

(a) That the member is prevented from engaging in any occupation or employment for remuneration or profit as a result of bodily injury or disease, either occupational or nonoccupational in cause, but excluding disabilities resulting from service in the armed forces of any country, or from an intentionally self-inflicted injury; and

(b) That the member will likely remain so disabled permanently and continuously during the remainder of the member's life.

It is not necessary that a person be absolutely helpless or entirely unable to do anything worthy of compensation to be considered disabled. If the person is so disabled that substantially all the avenues of employment are reasonably closed to the person, that condition is within the meaning of "disabled." In evaluating whether a person is disabled, medical factors and non-medical factors including, but not limited to, education, economic and social environment, training and usable skills may be considered.

Refusal to submit to a medical examination ordered by the board before the commencement of a disability retirement allowance or at any reasonable time thereafter shall constitute proof that the member is not disabled. The board shall be empowered to select for such medical examination one (1) or more physicians or surgeons who are licensed to practice medicine and perform surgery. The fees and expenses of such examination shall be paid from the administration account of the fund. No member shall be required to undergo such examination more often than once each year after he has received a disability retirement allowance continuously for two (2) years.

(12A) "Disabled service" means the total number of months elapsing from the first day of the month next succeeding the final contribution of a member prior to receiving a disability retirement allowance to the first day of the month following the date of termination of such disability retirement allowance. During such period, the member shall remain classified in the membership category held during the month of final contribution. The total number of months of disabled service credited for a person first becoming disabled after the effective date of this chapter shall not exceed the excess, if any, of three hundred sixty (360) over the total number of months of prior service and membership service.

(12B) "Domestic retirement order" means any judgment, decree, or order, including approval of a property settlement agreement which relates to the provision of marital property rights to a spouse or former spouse of a member, and is made pursuant to a domestic relations law, including the community property law of the state of Idaho or of another state.

(13) "Early retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for early retirement.

(14) (A) "Employee" means:

(a) Any person who normally works twenty (20) hours or more per week for an employer or a school teacher who works half-time or more for an employer and who receives salary for services rendered for such employer; ~~or~~

(b) Elected officials or appointed officials of an employer who receive a salary; ~~or~~

(c) A person who is separated from service with less than five (5) consecutive months of employment and who is reemployed or reinstated by the same employer within thirty (30) days; or

(d) A person receiving differential wage payments as defined in 26 U.S.C. 3401(h) on or after July 1, 2009. A differential wage payment generally refers to an employer payment to an employee called to active duty in the uniformed services for more than thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer.

(B) "Employee" does not include employment as:

- (a) A person rendering service to an employer in the capacity of an independent business, trade or profession; or
- (b) A person whose employment with any employer does not total five (5) consecutive months; or
- (c) A person provided sheltered employment or made-work by a public employer in an employment or industries program maintained for the benefit of such person; or
- (d) An inmate of a state institution, whether or not receiving compensation for services performed for the institution; or
- (e) A student enrolled in an undergraduate, graduate, or professional-technical program at and employed by a state college, university, community college or professional-technical center when such employment is predicated on student status; or
- (f) A person making contributions to the United States civil service commission under the United States Civil Service System Retirement Act except that a person who receives separate remuneration for work currently performed for an employer and the United States government may elect to be a member of the retirement system in accordance with rules of the board; or
- (g) A person not under contract with a school district or charter school, who on a day to day basis works as a substitute teacher replacing a contracted teacher and is paid a substitute wage as established by district policy or who, on a day to day basis works as a substitute assistant replacing a staff instruction assistant or a staff library assistant and is paid a substitute wage as established by district policy; or
- (h) A person occupying a position that does not exceed eight (8) consecutive months in a calendar year with a city, county or irrigation district when the city, county or irrigation district has certified, in writing to the system, the position is (i) seasonal or casual; and (ii) affected by weather and the growing season, including parks, golf course positions and irrigation positions; or
- (i) A person in a position that (i) is eligible for participation in an optional retirement program established under section 33-107A or 33-107B, Idaho Code, or (ii) would be eligible for participation in an optional retirement program established under section 33-107A or 33-107B, Idaho Code, if the person was not working less than half-time or less than twenty (20) hours per week.

(15) "Employer" means the state of Idaho, or any political subdivision or governmental entity, provided such subdivision or entity has elected to come into the system. Governmental entity means any organization composed of units of government of Idaho or organizations funded only by government or employee contributions or organizations who discharge governmental responsibilities or proprietary responsibilities that would otherwise be performed by government. All governmental entities are deemed to be political subdivisions for the purpose of this chapter.

(15A) "Final contribution" means the final contribution made by a member pursuant to sections 59-1331 through 59-1334, Idaho Code.

(16) "Firefighter" means an employee, including paid firefighters hired on or after October 1, 1980, whose primary occupation is that of preventing and extinguishing fires as determined by the rules of the board.

(17) "Fiscal year" means the period beginning on July 1 in any year and ending on June 30 of the next succeeding year.

(18) "Fund" means the public employee retirement fund established by this chapter.

(19) "Funding agent" means any bank or banks, trust company or trust companies, legal reserve life insurance company or legal reserve life insurance companies, or combinations thereof, any thrift institution or credit union or any investment management firm or individual investment manager

selected by the board to hold and/or invest the employers' and members' contributions and pay certain benefits granted under this chapter.

(20) "Inactive member" means a former active member who is not an employee and is not receiving any form of retirement allowance, but for whom a separation benefit has not become payable.

(20A) "Lifetime annuity" means periodic monthly payments of income by the retirement system to an alternate payee.

(20B) "Lump sum distribution" means a payment by the retirement system of the entire balance in the alternate payee's segregated account, together with regular interest credited thereon.

(21) "Member" means an active member, inactive member or a retired member.

(22) "Membership service" means military service which occurs after the commencement of contributions payable under sections 59-1331 through 59-1334, Idaho Code, and service with respect to which contributions are payable under sections 59-1331 through 59-1334, Idaho Code, which, except for benefit calculations described in sections 59-1342 and 59-1353, Idaho Code, includes service transferred to a segregated account under an approved domestic retirement order.

(23) "Military service" means any period of active duty service in the armed forces of the United States including the national guard and reserves, under the provisions of title 10, title 32, and title 37, United States code, which commences less than ninety (90) days after the person ceases to be an employee and ends less than ninety (90) days before the person again becomes an employee. Provided, if a member fails to again become an employee due to being killed while in active duty service, the member shall be entitled to military service through the date of death. In no event shall military service include:

(a) Any period ended by dishonorable discharge or during which termination of such service is available but not accepted; or

(b) Any active duty service in excess of five (5) years if at the convenience of the United States government, or in excess of four (4) years if not at the convenience of the United States government, provided additional membership service may be purchased as provided in section 59-1362, Idaho Code.

(24) (a) "Police officer" for retirement purposes shall be as defined in section 59-1303, Idaho Code.

(b) "POST" means the Idaho peace officer standards and training council established in chapter 51, title 19, Idaho Code.

(25) "Prior service" means any period prior to July 1, 1965, of military service or of employment for the state of Idaho or any political subdivision or other employer of each employee who is an active member or in military service or on leave of absence on the date of establishment, provided, however, an employee who was not an active member or in military service or on leave of absence on the date of establishment shall receive credit for the member's service prior to July 1, 1965, on the basis of recognizing two (2) months of such service for each month of membership service. For the purpose of computing such service, no deduction shall be made for any continuous period of absence from service or military service of six (6) months or less.

(26) "Regular interest" means interest at the rate set from time to time by the board.

(27) "Retired member" means a former active member receiving a retirement allowance.

(28) "Retirement" means the acceptance of a retirement allowance under this chapter upon termination of employment.

(29) "Retirement board" or "board" means the board provided for in sections 59-1304 and 59-1305, Idaho Code, to administer the retirement system.

(30) "Retirement system" or "system" means the public employee retirement system of Idaho.

(31) (A) "Salary" means:

(a) The total salary or wages paid to a person who meets the definition of employee by an employer for personal services performed and reported by the employer for income tax purposes, including the cash value of all remuneration in any medium other than cash.

(b) The total amount of any voluntary reduction in salary agreed to by the member and employer where the reduction is used as an alternative form of remuneration to the member.

(B) Salary in excess of the compensation limitations set forth in section 401(a) (17) of the Internal Revenue Code shall be disregarded for any person who becomes a member of the system on or after July 1, 1996. The system had no limitations on compensation in effect on July 1, 1993. The compensation limitations set forth in section 401(a) (17) of the Internal Revenue Code shall not apply for an "eligible employee." For purposes of this subsection, "eligible employee" is an individual who was a member of the system before July 1, 1996.

(C) "Salary" does not include:

(a) Contributions by employers to employee held medical savings accounts, as those accounts are defined in section 63-3022K, Idaho Code.

(b) Lump sum payments inconsistent with usual compensation patterns made by the employer to the employee only upon termination from service including, but not limited to, vacation payoffs, sick leave payoffs, early retirement incentive payments and bonuses.

(c) Differential wage payments as defined in 26 U.S.C. 3401(h). A differential wage payment generally refers to an employer payment to an employee called to active duty in the uniformed services for more than thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer.

(31A) "Segregated account" means the account established by the retirement system for the alternate payee of a member who is not a retired member. It shall include the months of credited service and accumulated contributions transferred from the member's account.

(32) "Separation benefit" means the amount, if any, payable upon or subsequent to separation from service.

(33) "Service" means being shown on an employer's payroll as an employee receiving a salary. For each calendar month, service is credited only when a member is an employee as defined in subsection (14) (A) of this section and is employed for fifteen (15) days or more during the calendar month. Employment of fourteen (14) days or less during any calendar month shall not be credited. No more than one (1) month of service shall be credited for all service in any month.

(34) "Service retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for service retirement.

(35) "State" means the state of Idaho.

(36) "Vested member" means an active or inactive member who has at least five (5) years of credited service, except that a member, who at the time of his separation from service:

(a) Held an office to which he had been elected by popular vote or having a term fixed by the constitution, statute or charter or was appointed to such office by an elected official; or

(b) Was the head or director of a department, division, agency, statutory section or bureau of the state; or

(c) Was employed on or after July 1, 1965, by an elected official of the state of Idaho and occupied a position exempt from the provisions of chapter 53, title 67, Idaho Code; and

(d) Was not covered by a merit system for employees of the state of Idaho,

is vested without regard to the length of credited service.

(37) The masculine pronoun, wherever used, shall include the feminine pronoun.

SECTION 3. That Section 59-1302, Idaho Code, be, and the same is hereby amended to read as follows:

59-1302. DEFINITIONS. (1) As used in this chapter, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context.

(2) "Active member" means any employee who is not establishing the right to receive benefits through his or her employer's participation in any other retirement system established for Idaho public employees, if such participation is mandated by applicable Idaho statutes other than this chapter. In no case will an employee be entitled to any benefit under this chapter for public service if such employee is establishing retirement benefit entitlements by other Idaho statutes or federal statutes other than military service or social security for that same service.

(3) "Accumulated contributions" means the sum of amounts contributed by a member of the system, together with regular interest credit thereon.

(4) "Actuarial equivalent" means a benefit equal in value to another benefit, when computed upon the basis of the actuarial tables in use by the system.

(5) "Actuarial tables" means such tables as shall have been adopted by the board in accordance with recommendations of the actuary.

(5A) "Alternate payee" means a spouse or former spouse of a member who is recognized by an approved domestic retirement order as having a right to all or a portion of the accrued benefits in the retirement system with respect to such member.

(5B) "Approved domestic retirement order" means a domestic retirement order which creates or recognizes the existence of an alternate payee's right or assigns to an alternate payee the right to all or a portion of the accrued benefits of a member under the retirement system, which directs the system to establish a segregated account or disburse benefits to an alternate payee, and which the executive director of the retirement system has determined meets the requirements of sections 59-1319 and 59-1320, Idaho Code.

(5C) "Average monthly salary" means the member's average salary during the base period as calculated pursuant to rules adopted by the retirement board.

(5D) (a) "Base period" means the period of fifty-four (54) consecutive calendar months during which the member earned:

(i) The highest average salary; and

(ii) Membership service of at least one-half (1/2) the number of months in the period, excluding months of service attributable to:

A. Military service;

B. Service qualifying as minimum benefit pursuant to section 59-1342(5), Idaho Code; and

C. Worker's compensation income benefits.

(b) Effective October 1, 1993, the consecutive calendar months shall be forty-eight (48). Effective October 1, 1994, the consecutive calendar months shall be forty-two (42).

(c) Entitlement to a base period shall not vest until the effective date of that base period. The retirement benefits shall be calculated on the amounts, terms and conditions in effect at the date of the final contribution by the member.

(d) If no base period exists for a member, the member's average monthly salary shall be determined by the board, using standards not inconsistent with those established in this subsection.

(e) To assure equitable treatment for all members, salary increments inconsistent with usual compensation patterns may be disallowed by the board in determining average monthly salary and base period.

(6) "Beneficiary" means the person who is nominated by the written designation of a member, duly executed and filed with the board, to receive the death benefit.

(7) "Calendar year" means twelve (12) calendar months commencing on the first day of January.

(7A) "Contingent annuitant" means the person designated by a member under certain retirement options to receive benefit payments upon the death of the member. The person so designated must be born and living on the effective date of retirement.

(8) "Credited service" means the aggregate of membership service, prior service and disabled service.

(9) "Date of establishment" means July 1, 1965, or a later date established by the board or statute.

(10) "Death benefit" means the amount, if any, payable upon the death of a member.

(11) "Disability retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for disability retirement.

(12) "Disabled" means:

(a) That the member is prevented from engaging in any occupation or employment for remuneration or profit as a result of bodily injury or disease, either occupational or nonoccupational in cause, but excluding disabilities resulting from service in the armed forces of any country other than the United States, or from an intentionally self-inflicted injury; and

(b) That the member will likely remain so disabled permanently and continuously during the remainder of the member's life.

It is not necessary that a person be absolutely helpless or entirely unable to do anything worthy of compensation to be considered disabled. If the person is so disabled that substantially all the avenues of employment are reasonably closed to the person, that condition is within the meaning of "disabled." In evaluating whether a person is disabled, medical factors and non-medical factors including, but not limited to, education, economic and social environment, training and usable skills may be considered.

Refusal to submit to a medical examination ordered by the board before the commencement of a disability retirement allowance or at any reasonable time thereafter shall constitute proof that the member is not disabled. The board shall be empowered to select for such medical examination one (1) or more physicians or surgeons who are licensed to practice medicine and perform surgery. The fees and expenses of such examination shall be paid from the administration account of the fund. No member shall be required to undergo such examination more often than once each year after he has received a disability retirement allowance continuously for two (2) years.

(12A) "Disabled service" means the total number of months elapsing from the first day of the month next succeeding the final contribution of a member prior to receiving a disability retirement allowance to the first day of the month following the date of termination of such disability retirement allowance. During such period, the member shall remain classified in the membership category held during the month of final contribution. The total number of months of disabled service credited for a person first becoming disabled after the effective date of this chapter shall not exceed the excess, if any, of three hundred sixty (360) over the total number of months of prior service and membership service.

(12B) "Domestic retirement order" means any judgment, decree, or order, including approval of a property settlement agreement which relates to the provision of marital property rights to a spouse or former spouse of a mem-

ber, and is made pursuant to a domestic relations law, including the community property law of the state of Idaho or of another state.

(13) "Early retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for early retirement.

(14) (A) "Employee" means:

(a) Any person who normally works twenty (20) hours or more per week for an employer or a school teacher who works half-time or more for an employer and who receives salary for services rendered for such employer; or

(b) Elected officials or appointed officials of an employer who receive a salary; or

(c) A person who is separated from service with less than five (5) consecutive months of employment and who is reemployed or reinstated by the same employer within thirty (30) days.

(B) "Employee" does not include employment as:

(a) A person rendering service to an employer in the capacity of an independent business, trade or profession; or

(b) A person whose employment with any employer does not total five (5) consecutive months; or

(c) A person provided sheltered employment or made-work by a public employer in an employment or industries program maintained for the benefit of such person; or

(d) An inmate of a state institution, whether or not receiving compensation for services performed for the institution; or

(e) A student enrolled in an undergraduate, graduate, or professional-technical program at and employed by a state college, university, community college or professional-technical center when such employment is predicated on student status; or

(f) A person making contributions to the United States civil service commission under the United States Civil Service System Retirement Act except that a person who receives separate remuneration for work currently performed for an employer and the United States government may elect to be a member of the retirement system in accordance with rules of the board; or

(g) A person not under contract with a school district or charter school, who on a day to day basis works as a substitute teacher replacing a contracted teacher and is paid a substitute wage as established by district policy or who, on a day to day basis works as a substitute assistant replacing a staff instruction assistant or a staff library assistant and is paid a substitute wage as established by district policy; or

(h) A person occupying a position that does not exceed eight (8) consecutive months in a calendar year with a city, county or irrigation district when the city, county or irrigation district has certified, in writing to the system, the position is (i) seasonal or casual; and (ii) affected by weather and the growing season, including parks, golf course positions and irrigation positions; or

(i) A person in a position that (i) is eligible for participation in an optional retirement program established under section 33-107A or 33-107B, Idaho Code, or (ii) would be eligible for participation in an optional retirement program established under section 33-107A or 33-107B, Idaho Code, if the person was not working less than half-time or less than twenty (20) hours per week.

(15) "Employer" means the state of Idaho, or any political subdivision or governmental entity, provided such subdivision or entity has elected to come into the system. Governmental entity means any organization composed of units of government of Idaho or organizations funded only by government or employee contributions or organizations who discharge governmental re-

sponsibilities or proprietary responsibilities that would otherwise be performed by government. All governmental entities are deemed to be political subdivisions for the purpose of this chapter.

(15A) "Final contribution" means the final contribution made by a member pursuant to sections 59-1331 through 59-1334, Idaho Code.

(16) "Firefighter" means an employee, including paid firefighters hired on or after October 1, 1980, whose primary occupation is that of preventing and extinguishing fires as determined by the rules of the board.

(17) "Fiscal year" means the period beginning on July 1 in any year and ending on June 30 of the next succeeding year.

(18) "Fund" means the public employee retirement fund established by this chapter.

(19) "Funding agent" means any bank or banks, trust company or trust companies, legal reserve life insurance company or legal reserve life insurance companies, or combinations thereof, any thrift institution or credit union or any investment management firm or individual investment manager selected by the board to hold and/or invest the employers' and members' contributions and pay certain benefits granted under this chapter.

(20) "Inactive member" means a former active member who is not an employee and is not receiving any form of retirement allowance, but for whom a separation benefit has not become payable.

(20A) "Lifetime annuity" means periodic monthly payments of income by the retirement system to an alternate payee.

(20B) "Lump sum distribution" means a payment by the retirement system of the entire balance in the alternate payee's segregated account, together with regular interest credited thereon.

(21) "Member" means an active member, inactive member or a retired member.

(22) "Membership service" means military service which occurs after the commencement of contributions payable under sections 59-1331 through 59-1334, Idaho Code, and service with respect to which contributions are payable under sections 59-1331 through 59-1334, Idaho Code, which, except for benefit calculations described in sections 59-1342 and 59-1353, Idaho Code, includes service transferred to a segregated account under an approved domestic retirement order.

(23) "Military service" means any period of active duty service in the armed forces of the United States including the national guard and reserves, under the provisions of title 10, title 32, and title 37, United States code, which commences less than ninety (90) days after the person ceases to be an employee and ends less than ninety (90) days before the person again becomes an employee. Provided, if a member fails to again become an employee due to being killed while in active duty service, the member shall be entitled to military service through the date of death. Provided further, if a member fails to again become an employee due to a disability retirement resulting from service in the armed forces of the United States, the member shall be entitled to military service through the date the disability allowance becomes payable. In no event shall military service include:

(a) Any period ended by dishonorable discharge or during which termination of such service is available but not accepted; or

(b) Any active duty service in excess of five (5) years if at the convenience of the United States government, or in excess of four (4) years if not at the convenience of the United States government, provided additional membership service may be purchased as provided in section 59-1362, Idaho Code.

(24) (a) "Police officer" for retirement purposes shall be as defined in section 59-1303, Idaho Code.

(b) "POST" means the Idaho peace officer standards and training council established in chapter 51, title 19, Idaho Code.

(25) "Prior service" means any period prior to July 1, 1965, of military service or of employment for the state of Idaho or any political subdivision or other employer of each employee who is an active member or in military service or on leave of absence on the date of establishment, provided, however, an employee who was not an active member or in military service or on leave of absence on the date of establishment shall receive credit for the member's service prior to July 1, 1965, on the basis of recognizing two (2) months of such service for each month of membership service. For the purpose of computing such service, no deduction shall be made for any continuous period of absence from service or military service of six (6) months or less.

(26) "Regular interest" means interest at the rate set from time to time by the board.

(27) "Retired member" means a former active member receiving a retirement allowance.

(28) "Retirement" means the acceptance of a retirement allowance under this chapter upon termination of employment.

(29) "Retirement board" or "board" means the board provided for in sections 59-1304 and 59-1305, Idaho Code, to administer the retirement system.

(30) "Retirement system" or "system" means the public employee retirement system of Idaho.

(31) (A) "Salary" means:

(a) The total salary or wages paid to a person who meets the definition of employee by an employer for personal services performed and reported by the employer for income tax purposes, including the cash value of all remuneration in any medium other than cash.

(b) The total amount of any voluntary reduction in salary agreed to by the member and employer where the reduction is used as an alternative form of remuneration to the member.

(B) Salary in excess of the compensation limitations set forth in section 401(a) (17) of the Internal Revenue Code shall be disregarded for any person who becomes a member of the system on or after July 1, 1996. The system had no limitations on compensation in effect on July 1, 1993. The compensation limitations set forth in section 401(a) (17) of the Internal Revenue Code shall not apply for an "eligible employee." For purposes of this subsection, "eligible employee" is an individual who was a member of the system before July 1, 1996.

(C) "Salary" does not include:

(a) Contributions by employers to employee held medical savings accounts, as those accounts are defined in section 63-3022K, Idaho Code.

(b) Lump sum payments inconsistent with usual compensation patterns made by the employer to the employee only upon termination from service including, but not limited to, vacation payoffs, sick leave payoffs, early retirement incentive payments and bonuses.

(31A) "Segregated account" means the account established by the retirement system for the alternate payee of a member who is not a retired member. It shall include the months of credited service and accumulated contributions transferred from the member's account.

(32) "Separation benefit" means the amount, if any, payable upon or subsequent to separation from service.

(33) "Service" means being shown on an employer's payroll as an employee receiving a salary. For each calendar month, service is credited only when a member is an employee as defined in subsection (14) (A) of this section and is employed for fifteen (15) days or more during the calendar month. Employment of fourteen (14) days or less during any calendar month shall not be credited. No more than one (1) month of service shall be credited for all service in any month.

(34) "Service retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for service retirement.

(35) "State" means the state of Idaho.

(36) "Vested member" means an active or inactive member who has at least five (5) years of credited service, except that a member, who at the time of his separation from service:

(a) Held an office to which he had been elected by popular vote or having a term fixed by the constitution, statute or charter or was appointed to such office by an elected official; or

(b) Was the head or director of a department, division, agency, statutory section or bureau of the state; or

(c) Was employed on or after July 1, 1965, by an elected official of the state of Idaho and occupied a position exempt from the provisions of chapter 53, title 67, Idaho Code; and

(d) Was not covered by a merit system for employees of the state of Idaho,

is vested without regard to the length of credited service.

(37) The masculine pronoun, wherever used, shall include the feminine pronoun.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 2007. Section 2 of this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 2009. Section 3 of this act shall be in full force and effect on and after July 1, 2011.

Approved March 22, 2011.

CHAPTER 101  
(S.B. No. 1081)

AN ACT

RELATING TO THE IDAHO STATE SCHOOL AND HOSPITAL; AMENDING CHAPTER 2, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-234, IDAHO CODE, TO PROVIDE FOR LEGISLATIVE INTENT; AMENDING CHAPTER 2, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-234A, IDAHO CODE, TO DEFINE TERMS; AMENDING CHAPTER 2, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-235A, IDAHO CODE, TO PROVIDE FOR PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON ADMISSIONS; AMENDING CHAPTER 2, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-235B, IDAHO CODE, TO PROVIDE FOR DISCHARGE PLANNING AND AUTHORIZATION TO DISCHARGE; AMENDING CHAPTER 2, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-235C, IDAHO CODE, TO PROVIDE FOR NOTICE OF DISCHARGE AND REQUEST FOR HEARING; AMENDING CHAPTER 2, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-235D, IDAHO CODE, TO PROVIDE FOR APPEALS; AND AMENDING CHAPTER 2, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-235E, IDAHO CODE, TO PROVIDE FOR RULEMAKING AUTHORITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-234, Idaho Code, and to read as follows:

56-234. LEGISLATIVE INTENT. It is hereby declared by the legislature that, in keeping with current state and national goals and best practice, increasing numbers of persons with developmental disabilities are being discharged to community facilities or private residences as an alternative to

large public institutions licensed as intermediate care facilities for persons with intellectual disabilities. Such deinstitutionalization is highly desirable since it can lead to a fuller, richer and more independent life for persons with developmental disabilities. Recognizing that every individual has unique needs and differing abilities, the purpose of the following provisions is to clarify the department of health and welfare's duties and responsibilities with respect to persons with developmental disabilities, who are or may become residents of the Idaho state school and hospital, a public institution licensed for nine (9) or more beds as an intermediate care facility for persons with intellectual disabilities. The following provisions shall be liberally construed to accomplish these purposes.

SECTION 2. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-234A, Idaho Code, and to read as follows:

56-234A. DEFINITIONS. As used in sections 56-234 through 56-235E, Idaho Code:

(1) "Admission-discharge committee" means an interdisciplinary team of at least three (3) individuals designated by the director to evaluate persons as required by the provisions of sections 56-234 through 56-235E, Idaho Code. Each committee member must be specially qualified by training and experience in the diagnosis and treatment of persons with a developmental disability.

(2) "Certified family home" means a family home as defined in section 39-3502, Idaho Code.

(3) "Community facility" means a privately owned or operated nursing facility, intermediate care facility for persons with intellectual disabilities, licensed residential or assisted living facility, other organization licensed, recognized, or certified by the department to provide care or treatment to persons with developmental disabilities, or a publicly owned or operated facility licensed for eight (8) beds or less as an intermediate care facility for persons with intellectual disabilities.

(4) "Department" means the Idaho department of health and welfare.

(5) "Developmental disabilities" means a chronic disability of a person as defined in section 66-402, Idaho Code.

(6) "Director" means the director of the Idaho department of health and welfare or his designee.

(7) "Discharge" means an admission-discharge committee has determined that there is an available community facility or private residence that is least restrictive, appropriate and consistent with the needs of the individual.

(8) "Medically fragile" means an individual with a developmental disability and a chronic medical condition that is characterized by periods of acute exacerbation or potentially life-threatening episodes and that may require frequent hospitalizations or prolonged recuperation periods and ongoing monitoring and assistance by a licensed registered nurse.

(9) "Private residence" means a certified family home or a single family dwelling or apartment in a multiple dwelling or apartment complex that is used by an individual as a place of abode and that is not used for commercial purposes.

(10) "Resident" means an individual who is admitted to or resides at the Idaho state school and hospital.

(11) "Transfer" means relocating and moving a person who is a resident of the Idaho state school and hospital from that institution to a community facility or private residence or from one (1) community facility or private residence to another. Transfer does not include relocating or moving a resident of the Idaho state school and hospital between rooms or beds within the Idaho state school and hospital.

SECTION 3. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-235A, Idaho Code, and to read as follows:

56-235A. PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON ADMISSION. (1) The Idaho state school and hospital shall not admit, accept or receive any person unless an admission-discharge committee determines that:

- (a) The individual has a developmental disability;
- (b) The individual meets the level of care requirements and active treatment requirements for admission to an intermediate care facility for persons with intellectual disabilities;
- (c) All community facilities, options and supports have been exhausted, and there is no available community facility or private residence that is least restrictive, appropriate and consistent with the needs of the individual; and
- (d) The Idaho state school and hospital is the least restrictive available residential placement consistent with the needs of the individual after considering all available and appropriate community facilities and private residences.

(2) The director may limit admissions and establish admission priorities to the Idaho state school and hospital through rulemaking in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department to the facility. The Idaho state school and hospital may refuse any applicant for voluntary admission.

(3) Subsections (1) and (2) of this section do not apply to:

- (a) Temporary emergency admissions or placements for crisis stabilization only, for up to ninety (90) days, that are preauthorized by the director; or
- (b) Admissions or placements made by the director pursuant to section 66-406, Idaho Code.

SECTION 4. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-235B, Idaho Code, and to read as follows:

56-235B. DISCHARGE PLANNING -- AUTHORIZATION TO DISCHARGE. The director may discharge a resident of the Idaho state school and hospital on such terms and conditions as the director may determine whenever an admission-discharge committee determines there is an available community facility or private residence that is least restrictive, appropriate and consistent with the individual's needs. The director shall use reasonable efforts to discharge a resident to a community facility or private residence where the individual can be readily visited by those persons interested in his well-being.

SECTION 5. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-235C, Idaho Code, and to read as follows:

56-235C. NOTICE OF DISCHARGE -- REQUEST FOR HEARING. (1) Before a discharge plan is implemented, the resident and the resident's spouse, guardian, adult next of kin or friend, if any, shall be given an opportunity to participate in the development and review of the admission-discharge committee's discharge plan.

(2) If, after reasonable efforts have been exhausted, the resident or the resident's spouse, guardian, adult next of kin or friend, if any, does not agree with the admission-discharge committee's discharge plan, ninety (90) days prior to discharge, written notice shall be filed with the committing court, if any, and served by registered or certified mail upon the

resident, resident's attorney, and either the resident's spouse, guardian, adult next of kin or friend, if any. The written notice must include a statement advising the resident of the right to request a hearing by the director and must also include a statement advising the resident of the right to judicial review.

(3) Within fifteen (15) days from receipt of the notice of discharge, the resident may serve a written request for hearing upon the director. Upon receipt of such request, the director shall fix a date for hearing, which date shall not be more than thirty (30) days from receipt of the request, and shall give the resident at least fifteen (15) days' written notice of said hearing date. Within thirty (30) days after the conclusion of the hearing, the director shall notify the resident in writing by registered or certified mail of his decision. A transfer shall not be implemented during any period in which a request for hearing is pending and undecided by the director. If no request for hearing is made within fifteen (15) days from receipt of the notice of discharge, the director may discharge the resident.

(4) The director shall periodically monitor the adjustment of the former resident to his transfer to a community facility or private residence. If within ninety (90) days following a transfer to a community facility or private residence, an admission-discharge committee determines that the former resident is not adjusting to the transfer and there is no other available community facility or private residence least restrictive, appropriate and consistent with the needs of the former resident, the director may make the determination that the former resident be readmitted to the Idaho state school and hospital in accordance with section 56-235A, Idaho Code.

SECTION 6. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-235D, Idaho Code, and to read as follows:

56-235D. APPEALS. If a former resident feels aggrieved by a decision of the director rendered pursuant to a hearing as provided in section 56-235C, Idaho Code, appeal may be taken to the committing court or the court of the county in which such former resident is present. Appeal must be taken in the manner and form set forth in chapter 52, title 67, Idaho Code, provided however, the filing of a notice of appeal with the court shall not, unless otherwise ordered, stay the resident's discharge or the decision of the director.

SECTION 7. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-235E, Idaho Code, and to read as follows:

56-235E. RULEMAKING AUTHORITY. The director, in addition to other duties imposed by law, is hereby authorized and directed through rulemaking to establish procedures necessary to implement these provisions. The rulemaking authority granted in this section shall be limited to the specific standards and procedures required by sections 56-234 through 56-235D, Idaho Code.

Approved March 22, 2011.

CHAPTER 102  
(S.B. No. 1082)

AN ACT

RELATING TO THE IDAHO STATE SCHOOL AND HOSPITAL; AMENDING SECTION 36-401, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 56-203, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 56-235, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 56-1004, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 66-115, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 66-116, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 66-118, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 66-402, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 66-501, IDAHO CODE, TO REVISE TERMINOLOGY; AND AMENDING SECTION 66-503, IDAHO CODE, TO REVISE TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 36-401, Idaho Code, be, and the same is hereby amended to read as follows:

36-401. HUNTING, TRAPPING, FISHING -- LICENSE REQUIREMENT -- EXCEPTIONS. No person shall hunt, trap, or fish for or take any wild animal, bird or fish of this state, without first having procured a license as hereinafter provided. Provided that no license shall be required:

- (a) 1. For children under the age of fourteen (14) years who are residents of this state to fish during the open season therefor.
2. For nonresident children under the age of fourteen (14) years to fish during the open season therefor provided they are accompanied by the holder of a valid fishing license, and provided further that any fish caught by such nonresident children shall be included in the bag and possession limit of such license holder.
3. For resident children under the age of twelve (12) years to hunt, take or kill predatory, unprotected birds and animals by means other than with firearms.
4. For resident children under the age of fourteen (14) years to trap muskrats from irrigation ditches or property on which they live during the open season.
5. For children under the age of eighteen (18) years who are residents of a licensed foster home or a children's residential care facility to fish during the open season therefor, provided they are accompanied and supervised by the director, officer, or other employee of the facility where the child resides.
6. For children with life-threatening medical conditions participating in a hunt in association with a qualified organization as provided in section 36-408(6), Idaho Code.
7. For military veterans with disabilities participating in a hunt in association with a qualified organization as provided in section 36-408(7), Idaho Code.

(b) For any person to fish on a "free fishing day" as may be designated by the commission.

(c) State Long-term Care Facility Residents. For any resident of a state long-term care facility to fish during open seasons, provided said state long-term care facility has a permit therefor from the director. The director is authorized to issue such permits upon the request of the head of the respective state long-term care facility having custody of said resident upon a showing that the state long-term care facility recommends

the issuance of such permit and will assume full responsibility for and control over any resident while using said permit. For purposes of this subsection only, "state long-term care facility" shall mean the state hospital north, state hospital south, southwest Idaho state school and hospital treatment center, and state veterans homes, and "resident" shall mean any individual residing and receiving treatment services at a state long-term care facility.

(d) State Juvenile Corrections Center Students. For students of the state juvenile corrections center, under the supervision of an officer of the center, to fish during the open season.

(e) Boy Scouts. For boy scouts who are official participants in attendance at national or international encampments at Farragut State Park to take fish during the encampment period from Lake Pend Oreille in such areas and such numbers as may be designated by the commission.

(f) Participants in Fish and Game Sponsored Functions. For persons who are official participants in attendance at official department sponsored functions including clinics, courses or other educational events, while under the supervision of a department approved instructor for the function, to fish during any open season, provided that the instructor has been issued an educational fishing permit by the director.

(g) Nothing contained herein shall be construed to prohibit citizens of the United States who are residents of the state of Idaho from carrying arms for the protection of life and property.

SECTION 2. That Section 56-203, Idaho Code, be, and the same is hereby amended to read as follows:

56-203. POWERS OF STATE DEPARTMENT. The state department shall have the power to:

(1) Enter into contracts and agreements with the federal government through its appropriate agency or instrumentality whereby the state of Idaho shall receive federal grants-in-aid or other benefits for public assistance or public welfare purposes under any act or acts of congress heretofore or hereafter enacted;

(2) Cooperate with the federal government in carrying out the purposes of any federal acts pertaining to public assistance or welfare services, and in other matters of mutual concern;

(3) Cooperate with county governments and other branches of government and other agencies, public or private, in administering and furnishing public welfare services;

(4) Enter into reciprocal agreements with other states relative to the provisions of public assistance and welfare services to residents and non-residents;

(5) Initiate and administer public assistance and social services for persons with physical or mental disabilities;

(6) Establish such requirements of residence for public assistance under this act as may be deemed advisable, subject to any limitations imposed in this act;

(7) Define persons entitled to medical assistance in such terms as will meet requirements for federal financial participation in medical assistance payments;

(8) Accept the legal custody of children committed to it by district courts of this state under the Child Protective Act, to provide protective supervision as defined therein, to place children for adoption when such children are in the legal custody of the state department and are legally available for adoption and to exercise consent to adoption when the authority to do so is vested in the department by court order or legally authorized parental relinquishment;

(9) Determine the amount, duration and scope of care and services to be purchased as medical assistance on behalf of needy eligible individuals;

(10) Manage and operate the southwest Idaho state school and hospital treatment center at Nampa, Idaho.

SECTION 3. That Section 56-235, Idaho Code, be, and the same is hereby amended to read as follows:

56-235. SOUTHWEST IDAHO STATE SCHOOL AND HOSPITAL TREATMENT CENTER. The establishment by law of the southwest Idaho state school and hospital treatment center at Nampa, Idaho, is hereby ratified and affirmed, and its operation continued; provided, however, that on and after the effective date of this act, the school and hospital treatment center shall be in the general supervision, control and government of the state department of health and welfare. All rights and title to property, real and personal, belonging to or vested in the state board of health are hereby transferred and vested in the state department of health and welfare. The state department is empowered to acquire, by purchase or exchange, any property which in the judgment of the department is needful for the operation of the school and hospital treatment center, and to dispose of, by sale or exchange, any property which in the judgment of the department is not needful for the operation of the same. The department of health and welfare shall have authority to administer the school and hospital treatment center, to employ and release such personnel as are required for the operation of the school and hospital treatment center, fix salaries, and to perform any other necessary and proper functions in the efficient and beneficial operation of the school and hospital treatment center.

SECTION 4. That Section 56-1004, Idaho Code, be, and the same is hereby amended to read as follows:

56-1004. DIRECTOR -- ADDITIONAL POWERS AND DUTIES. (1) The director shall exercise the following powers and duties in addition to all other powers and duties inherent in the position:

(a) Prescribe such rules as may be necessary for the administration of the department, the conduct and duties of the employees, the orderly and efficient management of department business, and the custody, use and preservation of department records, papers, books and property belonging to the state;

(b) Employ such personnel as may be deemed necessary, prescribe their duties and fix their compensation within the limits provided by the state personnel system law;

(c) Administer oaths for all purposes required in the discharge of his duties;

(d) Prescribe the qualifications of all personnel of the department on a nonpartisan merit basis, in accordance with the Idaho personnel system law, provided however, that the administrators in charge of any division of the department, and the administrators in charge of the state hospital north, state hospital south, and southwest Idaho state school and hospital treatment center shall serve at the pleasure of the director;

(e) Create such units, sections and subdivisions as are or may be necessary for the proper and efficient functioning of the department.

(2) The department is empowered to acquire, by purchase, lease or exchange, any property which in the judgment of the department is needful for the operation of the facilities and programs for which it is responsible and to dispose of, by sale, lease or exchange, any property which in the judgment of the department is not needful for the operation of the same.

SECTION 5. That Section 66-115, Idaho Code, be, and the same is hereby amended to read as follows:

66-115. OFFICIALLY NAMING THE STATE HOSPITALS. The hospital located at Blackfoot, in the county of Bingham, shall be known as the Sstate Hhospital Ssouth; the hospital located at Orofino, in the county of Clearwater, shall be known as the Sstate Hhospital Nnorth; the hospital located at Nampa, in the county of Canyon, shall be known as the southwest Idaho State School and Hospital treatment center.

SECTION 6. That Section 66-116, Idaho Code, be, and the same is hereby amended to read as follows:

66-116. INSTITUTIONS UNDER THE JURISDICTION OF THE BOARD. State Hhospital Ssouth, Sstate Hhospital Nnorth and southwest Idaho State School and Hospital treatment center shall be under the management and control of the board of health and welfare.

SECTION 7. That Section 66-118, Idaho Code, be, and the same is hereby amended to read as follows:

66-118. POWERS AND DUTIES OF THE BOARD -- HOSPITALS MANAGED BY -- ANNUAL REPORT. The board shall have complete authority to manage and operate the Sstate Hhospital Nnorth, at Orofino; the Sstate Hhospital Ssouth, at Blackfoot; the southwest Idaho State School and Hospital treatment center at Nampa; with authority to establish professional standards of qualifications for doctors, nurses, superintendents, general managers, farm managers, attendants, and all other personnel and may employ a general business manager for each of said hospitals, and hospital personnel at said hospitals and medical superintendents for each of said hospitals, at its discretion, or a superintendent, or director, or manager who may be over all hospitals. The board shall have complete authority to, or it is the duty of the board:

(a1) To make rules for the government of said hospitals and to define the duties of all employees; provided, that the members of the board shall not be personally liable for any act of any employee done in violation of any law, or contrary to any rule of the board; nor shall any administrative employee of the board be responsible for the act of any other employee done in violation of any laws of the state, or rule of the board, or order of the administrative employee;

(b2) To receive, take and hold property, both real and personal, in trust for the state and for the use and benefit of such hospitals;

(e3) To visit each of said hospitals at such times as it deems necessary and to keep itself advised of all expenses and the condition of buildings and property, the safety and treatment of patients, and require the general manager or superintendent to make periodic reports as to the condition of each hospital and treatment of the patients;

(d4) To require the keeping of a complete and accurate set of books of each hospital in accordance with the accounting required of other institutions of the state; to examine and audit the expenditures of each hospital and to certify the same to the state controller. The board shall require that all itemized bills, purchases and other expenditures made, must be examined and approved by the head of the hospital making such purchases or expenditures and then the same must be certified by the board, and transmitted to the state controller to be reviewed and allowed in the same manner as other accounts against the state are reviewed and allowed. When allowed the state controller must draw his warrant on the state treasurer for the amount so reviewed and allowed, and the state treasurer is hereby authorized and required to pay the same out of any money in the state treasury appropriated therefor;

(e5) To make rules and fix the terms and conditions of payment of costs of care and treatment of mentally ill persons who are not indigent or who are not residents of the state, who are admitted to said Sstate Hhospital Nnorth, Sstate Hhospital Ssouth, or southwest Idaho State School and Hospital treatment center, all receipts from such persons to be paid into the state treasury and credited to salaries and wages, other current expense, or capital outlay of the general fund of the remitting hospital, at the discretion of the board;

(f6) To enter into reciprocal agreements with similar boards of other states for the transfer of residents of those states, who have been involuntarily hospitalized to any of the aforesaid hospitals in this state, or the transfer of Idaho residents, who have been involuntarily hospitalized to similar hospitals in those states, to the appropriate hospital in this state;

(g7) To recognize that or to proceed on the fact that any order of involuntary hospitalization of an Idaho resident, by judicial action of another state, shall be sufficient for admitting such resident, without further judicial action in this state, to a similar hospital in this state;

(h8) To remove patients in case of necessity, or when they feel it is for the betterment of the patient's welfare, to an appropriate place at the discretion of the board, and to make necessary negotiations to carry out such a procedure;

(i9) To purchase insurance for any of the medical staff in any of the hospitals against liability for alleged malpractice by reason of any act, or omission, while in the service of the state of Idaho;

(j10) To remove and transfer from one (1) state hospital to another, or from a state hospital to a private hospital, or to a hospital of another state, or other government agency, any person confined therein, for the purpose of grouping together classes of mentally ill persons, or to give them better medical aid and care;

(k11) To report to the governor each year, a statement of receipts and expenditures, the condition of each hospital, the number of patients under treatment at each hospital during the preceding year and such other matters as may be pertinent, and to make an annual report to the governor in substantially the same manner on or before ~~the 1st day of~~ December 1 prior to each regular session of the legislature;

(l12) To delegate to the head of the hospital, or to a director or superintendent, or manager of all hospitals the powers and duties vested by law in the board, at its discretion;

(m13) To initiate, create, or promote procedures, policies and practices either as a body or in cooperation with other governmental departments or agencies for the general welfare and betterment of the mental health of the people of the state of Idaho.

SECTION 8. That Section 66-402, Idaho Code, be, and the same is hereby amended to read as follows:

66-402. DEFINITIONS. As used in this chapter:

- (1) "Adult" means an individual eighteen (18) years of age or older.
- (2) "Artificial life-sustaining procedures" means any medical procedure or intervention which utilizes mechanical means to sustain or supplant a vital function. Artificial life-sustaining procedures shall not include the administration of medication, and it shall not include the performance of any medical procedure deemed necessary to alleviate pain, or any procedure which could be expected to result in the recovery or long-term survival of the patient and his restoration to consciousness.
- (3) "Department" means the Idaho department of health and welfare.
- (4) "Director" means the director of the department of health and welfare.

(5) "Developmental disability" means a chronic disability of a person which appears before the age of twenty-two (22) years of age and:

(a) Is attributable to an impairment, such as intellectual disability, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and

(b) Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and

(c) Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated.

(6) "Emancipated minor" means an individual between fourteen (14) and eighteen (18) years of age who has been married or whose circumstances indicate that the parent-child relationship has been renounced.

(7) "Evaluation committee" means an interdisciplinary team of at least three (3) individuals designated by the director or his designee to evaluate an individual as required by the provisions of this chapter. Each committee must include a physician licensed to practice medicine in the state of Idaho, a licensed social worker and a clinical psychologist or such other individual who has a master's degree in psychology as designated by the department director. Each committee member must be specially qualified by training and experience in the diagnosis and treatment of persons with a developmental disability.

(8) "Facility" means the ~~southwest Idaho state school and hospital treatment center~~, a nursing facility, an intermediate care facility, an intermediate care facility for people with intellectual disabilities, a licensed residential or assisted living facility, a group foster home, other organizations licensed to provide twenty-four (24) hour care, treatment and training to the developmentally disabled, a mental health center, or an adult and child development center.

(9) "Lacks capacity to make informed decisions" means the inability, by reason of developmental disability, to achieve a rudimentary understanding of the purpose, nature, and possible risks and benefits of a decision, after conscientious efforts at explanation, but shall not be evidenced by improvident decisions within the discretion allowed nondevelopmentally disabled individuals.

(10) "Likely to injure himself or others" means:

(a) A substantial risk that physical harm will be inflicted by the respondent upon his own person as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or

(b) A substantial risk that physical harm will be inflicted by the respondent upon another as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or

(c) That the respondent is unable to meet essential requirements for physical health or safety.

(11) "Manage financial resources" means the actions necessary to obtain, administer and dispose of real, personal, intangible or business property, benefits and/or income.

(12) "Meet essential requirements for physical health or safety" means the actions necessary to provide health care, food, clothing, shelter, personal hygiene and/or other care without which serious physical injury or illness would occur.

(13) "Minor" means an individual seventeen (17) years of age or less.

(14) "Protection and advocacy system" means the agency designated by the governor of the state of Idaho to provide advocacy services for people with disabilities pursuant to 42 U.S.C. section 6042.

(15) "Respondent" means the individual subject to judicial proceedings authorized by the provisions of this chapter.

SECTION 9. That Section 66-501, Idaho Code, be, and the same is hereby amended to read as follows:

66-501. CREATION OF PATIENTS' TRUST FUND. There shall be established in the respective offices of the superintendents or managers of each state hospital and the southwest Idaho state school and hospital treatment center, a fund to be known as the patients' trust fund.

SECTION 10. That Section 66-503, Idaho Code, be, and the same is hereby amended to read as follows:

66-503. CUSTODY OF MONEY -- DUTY OF SUPERINTENDENT OR MANAGER. All moneys so held in trust shall be kept by the superintendent or manager, subject to be returned to the person or persons from whom any part of such fund has been taken for deposit in trust, except any portion thereof applied to such patient's expenses while in said state hospital or the southwest Idaho state school and hospital treatment center or applied to the payment of the funeral expenses of said patient, upon his death, release or discharge from the said institution; provided, however, that if any patient who dies or has been discharged or escaped from any state hospital or the southwest Idaho state school and hospital treatment center does not present, personally or through his legal guardian, heirs or assigns, a claim against the said trust fund for repayment to him of money to his credit in said trust fund for patients within five (5) years from the date of his death, discharge or escape as certified to the state controller of the state of Idaho by the officer in charge of said institutions, said money shall escheat to the state of Idaho and shall be transferred to the general fund thereof by the state controller and the superintendent.

Approved March 22, 2011.

CHAPTER 103  
(S.B. No. 1101)

AN ACT

RELATING TO DAYCARE FACILITIES; AMENDING SECTION 39-1118, IDAHO CODE, TO REVISE A DOCUMENT NAME, TO PROVIDE FOR THE SIGNING OF AN IMMUNIZATION RECORD, TO PROVIDE THAT THE SIGNATURE ON AN IMMUNIZATION RECORD SHALL VERIFY CERTAIN INFORMATION AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-1118, Idaho Code, be, and the same is hereby amended to read as follows:

39-1118. IMMUNIZATION REQUIRED. (1) Within fourteen (14) days of a child's initial attendance at any licensed daycare facility, the parent or guardian shall provide a statement an immunization record to the operator of the daycare facility regarding the child's immunity to certain childhood diseases. This statement shall provide a certificate record, signed by a physician or a his representative of a district health department or another licensed health care professional, shall verify that the child has received,

or is in the process of receiving immunizations as specified by the board; or can effectively demonstrate, through verification in a form approved by the department, immunity gained through prior contraction of the disease.

Immunizations required and the manner and frequency of their administration shall be as prescribed by the board and shall conform to recognized standard medical practices in the state. The board shall promulgate appropriate rules for the enforcement of the required immunization program and specify reporting requirements of daycare facilities, pursuant to the provisions of chapter 52, title 67, Idaho Code.

(2) Any minor child whose parent or guardian has submitted to officials of a licensed daycare facility a certificate signed by a physician licensed by the state board of medicine stating that the physical condition of the child is such that all or any of the required immunizations would endanger the life or health of the child shall be exempt from the provisions of this section. Any minor child whose parent or guardian has submitted a signed statement to officials of the daycare facility stating their objections on religious or other grounds shall be exempt from the provisions of this section.

Approved March 22, 2011.

CHAPTER 104  
(S.B. No. 1103)

AN ACT

RELATING TO CHILD SUPPORT; AMENDING SECTION 5-245, IDAHO CODE, TO REVISE THE TIME FRAME DURING WHICH AN ACTION OR PROCEEDING TO COLLECT CHILD SUPPORT ARREARAGES CAN BE COMMENCED; AMENDING SECTION 10-1110, IDAHO CODE, TO REMOVE A QUALIFICATION AS TO THE JUDGMENT UNDER WHICH A LIEN ARISES AND TO REVISE THE TIME FRAME DURING WHICH A LIEN ARISING FROM THE DELINQUENCY OF THE PAYMENT DUE UNDER A RECORDED CHILD SUPPORT JUDGMENT CONTINUES; AMENDING SECTION 10-1111, IDAHO CODE, TO PROVIDE FOR THE RENEWAL OF A CHILD SUPPORT JUDGMENT AND THE DURATION OF THE LIEN ESTABLISHED THEREBY; PROVIDING SEVERABILITY; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 5-245, Idaho Code, be, and the same is hereby amended to read as follows:

5-245. ACTIONS TO COLLECT CHILD SUPPORT ARREARAGES. An action or proceeding to collect child support arrearages ~~must, arising under an Idaho child support order, can be commenced within five (5) years after the child reaches the age of majority or within five (5) years after the child's death, if death occurs before the child reaches majority at any time prior to the expiration of the resulting judgment or any renewal thereof.~~ An action or proceeding under this section shall include, but is not limited to, execution on the judgment, order to show cause, garnishment, income withholding, income tax offset or lottery prize offset.

SECTION 2. That Section 10-1110, Idaho Code, be, and the same is hereby amended to read as follows:

10-1110. FILING TRANSCRIPT OF JUDGMENTS -- LIEN ACQUIRED. A transcript or abstract of any judgment or decree of any court of this state or any court of the United States the enforcement of which has not been stayed as provided by law, if rendered within this state, certified by the clerk

having custody thereof, may be recorded with the recorder of any county of this state, who shall immediately record and docket the same as by law provided, and from the time of such recording, and not before, the judgment so recorded becomes a lien upon all real property of the judgment debtor in the county, not exempt from execution, owned by him at the time or acquired afterwards at any time prior to the expiration of the lien; provided that where a transcript or abstract is recorded of any judgment or decree of divorce or separate maintenance making provision for installment or periodic payment of sums for maintenance of children or alimony or allowance for wife's support, such judgment or decree shall be a lien only in an amount for payments so provided, delinquent or not made when due. The lien resulting from recording of a judgment other than for support of a child continues five (5) years from the date of the judgment, unless the judgment be previously satisfied, or unless the enforcement of the judgment be stayed upon an appeal as provided by law. A lien arising from the delinquency of a payment due under a recorded judgment for support of a child after ~~July 1, 1995,~~ issued by an Idaho court continues twenty-three (23) until five (5) years from the date of after the death or emancipation of the last child for whom support is owed under the judgment unless the underlying judgment be is renewed, is previously satisfied or unless the enforcement of the judgment be is stayed upon an appeal as provided by law. Provided, that no lien for child support shall continue more than five (5) years after the child reaches the age of majority or five (5) years after the child's death, whichever shall first occur. If the recorded judgment is for the support of more than one (1) child, the lien shall continue until five (5) years after the youngest child reaches the age of majority or five (5) years after the death of the last remaining child, whichever shall first occur. The transcript or abstract above mentioned shall contain the title of the court and cause and number of action, names of judgment creditors and debtors, time of entry and amount of judgment.

SECTION 3. That Section 10-1111, Idaho Code, be, and the same is hereby amended to read as follows:

10-1111. RENEWAL OF JUDGMENT -- LIEN. (1) Unless the judgment has been satisfied, at any time prior to the expiration of the lien created by section 10-1110, Idaho Code, or any renewal thereof, the court which entered the judgment, other than a judgment for child support, may, upon motion, renew such judgment. The renewed judgment may be recorded in the same manner as the original judgment, and the lien established thereby shall continue for five (5) years from the date of judgment.

(2) Unless the judgment has been satisfied, and prior to the expiration of the lien created in section 10-1110, Idaho Code, or any renewal thereof, a court that has entered a judgment for child support may, upon motion, renew such judgment. The renewed judgment may be enforced in the same manner as the original judgment, and the lien established thereby shall continue for ten (10) years from the date of the renewed judgment.

SECTION 4. 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 the remaining portions of this act.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to July 1, 2011, and shall apply to all orders currently being enforced by the Idaho Department of Health and Welfare Child Support Program such that any Idaho judgment for child support

that would otherwise have expired since July 1, 1995, may be renewed on or before December 30, 2011.

Approved March 22, 2011.

CHAPTER 105  
(S.B. No. 1116)

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 18-8001, IDAHO CODE, TO REVISE THE COURT'S AUTHORITY TO SUSPEND DRIVING PRIVILEGES FOLLOWING AN INITIAL AND SUBSEQUENT CONVICTION OF A SPECIFIED OFFENSE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-8001, Idaho Code, be, and the same is hereby amended to read as follows:

18-8001. DRIVING WITHOUT PRIVILEGES. (1) Any person who drives or is in actual physical control of any motor vehicle upon the highways of this state with knowledge or who has received legal notice pursuant to section 49-320, Idaho Code, that his driver's license, driving privileges or permit to drive is revoked, disqualified or suspended in this state or any other jurisdiction is guilty of a misdemeanor.

(2) A person has knowledge that his license, driving privileges or permit to drive is revoked, disqualified or suspended when:

(a) He has actual knowledge of the revocation, disqualification or suspension of his license, driving privileges or permit to drive; or

(b) He has received oral or written notice from a verified, authorized source, that his license, driving privileges or permit to drive was revoked, disqualified or suspended; or

(c) Notice of the suspension, disqualification or revocation of his license, driving privileges or permit to drive was mailed by first class mail to his address pursuant to section 49-320, Idaho Code, as shown in the transportation department records, and he failed to receive the notice or learn of its contents as a result of his own unreasonable, intentional or negligent conduct or his failure to keep the transportation department apprised of his mailing address as required by section 49-320, Idaho Code; or

(d) He has knowledge of, or a reasonable person in his situation exercising reasonable diligence would have knowledge of, the existence of facts or circumstances which, under Idaho law, might have caused the revocation, disqualification or suspension of his license, driving privileges or permit to drive.

(3) Any person who pleads guilty to or is found guilty of a violation of subsection (1) for the first time:

(a) Shall be sentenced to jail for a mandatory minimum period of not less than two (2) days, and may be sentenced to not more than six (6) months, provided however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work release or work detail program within the custody of the county sheriff during the period of incarceration, or, if the underlying suspension that resulted in the violation of this section is not a suspension resulting from an offense identified in subsection (8) of this section, the judge may authorize an equivalent amount of community service in lieu of jail, or any equivalent combination of these options;

(b) May be fined an amount not to exceed one thousand dollars (\$1,000); and

(c) ~~Shall~~ May have his driving privileges suspended by the court for an additional six (6) months period not to exceed one hundred eighty (180) days following the end of any period of suspension, disqualification or revocation existing at the time of the violation; the defendant may request restricted driving privileges during the period of the suspension or disqualification, which the court may allow if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment, education or for family health needs.

(4) Any person who pleads guilty to or is found guilty of a violation of subsection (1) for a second time within five (5) years, irrespective of the form of the judgment(s) or withheld judgment(s):

(a) Shall be sentenced to jail for a mandatory minimum period of not less than twenty (20) days, and may be sentenced to not more than one (1) year, provided however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work release or work detail program within the custody of the county sheriff during the period of incarceration, or, if the underlying suspension that resulted in the violation of this section is not a suspension resulting from an offense identified in subsection (8) of this section, the judge may authorize an equivalent amount of community service in lieu of jail, or any equivalent combination of these options;

(b) May be fined an amount not to exceed one thousand dollars (\$1,000); and

(c) ~~Shall~~ May have his driving privileges suspended by the court for an additional period not to exceed one (1) year following the end of any period of suspension, disqualification or revocation existing at the time of the second violation, ~~during the first thirty (30) days of which time he shall have absolutely no driving privileges of any kind.~~ The defendant may request restricted driving privileges during the period of the suspension ~~or disqualification, to begin after the period of absolute suspension,~~ which the court may allow if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment, education or for family health needs.

(5) Any person who has pled guilty to or been found guilty of more than two (2) violations of the provisions of subsection (1) of this section within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a misdemeanor; and

(a) Shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days, and may be sentenced to not more than one (1) year; provided, however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work release or work detail program within the custody of the county sheriff during the period of incarceration, or, if the underlying suspension that resulted in the violation of this section is not a suspension resulting from an offense identified in subsection (8) of this section, the judge may authorize an equivalent amount of community service in lieu of jail, or any equivalent combination of these options;

(b) May be fined an amount not to exceed three thousand dollars (\$3,000); and

(c) ~~Shall~~ May have his driving privileges suspended by the court for an additional period not to exceed two (2) years following the end of any period of suspension, disqualification or revocation existing at the time of the violation, ~~during the first ninety (90) days of which time he shall have absolutely no driving privileges of any kind.~~ The defendant may request restricted driving privileges during the period of the suspension ~~or disqualification, to begin after the period of absolute suspension,~~ which the court may allow if the defendant shows by a

preponderance of the evidence that driving privileges are necessary for his employment, education or for family health needs.

(6) A minor may be prosecuted for a violation of subsection (1) of this section under chapter 5, title 20, Idaho Code.

(7) If a person is convicted for a violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, and at the time of arrest had no driving privileges, the penalties imposed by this section shall be in addition to any penalties imposed under the provisions of section 18-8005, 18-8004A, 18-8004C or 18-8006, Idaho Code, and not in lieu thereof.

(8) For purposes of this section, the offenses referred to in subsections (3) (a), (4) (a) and (5) (a) of this section are:

- (a) Section 18-1501(3), Idaho Code, transporting a minor in a motor vehicle while under the influence;
- (b) Section 18-4006(3), Idaho Code, vehicular manslaughter;
- (c) Section 18-8001, Idaho Code, driving without privileges;
- (d) Section 18-8004, Idaho Code, driving under the influence of alcohol, drugs or other intoxicating substances;
- (e) Section 18-8004C, Idaho Code, excessive alcohol concentration;
- (f) Section 18-8006, Idaho Code, aggravated driving while under the influence of alcohol, drugs or any other intoxicating substances;
- (g) Section 18-8007, Idaho Code, leaving the scene of an accident resulting in injury or death;
- (h) Section 49-1229, Idaho Code, required motor vehicle insurance;
- (i) Section 49-1232, Idaho Code, certificate or proof of liability insurance to be carried in motor vehicle;
- (j) Section 49-1401, Idaho Code, reckless driving;
- (k) Section 49-1404, Idaho Code, eluding a police officer;
- (l) Section 49-1428, Idaho Code, operating a vehicle without liability insurance;

or any substantially conforming foreign criminal violation.

(9) In no event shall a person be granted restricted driving privileges unless the person shows proof of liability insurance or other proof of financial responsibility, as provided in chapter 12, title 49, Idaho Code.

(10) In no event shall a person who is disqualified or whose driving privileges are suspended, revoked or canceled under the provisions of this chapter be granted restricted driving privileges to operate a commercial motor vehicle.

Approved March 22, 2011.

CHAPTER 106  
(S.B. No. 1121)

AN ACT

RELATING TO INTESTATE SUCCESSION AND WILLS; AMENDING SECTION 15-2-801, IDAHO CODE, TO REVISE THE TIME FRAME FOR FILING A DISCLAIMER UNDER CERTAIN CIRCUMSTANCES, TO REMOVE OUTDATED PROVISIONS AND TO MAKE TECHNICAL CORRECTIONS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 15-2-801, Idaho Code, be, and the same is hereby amended to read as follows:

15-2-801. RENUNCIATION.

(1) (a) ~~(1)~~ A person or the representative of an incapacitated or unascertained person who is an heir, devisee, person succeeding to a

renounced interest, donee, beneficiary under a testamentary or non-testamentary instrument, donee of a power of appointment, grantee, surviving joint owner or surviving joint tenant, beneficiary of an insurance contract, person designated to take pursuant to a power of appointment exercised by a testamentary or nontestamentary instrument, or otherwise the recipient of any benefit under a testamentary or nontestamentary instrument, may renounce in whole or in part, powers, future interests, specific parts, fractional shares or assets thereof by filing a written instrument within the time and at the place hereinafter provided.

(2b) The instrument shall:

- (i) ~~d~~Describe the property or interest renounced;
- (ii) ~~b~~Be signed by the person renouncing; and
- (iii) ~~d~~Declare the renunciation and the extent thereof.

(3c) The appropriate court may direct or permit a trustee under a testamentary or nontestamentary instrument to renounce or to deviate from any power of administration, management or allocation of benefit upon finding that exercise of such power may defeat or impair the accomplishment of the purposes of the trust whether by the imposition of tax or the allocation of beneficial interest inconsistent with such purposes. Such authority shall be exercised after hearing and upon notice to all known persons beneficially interested in such trust or estate, in the manner ~~provided by this act pursuant to part 4, chapter 1, title 15, Idaho Code.~~

(b2) ~~Except as provided in subsection (9) of the this section, t~~The writing specified in subsection (a1) of this section must be filed within nine (9) months after the transfer or the death of the decedent, or donee of the power, ~~(whichever is the later),~~ or, if the taker of the property is not then finally ascertained, not later than nine (9) months after the event that determines that the taker of the property or interest is finally ascertained or his interest indefeasibly vested. The writing must be filed in the court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. If an interest in real estate is renounced, a copy of the writing may also be recorded in the office of the recorder in the county in which said real estate lies. A copy of the writing also shall be delivered in person or mailed by registered or certified mail to the personal representative of the decedent, the trustee of any trust in which the interest renounced exists, and no such personal representative, trustee, or person shall be liable for any otherwise proper distribution or other disposition made without actual notice of the renunciation.

(e3) Unless the decedent or donee of the power has otherwise indicated, the property or interest renounced passes as if the person renouncing had predeceased the decedent, or if the person renouncing is designated to take under a power of appointment as if the person renouncing had predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the person renouncing had predeceased the decedent or the donee of the power. In every case the renunciation relates back for all purposes to the date of death of the decedent or the donee, as the case may be.

(d4) The right to renounce property or an interest therein is barred by:

- (1a) ~~a~~Assignment, conveyance, encumbrance, pledge or transfer of property therein or any contract therefor;
- (2b) ~~w~~Written waiver of the right to renounce; or
- (3c) ~~s~~Sale or other disposition of property pursuant to judicial process, made before the renunciation is effective.

(e5) The right to renounce granted by this section exists irrespective of any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(f6) The renunciation or the written waiver of the right to renounce is binding upon the person renouncing or person waiving and all persons claiming through or under him.

(g7) This section does not abridge the right of any person to assign, convey, release, or renounce any property or an interest therein arising under any other statute.

~~(h8) An interest in property existing on the effective date of this act as to which, if a present interest, the time for filing a renunciation has not expired, or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained may be renounced within nine (9) months after the effective date of this act.~~

~~(i) In clarification and amplification of subsection (1) (a) (1) of this section, and to make clear the existing terms thereof, a renunciation may be made by an agent appointed under a power of attorney, by a conservator or guardian on behalf of an incapacitated person, or by the personal representative or administrator of a deceased person. The ability to renounce on behalf of the person does not need to be specifically set forth in a power of attorney if the power is general in nature.~~

(9) The due date for filing a timely disclaimer under subsection (2) of this section, where the decedent died after December 31, 2009, but before December 17, 2010, shall be not earlier than September 19, 2011.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval and retroactively to January 1, 2010, for all decedents who die on or after January 1, 2010.

Approved March 22, 2011.

CHAPTER 107  
(S.B. No. 1123, As Amended)

AN ACT

RELATING TO THE PROHIBITION OF REAL ESTATE TRANSFER FEES; AMENDING TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 31, TITLE 55, IDAHO CODE, TO PROVIDE FOR LEGISLATIVE FINDINGS, TO DEFINE TERMS AND TO MAKE UNLAWFUL THE IMPLEMENTATION AND COLLECTION OF CERTAIN FEES; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 55, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 31, Title 55, Idaho Code, and to read as follows:

CHAPTER 31  
PROHIBITION OF TRANSFER FEE COVENANTS

55-3101. LEGISLATIVE FINDINGS. (1) The public policy of this state favors the transferability of interests in real property free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the property.

(2) A transfer fee covenant violates the public policy of this state by impairing the marketability of title to the affected real property and constitutes an unreasonable restraint on alienation, regardless of the duration of the covenant or the amount of the transfer fee set forth in the covenant.

55-3102. DEFINITIONS. As used in this section:

(1) "Association" means a nonprofit, mandatory membership organization comprised of owners of homes, condominiums, cooperatives, manufactured homes or any interest in real property, created pursuant to a declaration, covenant or other applicable law.

(2) "Transfer" means the sale, gift, grant, conveyance, assignment, inheritance or other transfer of an interest in real property located in this state.

(3) "Transfer fee" means a fee or charge payable upon the transfer of an interest in real property or payable for the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price or other consideration given, but shall not include any tax, assessment, fee or charge imposed by a governmental authority or taxing district pursuant to applicable laws, ordinances or regulations or any obligation imposed by a court order, judgment or decree.

(4) "Transfer fee covenant" means a provision in a document, whether recorded or not and however denominated, which purports to run with the land or bind current owners or successors in title to specified real property located in this state, and which obligates a transferee or transferor of all or part of the property to pay a fee or charge to a third person upon transfer of an interest in all or part of the property, or in consideration for permitting any such transfer. The term "transfer fee covenant" shall not include:

(a) Any provision of a purchase contract, option, mortgage, security agreement, real property listing agreement, lease or other agreement which obligates one (1) party to the agreement to pay the other, as full or partial consideration for the agreement or for a waiver of rights under the agreement, an amount determined by the agreement, if that amount is: (i) payable on a one-time basis only upon the next transfer of an interest in the specified real property and, once paid, shall not bind successors in title to the property; and (ii) constitutes a loan assumption or similar fee charged by a lender holding a lien on the property; or

(b) Any provision in a deed, memorandum or other document recorded for the purpose of providing record notice of an agreement described in paragraph (a) of this subsection; or

(c) Any provision in a mortgage, deed of trust or promissory note secured by a mortgage or deed of trust; or

(d) Any commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the transferor or transferee; or

(e) Any fee charged that is a typical or common real estate closing cost, including closing or escrow fees, settlement fees, attorney's fees or title insurance premiums and fees; or

(f) Any provision of a document requiring payment of a fee or charge to an association or any entity that operates for the benefit of the association, its members or property of the association or its members to be used exclusively for purposes authorized in the document, so long as no portion of the fee is required to be passed through to a third-party designated or identifiable by description in the document or another document referenced therein; or

(g) Any provision of a document requiring payment of any fee or charge under the housing or financing programs of the Idaho housing and finance association; or

(h) Any provision in any purchase contract, option, mortgage, security agreement, real property listing agreement or lease that obligates one (1) party to the agreement to pay the other consideration for assignment or transfer of the agreement.

55-3103. REAL ESTATE TRANSFER FEES UNLAWFUL. (1) A transfer fee covenant recorded after the effective date of this section, or any lien to the extent that it purports to secure the payment of a transfer fee, is not binding upon or enforceable against the affected real property or any subsequent owner, purchaser or mortgagee of any interest in the property.

(2) Nothing in this section shall imply that a transfer fee covenant recorded prior to the effective date of this section is valid or enforceable.

(3) A person who records a transfer fee covenant, files a lien that purports to secure payment of a transfer fee or enters into an agreement imposing a private transfer fee obligation shall be liable for:

(a) Any and all damages resulting from the imposition of the transfer fee obligation on the transfer of an interest in the real property, including the amount of any transfer fee paid by a party to the transfer.

(b) All attorney's fees, expenses and costs incurred by a party to the transfer or mortgagee of the real property to recover the transfer fee paid or in connection with an action to quiet title.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 22, 2011.

CHAPTER 108  
(S.B. No. 1127)

AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2004, IDAHO CODE, TO DEFINE TERMS; AMENDING SECTION 54-2038, IDAHO CODE, TO PROVIDE THAT CERTAIN LICENSEES MAY GIVE AN OPINION OF THE PRICE OF REAL ESTATE FOR THE PURPOSE OF A PROSPECTIVE LISTING OR SALE, TO PROVIDE THAT ONLY AN ACTIVELY LICENSED BROKER OR ASSOCIATE BROKER MAY PREPARE AND RENDER A BROKER PRICE OPINION, TO PROVIDE REQUIREMENTS RELATING TO A BROKER PRICE OPINION PREPARED OR RENDERED BY AN ASSOCIATE BROKER AND TO PROVIDE FOR DISCIPLINE; AND AMENDING SECTION 54-2058, IDAHO CODE, TO REMOVE LANGUAGE RELATING TO A PERSON ACTING WITHIN THE STATE OF IDAHO AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2004, Idaho Code, be, and the same is hereby amended to read as follows:

54-2004. DEFINITIONS. As used in this chapter:

(1) "Accredited college or university" means an institution accredited by the regional accrediting associations, as reported in the most current publication of the accredited institutions of postsecondary education.

(2) "Acting in this state" means and includes dealing with any interest in real property, or a business opportunity involving an interest in real property, that is situated in the state of Idaho, or conducting or attempting to conduct or solicit real estate business with residents of the state of Idaho.

(3) "Active license" means the status of a real estate license that has not been inactivated, expired, terminated, suspended or revoked.

(34) "Associate broker" means an individual who has qualified personally as a real estate broker in Idaho under this chapter, but is licensed un-

der, associated with and represents a designated broker in the performance of any act described in subsection (335) of this section.

(45) "Branch office" means an office operated by a licensed real estate broker or licensed legal business entity, separate and apart from the main office. A branch office may be licensed or unlicensed, in accordance with this chapter.

(6) "Broker price opinion" means a written price opinion of the estimated price for identified real property prepared or rendered by an actively licensed broker or associate broker, for a purpose other than a prospective listing or sale, and that complies or purports to comply with the requirements and content provision of section 54-4105, Idaho Code.

(57) "Brokerage company" means a real estate business, whether a sole proprietorship, a legal entity, or any other licensed person engaged in acts requiring a real estate license in Idaho, and which is conducting or holding itself out as conducting the business of real estate through a designated broker.

(68) "Brokerage representation agreement" means a written contract between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transaction.

(79) "Business conduct and office operations course" means, in reference to a real estate course offering, the component of the advanced real estate course that is required in order to obtain a broker license and that teaches business practices and office operations of the brokerage, including recordkeeping, trust account procedures and the laws governing those practices.

(810) "Business day" means and includes each day of the week except Saturday, Sunday or any other legal holiday enumerated in section 73-108, Idaho Code.

(911) "Business name" means the name in which the brokerage company is licensed by the commission.

(102) "Business opportunity" means and includes an established business, good will of an established business, or any interest therein, or any one (1) or combination thereof, where a sale or transfer of an interest in land including, but not limited to, an assignment of a lease, is involved in the transaction.

(113) "Commission" means the Idaho real estate commission, unless the context clearly indicates a different meaning.

(124) "Commission core course" means, in reference to a real estate course offering, the course containing curriculum, identified by the commission, that stresses current trends in real estate practices and changes in laws in real estate related industries. A core course must contain no more than four (4) classroom hours of instruction.

(135) "Continuing education elective course" means a real estate course offering, other than the commission core course for which continuing education credit hours may be obtained as provided in section 54-2023, Idaho Code.

(146) "Convicted" means a plea of nolo contendere or guilty, a jury verdict of guilty or a court decision of guilt whether or not a judgment or sentence has been imposed, withheld or suspended.

(157) "Cooperative sale" means a transaction involving two (2) or more brokers.

(168) "Council" means the Idaho real estate education council.

(179) "Dealer in options" means any person, firm, partnership, association or corporation who shall directly or indirectly take, obtain or use options to purchase, exchange, lease option or lease purchase real property or any interest therein for another or others whether or not the options shall be in his or its name and whether or not title to the property shall pass through the name of the person, firm, partnership, association or corporation in connection with the purchase, sale, exchange, lease option or lease purchase of the real property, or interest therein.

(1820) "Designated broker" means an individual who is licensed as a real estate broker in Idaho and who is designated by the brokerage company to be responsible for the supervision of the brokerage company and the activities of any associated licensees in accordance with this chapter.

(1921) "Distance learning course" means, in relation to a real estate course offering, a real estate course that is delivered, not as a live course, but through a medium in which the instructor and student are separated by both distance and time.

(202) "Double contract" means two (2) or more written or unwritten contracts of sale, purchase and sale agreements, loan applications, or any other agreements, one (1) of which is not made known to the prospective loan underwriter or the loan guarantor, to enable the buyer to obtain a larger loan than the true sales price would allow, or to enable the buyer to qualify for a loan which he or she otherwise could not obtain. An agreement or loan application is not made known unless it is disclosed in writing to the prospective loan underwriter or loan guarantor.

(213) "Executive director" means the executive director of the Idaho real estate commission.

(224) "Expired license" means the status of a license when the license period has expired and the license is not renewed or provisional license granted, and before the license is terminated.

(235) "Fee or commission" means a payment, actual, promised or expected, as compensation for the performance of any act requiring a real estate license.

(246) "Inactive license" means the status of a license that is not expired, terminated, suspended or revoked, and during which inactive period the license holder is not authorized to act as or associate with a designated broker.

(257) "Legal business entity" means and includes any type of corporation, partnership, limited liability company or limited liability partnership, a governmental entity, trust or other entity capable of conducting business.

(268) "Licensee" means any person who is licensed in accordance with this chapter to engage in the business or act in the capacity of real estate broker, associate broker or real estate salesperson.

(279) "Limited broker" means a broker individually qualified to do business in Idaho, but who may not have associate brokers or salespersons licensed with that broker.

(2830) "Live presentation" means, in reference to a real estate course offering, a real estate course that is personally presented by the instructor and personally attended by the student at the same facility, or, if separated by distance, the instructor and student are connected by contemporaneous, two-way audio and visual communication.

(2931) "Main office" means the principal location where the real estate broker is licensed to transact business.

(302) "Person" means and includes an individual, or any legal business entity.

(313) "Primary Idaho license" means an Idaho real estate license that is not contingent upon continuance of a license in another state or jurisdiction.

(324) "Provisional license" means an extension of the period of active licensure, beyond the licensee's expiration date, granted by the commission for the purpose of allowing the licensee to complete the continuing education requirements set forth in section 54-2023, Idaho Code, or for any other purpose allowed by this chapter.

(335) "Real estate broker" means and includes:

(a) Any person other than a real estate salesperson, who, directly or indirectly, while acting for another, for compensation or a promise or an expectation thereof, engages in any of the following: sells, lists,

buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest therein or business opportunity or interest therein for others;

(b) Any actively licensed broker while, directly or indirectly, acting on the broker's own behalf;

(c) Any person who represents to the public that the person is engaged in any of the above activities;

(d) Any person who directly or indirectly engages in, directs, or takes any part in the procuring of prospects, or in the negotiating or closing of any transaction which does or is calculated to result in any of the acts above set forth;

(e) A dealer in options as defined in this section.

(346) "Real estate salesperson" or "salesperson" means any person who has qualified and is licensed as a real estate salesperson in Idaho under this chapter, and is licensed under, associated with, and represents a designated broker in the performance of any act described in subsection (335) of this section.

(357) "Real estate settlement procedures act" means the real estate settlement procedures act of 1974, as amended, 12 U.S.C. section 2601 et seq., and as in effect on January 1, 2008.

(368) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

(379) "Responsible broker" means the designated broker in the regulated real estate transaction who is responsible for the accounting and transaction files for the transaction, in the manner described in section 54-2048, Idaho Code.

(3840) "Revoked license" means a license that has been permanently revoked by the issuing authority.

(3941) "Sales associate" means a salesperson or an associate broker licensed under and associated with a designated broker.

(402) "State or jurisdiction" means and includes any of the fifty (50) states and any foreign jurisdiction that issue real estate licenses substantially similar to those provided for in this chapter.

(413) "Successfully completed" means, in reference to a real estate course offering, completing all required course hours and, except where the licensee seeks continuing education credit for having regularly attended the live presentation of a course, passing a commission-approved final examination.

(424) "Surrendered license" means a license that has been voluntarily terminated or surrendered by a licensee who, at the time of the voluntary termination or surrender, was under investigation or named in a formal administrative complaint.

(435) "Suspended license" means a license that has been temporarily suspended by the issuing authority.

SECTION 2. That Section 54-2038, Idaho Code, be, and the same is hereby amended to read as follows:

54-2038. DESIGNATED BROKER -- GENERAL RESPONSIBILITIES -- BROKER PRICE OPINIONS. The requirement that each brokerage company be maintained and conducted in compliance with the Idaho real estate license law and the Idaho real estate brokerage representation act is the responsibility of its designated broker. The designated broker is responsible for the actions of its licensees and associated unlicensed persons performed within the course and scope of their employment or agency, regardless of the location of the company's business or where representation is conducted.

(1) A designated broker is required to:

(a) Supervise and control, in the manner required by law and rule, all office locations, and the activities of all licensees and unlicensed persons associated with that brokerage company or for whom that designated broker is responsible;

(b) Review and approve all real estate agreements including, but not limited to, those related to listing, selling or purchasing property and brokerage representation agreements;

(c) Be reasonably available to manage and supervise the brokerage company during regular business hours. When a broker is a regular full-time employee or is engaged in a full-time activity at a location other than where the broker is licensed to do business, a presumption will be made that the broker is unable to manage and supervise the brokerage company in accordance with these requirements, and no sales associate shall be licensed under the broker until such presumption is overcome by evidence to the contrary, satisfactory to the commission.

(2) A broker who is otherwise qualified to do business in Idaho, but is not able to manage and supervise according to this section, may be licensed as a "limited broker" in Idaho and shall not have any sales associates licensed under that broker.

(3) An actively licensed salesperson or broker may, in the ordinary course of business, give an opinion of the price of real estate for the purpose of a prospective listing or sale. Only an actively licensed broker or associate broker may prepare and render a broker price opinion, as defined in this chapter. An associate broker who prepares and renders a broker price opinion shall notify the designated broker and the associate broker may not accept any fee except through the designated broker. Any licensee who renders a price opinion that does not comply with this subsection or with the requirements of section 54-4105, Idaho Code, is subject to discipline by the commission.

(4) A designated broker shall not allow any person who is not properly licensed to represent that broker as a sales associate or otherwise, in any real estate business activities requiring a real estate license. "Properly licensed" means a license or a change in license that has been made effective by the commission.

SECTION 3. That Section 54-2058, Idaho Code, be, and the same is hereby amended to read as follows:

54-2058. AUTHORITY TO INVESTIGATE AND DISCIPLINE. (1) General authority to investigate. The commission may investigate the action of any person engaged in the business or acting in the capacity of real estate broker or salesperson within the this state of Idaho, or any person believed to have acted as a real estate broker or salesperson without a license in violation of section 54-2002, Idaho Code. Upon receipt of a written complaint from anyone who claims to have been injured or defrauded as a result of such action, or upon information received by the executive director, the executive director shall perform an investigation of the facts alleged against such real estate broker or salesperson or such unlicensed person. Prior to the initiation of any proceedings for the revocation or suspension of a license, or for such other disciplinary actions as set forth in section 54-2059, Idaho Code, the executive director shall transmit to the commission a report, in writing, signed by the executive director, setting forth the facts alleged against such real estate broker or salesperson or unlicensed person. Upon receiving such report, the commission shall make an examination of all the facts and circumstances connected with such report. If the facts set forth in the report are deemed insufficient by the commission, no further action shall be taken, unless the executive director resubmits the report with additional facts supporting the filing of an administrative complaint. Should the commission deem that the facts set forth in the report are sufficient to

proceed with a formal action, the commission shall authorize the filing of an administrative complaint against such person.

~~A person is acting "within the state of Idaho" if that person is dealing with any interest in real property or a business opportunity involving an interest in real property, which is situated in this state, or is conducting or attempting to conduct or solicit real estate business with residents of the state of Idaho.~~

(2) Audits. The commission or its duly authorized representative is vested with the authority to conduct periodic inspections, surveys and audits of the transaction records and real estate trust accounts of all Idaho licensed designated brokers. Any transaction records or real estate trust account records located outside the state of Idaho shall promptly be made available to the commission upon request at the licensee's own cost and at the location or in the manner requested by the commission. If the analysis of a broker's real estate trust account indicates a deficiency or any irregularity which cannot be resolved between the commission and the broker, the commission may order a complete audit of the trust account by a certified public accountant at the broker's expense.

(3) The commission also has the authority to investigate the action of any Idaho licensee as provided in this section. The licensee or broker shall answer all reasonable investigative questions of the commission, and must make available, promptly upon request, any and all records to the commission at the licensee's own cost and at the location or in the manner requested by the commission.

Approved March 22, 2011.

CHAPTER 109  
(H.B. No. 85)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-104, IDAHO CODE, TO AUTHORIZE THE FISH AND GAME COMMISSION TO ADOPT RULES GOVERNING A MENTORED HUNTING PROGRAM; AMENDING SECTION 36-401, IDAHO CODE, TO PROVIDE AN EXCEPTION TO LICENSURE FOR CERTAIN MENTORED HUNTERS AND TO CLARIFY THE APPLICABILITY OF LICENSURE REQUIREMENTS; AND AMENDING SECTION 36-409, IDAHO CODE, TO PROVIDE THAT RESIDENTS WHO HAVE OBTAINED CERTAIN AUTHORIZATIONS SHALL BE ELIGIBLE TO RECEIVE SPECIFIED GAME TAGS AND TO PROVIDE A CODE REFERENCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 36-104, Idaho Code, be, and the same is hereby amended to read as follows:

36-104. GENERAL POWERS AND DUTIES OF COMMISSION. (a) Organization -- Meetings. The members of the commission shall annually meet at their offices and organize by electing from their membership a chairman, who shall hold office for a period of one (1) year, or until his successor has been duly elected. In addition to the regular annual meeting, to be held in January, said commission shall hold other regular quarterly meetings each year at such places within the state as the commission shall select for the transaction of business. Special meetings may be called at any time and place by the chairman or a majority of the members of the commission. Notice of the time, place and purpose of any and all special meetings shall be given by the secretary to each member of the commission prior to said meeting.

(b) Authorization for Commission Powers and Duties. For the purpose of administering the policy as declared in section 36-103, Idaho Code, the commission is hereby authorized and empowered to:

1. Investigate and find facts regarding the status of the state's wildlife populations in order to give effect to the policy of the state hereinbefore announced.

2. Hold hearings for the purpose of hearing testimony, considering evidence and determining the facts as to when the supply of any of the wildlife in this state will be injuriously affected by the taking thereof, or for the purpose of determining when an open season may be declared for the taking of wildlife. Whenever said commission determines that the supply of any particular species of wildlife is being, or will be, during any particular period of time, injuriously affected by depletion by permitting the same to be taken, or if it should find a longer or different season, or different bag limit should be adopted for the better protection thereof, or if it finds that an open season may be declared without endangering the supply thereof, then it shall make a rule or proclamation embodying its findings in respect to when, under what circumstances, in which localities, by what means, what sex, and in what amounts and numbers the wildlife of this state may be taken.

3. Whenever it finds it necessary for the preservation, protection, or management of any wildlife of this state, by reason of any act of God or any other sudden or unexpected emergency, declare by temporary rule or proclamation the existence of such necessity, and the cause thereof, and prescribe and designate all affected areas or streams, and close the same to hunting, angling or trapping, or impose such restrictions and conditions upon hunting, angling or trapping as said commission shall find to be necessary. Every such temporary rule shall be made in accordance with the provisions of chapter 52, title 67, Idaho Code.

4. At any time it shall deem necessary for the proper management of wildlife on any game preserve in the state of Idaho, declare an open season in any game preserve as it deems appropriate.

5. (A) Upon notice to the public, hold a public drawing giving to license holders, under the wildlife laws of this state, the privilege of drawing by lot for a controlled hunt permit authorizing the person to whom issued to hunt, kill, or attempt to kill any species of wild animals or birds designated by the commission under such rules as it shall prescribe.

(B) The commission may, under rules or proclamations as it may prescribe, authorize the director to issue additional controlled hunt permits and collect fees therefor authorizing landowners of property valuable for habitat or propagation purposes of deer, elk or antelope, or the landowner's designated agent(s) to hunt deer, elk or antelope in controlled hunts containing the eligible property owned by those landowners in units where any permits for deer, elk or antelope are limited.

(C) A nonrefundable fee as specified in section 36-416, Idaho Code, shall be charged each applicant for a controlled hunt permit. Successful applicants for controlled hunt permits shall be charged the fee as specified in section 36-416, Idaho Code. Additionally, a fee may be charged for telephone and credit card orders in accordance with subsection (e)11. of section 36-106, Idaho Code. The department shall include a checkoff form to allow applicants to designate one dollar (\$1.00) of such nonrefundable application fee for transmittal to the reward fund of citizens against poaching, inc., an Idaho nonprofit corporation. The net proceeds from the nonrefundable fee shall be deposited in the fish and game account and none of the net proceeds shall be used to purchase lands.

(D) The commission may by rule establish procedures relating to the application for the purchase of controlled hunt bonus or preference points by sportsmen and the fee for such application shall be as specified in section 36-416, Idaho Code.

6. Adopt rules pertaining to the importation, exportation, release, sale, possession or transportation into, within or from the state of Idaho of any species of live, native or exotic wildlife or any eggs thereof.

7. Acquire for and on behalf of the state of Idaho, by purchase, condemnation, lease, agreement, gift, or other device, lands or waters suitable for the purposes hereinafter enumerated in this paragraph. Whenever the commission proposes to purchase a tract of land in excess of fifteen (15) acres, the commission shall notify the board of county commissioners of the county where this land is located of the intended action. The board of county commissioners shall have ten (10) days after official notification to notify the commission whether or not they desire the commission to hold a public hearing on the intended purchase in the county. The commission shall give serious consideration to all public input received at the public hearing before making a final decision on the proposed acquisition. Following any land purchase, the fish and game commission shall provide, upon request by the board of county commissioners, within one hundred twenty (120) days, a management plan for the area purchased that would address noxious weed control, fencing, water management and other important issues raised during the public hearing. When considering purchasing lands pursuant to this paragraph, the commission shall first make a good faith attempt to obtain a conservation easement, as provided in chapter 21, title 55, Idaho Code, before it may begin proceedings to purchase, condemn or otherwise acquire such lands. If the attempt to acquire a conservation easement is unsuccessful and the commission then purchases, condemns or otherwise acquires the lands, the commission shall record in writing the reasons why the attempt at acquiring the conservation easement was unsuccessful and then file the same in its records and in a report to the joint finance-appropriations committee. The commission shall develop, operate, and maintain the lands, waters or conservation easements for said purposes, which are hereby declared a public use:

(A) For fish hatcheries, nursery ponds, or game animal or game bird farms;

(B) For game, bird, fish or fur-bearing animal restoration, propagation or protection;

(C) For public hunting, fishing or trapping areas to provide places where the public may fish, hunt, or trap in accordance with the provisions of law, or the regulation of the commission;

(D) To extend and consolidate by exchange, lands or waters suitable for the above purposes.

8. Enter into cooperative agreements with educational institutions, and state, federal, or other agencies to promote wildlife research and to train students for wildlife management.

9. Enter into cooperative agreements with state and federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of wildlife rearing, propagating, management, protection and demonstration projects.

10. In the event owners or lawful possessors of land have restricted the operation of motor-propelled vehicles upon their land, the commission, upon consultation with all other potentially affected landowners, and having held a public hearing, if requested by not less than ten (10) residents of any county in which the land is located, may enter into cooperative agreements with those owners or possessors to enforce those restrictions when the restrictions protect wildlife or wildlife habitat.

Provided, however, the commission shall not enter into such agreements for lands which either lie outside or are not adjacent to any adjoining the proclaimed boundaries of the national forests in Idaho.

(A) The landowners, with the assistance of the department, shall cause notice of the restrictions, including the effective date thereof, to be posted on the main traveled roads entering the areas to which the restrictions apply. Provided, however, that nothing in this subsection shall allow the unlawful posting of signs or other information on or adjacent to public highways as defined in subsection (5) of section 40-109, Idaho Code.

(B) Nothing in this section authorizes the establishment of any restrictions that impede normal forest or range management operations.

(C) No person shall violate such restrictions on the use of motor-propelled vehicles or tear down or lay down any fencing or gates enclosing such a restricted area or remove, mutilate, damage or destroy any notices, signs or markers giving notice of such restrictions. The commission may promulgate rules to administer the restrictions and cooperative agreements addressed in this subsection.

11. Capture, propagate, transport, buy, sell or exchange any species of wildlife needed for propagation or stocking purposes, or to exercise control of undesirable species.

12. Adopt rules pertaining to the application for, issuance of and administration of a lifetime license certificate system.

13. Adopt rules governing the application and issuance of permits for and administration of fishing contests on waters under the jurisdiction of the state. The fee for each permit shall be as provided for in section 36-416, Idaho Code.

14. Adopt rules governing the application for and issuance of licenses by telephone and other electronic methods.

15. Enter into agreements with cities, counties, recreation districts or other political subdivisions for the lease of lands or waters, in accordance with all other applicable laws, including applicable provisions of titles 42 and 43, Idaho Code, to cost-effectively provide recreational opportunities for taxpayers or residents of those local governments or political subdivisions.

16. Adopt rules governing a mentored hunting program.

(c) Limitation on Powers. Nothing in this title shall be construed to authorize the commission to change any penalty prescribed by law for a violation of its provisions, or to change the amount of license fees or the authority conferred by licenses prescribed by law.

(d) Organization of Work. The commission shall organize the department, in accordance with the provisions of title 67, Idaho Code, into administrative units as may be necessary to efficiently administer said department. All employees of the department except the director shall be selected and appointed by the director in conformance with the provisions of chapter 53, title 67, Idaho Code.

SECTION 2. That Section 36-401, Idaho Code, be, and the same is hereby amended to read as follows:

36-401. HUNTING, TRAPPING, FISHING -- LICENSE REQUIREMENT -- EXCEPTIONS. No person shall hunt, trap, or fish for or take any wild animal, bird or fish of this state, without first having procured a license as hereinafter provided. Provided that no license shall be required:

(a) 1. For children under the age of fourteen (14) years who are residents of this state to fish during the open season therefor.

2. For nonresident children under the age of fourteen (14) years to fish during the open season therefor provided they are accompanied by the holder of a valid fishing license, and provided further that any fish caught by such nonresident children shall be included in the bag and possession limit of such license holder.

3. For resident children under the age of twelve (12) years to hunt, take or kill predatory, unprotected birds and animals by means other than with firearms.

4. For resident children under the age of fourteen (14) years to trap muskrats from irrigation ditches or property on which they live during the open season.

5. For children under the age of eighteen (18) years who are residents of a licensed foster home or a children's residential care facility to fish during the open season therefor, provided they are accompanied and supervised by the director, officer, or other employee of the facility where the child resides.

6. For children with life-threatening medical conditions participating in a hunt in association with a qualified organization as provided in section 36-408(6), Idaho Code.

7. For military veterans with disabilities participating in a hunt in association with a qualified organization as provided in section 36-408(7), Idaho Code.

8. For mentored hunters participating in a mentored hunting program as prescribed by the commission such that a person may apply to the department for a special authorization to take wildlife while accompanied by a mentor who possesses a valid Idaho hunting license and who is eighteen (18) years of age or older. At such time as a mentored hunter's special authorization is no longer valid, nothing in this paragraph shall be construed as altering the requirements of section 36-411, Idaho Code, to obtain a valid hunting license.

(b) For any person to fish on a "free fishing day" as may be designated by the commission.

(c) State Long-term Care Facility Residents. For any resident of a state long-term care facility to fish during open seasons, provided said state long-term care facility has a permit therefor from the director. The director is authorized to issue such permits upon the request of the head of the respective state long-term care facility having custody of said resident upon a showing that the state long-term care facility recommends the issuance of such permit and will assume full responsibility for and control over any resident while using said permit. For purposes of this subsection only, "state long-term care facility" shall mean the state hospital north, state hospital south, Idaho state school and hospital, and state veterans homes, and "resident" shall mean any individual residing and receiving treatment services at a state long-term care facility.

(d) State Juvenile Corrections Center Students. For students of the state juvenile corrections center, under the supervision of an officer of the center, to fish during the open season.

(e) Boy Scouts. For boy scouts who are official participants in attendance at national or international encampments at Farragut State Park to take fish during the encampment period from Lake Pend Oreille in such areas and such numbers as may be designated by the commission.

(f) Participants in Fish and Game Sponsored Functions. For persons who are official participants in attendance at official department sponsored functions including clinics, courses or other educational events, while under the supervision of a department approved instructor for the function, to fish during any open season, provided that the instructor has been issued an educational fishing permit by the director.

(g) Nothing contained herein shall be construed to prohibit citizens of the United States who are residents of the state of Idaho from carrying arms for the protection of life and property.

SECTION 3. That Section 36-409, Idaho Code, be, and the same is hereby amended to read as follows:

36-409. GAME TAGS -- PERMITS -- FEES -- PENALTY. (a) Resident Game Tags. A resident who has obtained a ~~permit~~ authorization to hunt, as provided in section 36-401, Idaho Code, or has purchased or obtained a license to hunt, as provided in section 36-406, Idaho Code, upon payment of the fees provided herein shall be eligible to receive a resident game tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear, wolf, sandhill crane or turkey in accordance with the laws of this state and rules promulgated by the commission; provided further, that any person who holds a senior resident combination license or any person who holds a junior combination or hunting license or any disabled American veteran who holds a disabled combination license, may be issued a bear, deer, elk, or turkey tag for a fee as specified in section 36-416, Idaho Code; provided further, that resident game tags may be issued only to those persons who meet residency requirements of subsection (s) of section 36-202, Idaho Code. In the event an emergency is declared to open a season to protect private property as provided in section 36-106(e)6.(B), Idaho Code, the affected landowner or his designee shall be eligible to receive a resident deer, elk or antelope tag without charge; provided further, that resident game tags may be issued only to persons who qualify as residents pursuant to section 36-202, Idaho Code.

(b) Nonresident Game Tags. A nonresident who has purchased a license to hunt, as provided in section 36-407(a) or (k), Idaho Code, or has obtained a license to hunt, as provided in section 36-406(e), Idaho Code, or a resident who has purchased or obtained a license or authorization to hunt, as provided in section 36-401 or 36-406, Idaho Code, upon payment of the fees provided herein, shall be eligible to receive a nonresident tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear, wolf, sandhill crane or turkey in accordance with the laws of this state and rules promulgated by the commission; provided further that a nonresident who has purchased a license to hunt, as provided in section 36-407(k), Idaho Code, shall be eligible to receive a junior mentored deer, elk, bear, or turkey tag for a fee as specified in section 36-416, Idaho Code.

(c) Game Tags Required. The appropriate tag must be had for the hunting or taking of each and every one of the aforementioned wildlife. Provided, however, that the requirements for a wolf tag, a mountain lion tag or a bear tag, as to different periods of time and areas of the state, shall be determined and specified by the commission. Provided further, that the commission may promulgate rules to allow a nonresident deer or elk tag to be used to hunt and kill either a bear, wolf or a mountain lion during the open season for deer or elk in that area, unit or zone as may be specified by the commission. All of said tags are to bear and have serial numbers.

(d) Game Tag to Be Validated and Attached to Carcass. As soon as any person kills any wildlife for which a tag is required, said tag, belonging to him, must be validated and attached to said wildlife in a manner provided by commission rule.

(e) Archery Permits. In addition to meeting the license and tag requirements provided in this chapter, any person participating in any controlled or general game season which has been specifically designated as an archery hunt must have in his possession an archery hunt permit which may be purchased for a fee as specified in section 36-416, Idaho Code.

(f) Muzzleloader Permit. In addition to meeting the license and tag requirements provided in this chapter, any person participating in any con-

trolled or general game season which has been specifically designated as a muzzleloader hunt must have in his possession a muzzleloader permit which may be purchased for a fee as specified in section 36-416, Idaho Code.

(g) Hound Hunter Permit -- Resident -- Nonresident. Any person using a dog for the purpose of hunting or for taking, as defined in section 36-202, Idaho Code, big game or furbearing animals must have in his possession a valid hound hunter permit which may be purchased by resident and nonresident license holders for a fee as specified in section 36-416, Idaho Code.

(h) Nonresident Bird of Prey Capture Permit. The commission may, under rules as it may prescribe, issue a nonresident bird of prey capture permit. This capture permit may be purchased by any licensed, nonresident falconer for capturing birds of prey in Idaho. The fee for the permit shall be as specified in section 36-416, Idaho Code, and the permit shall be issued under the condition that the nonresident's home state allows reciprocal raptor capturing privileges for Idaho falconers.

(i) Wildlife Management Area (WMA) Upland Game Bird Permit. The commission may, under rules as it may prescribe, issue a wildlife management area upland game bird permit that must be purchased by all persons over sixteen (16) years of age prior to hunting stocked upland game birds on state wildlife management areas designated by the commission. The fee for the permit shall be as specified in section 36-416, Idaho Code.

(j) Bear Baiting Permit. The commission may, under rules as it may prescribe, issue a bear baiting permit. Any person placing or using bait as may be allowed by rule for the purpose of attracting bear must have in his possession a valid bear baiting permit which may be purchased by a license holder for a fee as specified in section 36-416, Idaho Code.

(k) Migratory Bird Harvest Information Program Permit. The commission may, as provided by federal laws or regulations and under rules as it may prescribe, issue a migratory bird harvest information program permit that must be purchased by all persons prior to hunting migratory game birds as required by federal law or regulations. The fee for the permit shall be as specified in section 36-416, Idaho Code.

(l) Dog Field Trial Permit. The commission may, under rules as it may prescribe, issue a dog field trial permit to any person using birds for dog field trials or training as may be allowed by rule. The permit may be purchased for a fee as specified in section 36-416, Idaho Code.

(m) Idaho Nursing Home Facility Resident Fishing Permit. The commission may, under rules as it may prescribe, issue an Idaho nursing home facility resident fishing permit that must be purchased by an Idaho nursing home facility to allow residents of its facility to fish during the open season. Facilities eligible to purchase this permit are: intermediate care facilities providing twenty-four (24) hour skilled nursing care, assisted living facilities providing twenty-four (24) hour extensive assistance and skilled nursing facilities providing twenty-four (24) hour skilled nursing. By purchasing this permit the facility assumes full responsibility for and control over the facility residents while using the permit. All laws, rules and proclamations apply to the use of this permit and it is the responsibility of the facility to assure compliance with all laws, rules and proclamations. In case of a violation the facility shall be held accountable and any citations shall be issued to the facility. The permit may be purchased for a fee as specified in section 36-416, Idaho Code.

Approved March 22, 2011.

CHAPTER 110  
(H.B. No. 94)

AN ACT

RELATING TO INJECTION WELLS; AMENDING THE HEADING FOR CHAPTER 39, TITLE 42, IDAHO CODE, TO DELETE REFERENCE TO WASTE DISPOSAL; AMENDING SECTION 42-3902, IDAHO CODE, TO REVISE DEFINITIONS, TO DEFINE A TERM AND TO DELETE A DEFINITION FOR "WASTE DISPOSAL AND INJECTION WELL"; AMENDING SECTION 42-3903, IDAHO CODE, TO REVISE TERMINOLOGY TO PROVIDE FOR DEEP INJECTION WELLS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 42-3904, IDAHO CODE, TO DELETE AN EXEMPTION FROM NOTICE OF CONSTRUCTION FILING REQUIREMENTS AND FEES FOR CERTAIN NEW SHALLOW INJECTION WELLS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTIONS 42-3905, 42-3908, 42-3911, 42-3912 AND 42-3913, IDAHO CODE, TO REVISE TERMINOLOGY TO PROVIDE FOR DEEP INJECTION WELLS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That the Heading for Chapter 39, Title 42, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 39  
~~WASTE DISPOSAL AND~~ INJECTION WELLS

SECTION 2. That Section 42-3902, Idaho Code, be, and the same is hereby amended to read as follows:

42-3902. DEFINITIONS. Whenever used in this chapter:

(1) "Aquifer" means any geologic formation that will yield water to a well in sufficient quantities to make production of water from the formation feasible for beneficial use, except when the water in such formation results solely from injection through a ~~waste disposal and~~ deep or shallow injection well.

(2) "Deep injection well" means an injection well which is more than eighteen (18) feet in vertical depth below land surface.

(3) "Director" means the director of the department of water resources.

(34) "Drinking water source" means an aquifer which contains water having less than 10,000 mg/l total dissolved solids and has not been exempted from this designation by the director of the department of water resources.

(45) "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gaseous or any other form or state.

(56) "Formation" means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is mappable at the earth's surface or traceable in the subsurface.

(67) "Hazardous waste" means any fluid or combination of fluids, excluding radioactive wastes, which because of quantity, concentration or characteristics (physical, chemical or biological) may:

(a) Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible or incapacitating reversible illness; or

(b) Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties, but do not include solid or dissolved material in domestic sewage or solid or dissolved material in irrigation return flows.

(78) "Injection" means the subsurface emplacement of fluids through an injection well.

(89) "Injection well" means any ~~excavation or artificial opening into the ground which meets the following three (3) criteria~~ feature that is operated to allow injection which also meets at least one (1) of the following criteria:

(a) ~~It is a bored, drilled or dug hole, or is a driven mine shaft or a driven well point; and~~ A bored, drilled or driven shaft whose depth is greater than the largest surface dimension;

(b) ~~It is deeper than its largest straight-line surface dimension; and~~ A dug hole whose depth is greater than the largest surface dimension;

(c) ~~It is used for or intended to be used for injection~~ An improved sink-hole; or

(d) A subsurface fluid distribution system.

(910) "Irrigation waste water" means ~~surplus water diverted for irrigation but not applied to crops or runoff of surplus water from the cropland as a result of irrigation~~ excess surface water from agricultural fields generated during any agricultural operation, including runoff of irrigation tailwater, as well as natural drainage resulting from precipitation, snowmelt and floodwaters.

(101) "Licensed driller" means any person holding a valid license to drill water wells in Idaho as provided and defined in section 42-238, Idaho Code.

(112) "Operate" means to allow fluids to enter an injection well by action or by inaction of the operator.

(123) "Operator" means any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district or federal agency who operates or proposes to operate any injection well.

(134) "Owner" means any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, or federal agency owning land on which any injection well exists or is proposed to be constructed.

(145) "Radioactive material" means any material, solid, liquid or gas which emits radiation spontaneously.

(156) "Radioactive waste" means any fluid which contains radioactive material in concentrations which exceed those established for discharges to water by 10 CFR 20.

(167) "Shallow injection well" means an injection well which is less than or equal to eighteen (18) feet in vertical depth below land surface.

(178) "Sanitary waste" means any fluid generated through residential (domestic) activities, such as food preparation, cleaning and personal hygiene. The term does not include industrial, municipal, commercial or other nonresidential process fluids.

(189) "Surface runoff water" means runoff water from the natural ground surface and cropland. Runoff from urbanized areas, such as streets, parking lots, airports, and runoff from animal feedlots, agricultural processing facilities and similar facilities are not included within the scope of this term.

~~(19) "Waste disposal and injection well" means an injection well which is more than eighteen (18) feet in vertical depth below land surface.~~

SECTION 3. That Section 42-3903, Idaho Code, be, and the same is hereby amended to read as follows:

42-3903. ~~WASTE DISPOSAL AND DEEP INJECTION WELLS -- CONSTRUCTION -- MODIFICATION -- USE -- PERMIT REQUIRED.~~ No new ~~waste disposal and deep~~ injection well shall be constructed after the effective date of this act unless a permit therefor has been issued by the director of the department of water

resources. No ~~waste disposal and deep~~ injection well existing on the effective date of this act shall be modified after the effective date of this act unless a permit therefor has been issued by the director. No ~~waste disposal and deep~~ injection well existing on the effective date of this act shall continue to be used and maintained after January 1, 1974, unless a permit therefor has been issued by the director.

SECTION 4. That Section 42-3904, Idaho Code, be, and the same is hereby amended to read as follows:

42-3904. APPLICATION FOR PERMIT -- OWNER -- OPERATOR RESPONSIBLE -- NOTICE OF CONSTRUCTION FORM. (1) The owner or operator shall make application to the director of the department of water resources for a permit as provided in this chapter. When a facility is owned by one (1) person but operated by another, it shall be the operator's duty to obtain a permit. Such application shall be upon forms furnished by the director which shall require information concerning the location and description of the injection well, the quantity, quality, and nature of the material being or proposed to be injected, the description of the underground formation and aquifer into which the material is proposed to be or is being injected, the availability of alternative sources of disposal, and such other information as will enable the director to determine the effect of injection upon the quality of the ground water, the effect upon the beneficial uses of said ground water, the effect upon the public health and the effect upon public benefits derived therefrom, if any. Such application shall be submitted complete with fees as provided in this chapter. Mine shafts used for the disposal of wastes resulting from the mining and concentration process shall be exempt from the permit requirements of this chapter until an inventory and assessment of the contamination potential posed by such operation is completed.

(2) Owners of new shallow injection wells drilled after July 1, 1997, shall submit a notice of construction form to the department of water resources no later than thirty (30) days prior to commencement of construction for each new well. The notice of construction form shall be submitted with the fee as provided in this chapter on a form provided by the department of water resources. ~~New shallow injection wells used for disposal of storm water from building roof drains are exempt from the notice of construction filing requirements and fees of this chapter.~~

SECTION 5. That Section 42-3905, Idaho Code, be, and the same is hereby amended to read as follows:

42-3905. FEES -- TRANSMITTED TO STATE TREASURER. (1) Fees provided for in this section shall accompany all applications and notice of construction forms. No such application or notice of construction form shall be accepted unless accompanied by a filing fee as provided in this section. A separate application shall be filed for each ~~waste disposal and deep~~ injection well and each shallow injection well for which a permit is required by the rules adopted by the water resource board. The filing fee for each injection well requiring a permit shall be one hundred dollars (\$100) payable to the department of water resources.

(2) The notice of construction form for each new shallow injection well shall be accompanied by a fee of seventy-five dollars (\$75.00) payable to the department of water resources.

(3) All fees received under the provisions of this chapter are deemed to be nonrefundable and shall be transmitted to the state treasurer for deposit in the water administration fund as established under the provisions of section 42-238(a), Idaho Code, except that fees submitted with applications that do not require a permit shall be returned to the applicant. Fees

collected may be used by the director of the department of water resources to carry out the provisions of this chapter.

SECTION 6. That Section 42-3908, Idaho Code, be, and the same is hereby amended to read as follows:

42-3908. PERMIT APPROVING CONSTRUCTION AND USE -- CONDITIONS -- REJECTION OF APPLICATION. If the director of the department of water resources determines the use of the proposed or existing injection well will not affect the rights of others to use water for beneficial purposes shall issue a permit approving the construction, modification or continued operation of such well. Such permit shall contain conditions, if any, determined to be necessary to protect the public interest in the ground water resource including, but not limited to, the method and manner of operation of the injection well, the period during which the injection well may be operated, a date when such permit shall expire, and periodic reports to the department of water resources of the quality and quantity of the fluids injected. No ~~waste disposal~~ and deep injection well or shallow injection well, as may be required by rules and regulations adopted under this chapter, shall be used unless a valid permit is in effect in accordance with this chapter.

If the director of the department of water resources determines the use of the proposed or existing injection well will interfere or is interfering with the right of the public to withdraw water for beneficial uses, and the director finds there are no overriding needs existing to justify the use of the injection well, the director may reject the application and forward notice of such rejection to the owner or operator by certified mail.

SECTION 7. That Section 42-3911, Idaho Code, be, and the same is hereby amended to read as follows:

42-3911. FAILURE TO OBTAIN REQUIRED PERMIT OR SUBMIT REQUIRED INFORMATION -- PENALTY. Any owner or operator who causes to be constructed or consents either expressly or impliedly to the construction of a new ~~waste disposal~~ and deep injection well without having first obtained a permit therefor from the director of the department of water resources as provided in this chapter shall be guilty of a misdemeanor. Any owner or operator who causes an existing ~~waste disposal~~ and deep injection well to be modified or consents either expressly or impliedly to the modification of an existing ~~waste disposal~~ and deep injection well without having first obtained a permit therefor from the director of the department of water resources as provided in this chapter shall be guilty of a misdemeanor. From and after January 1, 1974, any owner or operator who continues to operate and maintain or consents either expressly or impliedly to the continued operation and maintenance of an existing ~~waste disposal~~ and deep injection well without having first obtained a permit therefor from the director of the department of water resources as provided in this chapter shall be guilty of a misdemeanor; provided, that no misdemeanor shall occur where an owner or operator applied for a permit before January 1, 1974, and the director of the department of water resources has not approved or rejected said application. Any owner or operator of a proposed or existing injection well who violates the rules and regulations of the water resource board shall be guilty of a misdemeanor. Each and every day that such activity is carried on in violation of this section shall constitute a separate and distinct offense.

SECTION 8. That Section 42-3912, Idaho Code, be, and the same is hereby amended to read as follows:

42-3912. DRILLERS -- MUST BE LICENSED -- APPROVED PERMITS -- CERTIFIED COPIES. It shall be unlawful for any person not a licensed driller to

construct a new ~~waste disposal and deep~~ injection well or modify an existing ~~waste disposal and deep~~ injection well, except that a driller's license is not required for the construction of a driven mine shaft or dug hole for the purposes of this chapter. All licensed drillers shall obtain a certified copy of the approved permit from the director of the department of water resources prior to construction of any new ~~waste disposal and deep~~ injection well or prior to the modification of any existing ~~waste and deep~~ injection well. Failure by a licensed driller to comply with this section shall constitute cause for revocation of a well driller's license in accordance with section 42-238, Idaho Code.

SECTION 9. That Section 42-3913, Idaho Code, be, and the same is hereby amended to read as follows:

42-3913. MINIMUM STANDARDS -- RULES AND REGULATIONS -- ADOPTION. The water resource board shall adopt minimum standards for the construction or abandonment of ~~waste disposal and deep~~ injection wells. Such standards shall require each ~~waste disposal and deep~~ injection well to be so constructed as to protect the ground water of this state from waste and unreasonable contamination. Each licensed well driller or operator will be furnished with a copy of the adopted standards, and will be required to construct each ~~waste disposal and deep~~ injection well drilled after the effective date of said rules and regulations in compliance with the determined standards. Failure by a licensed driller to comply with such standards shall constitute cause for revocation of the well driller's license in accordance with section 42-238, Idaho Code.

The water resource board shall also adopt minimum standards for the construction and abandonment of shallow injection wells. Any person who constructs or abandons a shallow injection well without complying with such standards shall be guilty of a misdemeanor.

Approved March 22, 2011.

CHAPTER 111  
(H.B. No. 108)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW AND TO UNEMPLOYMENT BENEFIT FINANCING; AMENDING SECTION 67-6205, IDAHO CODE, TO PROVIDE DEFINITIONS FOR "DEPARTMENT OF LABOR" AND "DEPARTMENT OF LABOR PROJECT" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-6206, IDAHO CODE, TO PROVIDE POWERS AND AUTHORITY RELATING TO THE FINANCING OF DEPARTMENT OF LABOR PROJECTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-6210, IDAHO CODE, TO PROVIDE FOR ADDITIONAL PROVISIONS FOR RESOLUTIONS AUTHORIZING NOTES OR BONDS OR ANY ISSUE THEREOF AND TO PROVIDE THAT THE IDAHO HOUSING AND FINANCE ASSOCIATION SHALL NOT ISSUE NOTES OR BONDS TO FINANCE DEPARTMENT OF LABOR PROJECTS UNLESS CERTAIN CONDITIONS ARE MET; AMENDING CHAPTER 13, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-1346B, IDAHO CODE, TO AUTHORIZE THE ISSUANCE OF UNEMPLOYMENT BENEFIT BONDS AND NOTES, TO PROVIDE FOR APPROPRIATION OF REVENUES IN THE DEPARTMENT OF LABOR'S EMPLOYMENT SECURITY RESERVE FUND, TO ALLOW THE DEPARTMENT OF LABOR'S EMPLOYMENT SECURITY FUND TO REPAY THE EMPLOYMENT SECURITY RESERVE FUND AND TO REQUIRE THE DIRECTOR OF THE DEPARTMENT OF LABOR TO OBTAIN FEDERAL ADVANCES AS NECESSARY TO PAY UNEMPLOYMENT INSURANCE BENEFITS; AMENDING SECTION 72-1350, IDAHO CODE, TO INCREASE THE FUND SIZE MULTIPLIER; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-6205, Idaho Code, be, and the same is hereby amended to read as follows:

67-6205. DEFINITIONS. The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Association" or "housing association" shall mean the Idaho housing and finance association created by section 67-6202, Idaho Code.

(b) "Housing project" shall mean any work or undertaking:

(1) To demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adoption of such area to public purposes, including parks or other recreational or community purposes; or

(2) To construct, sell, lease, finance, improve, operate or otherwise provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property which are necessary, convenient or desirable appurtenances, such as, but not limited to, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, and welfare or other purposes; or

(3) To accomplish a combination of the foregoing. The term "housing project" also may be applied to the planning of the buildings and improvements, for either single or multi-family housing, the acquisition of property, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration and repair of the buildings and improvements and all other work in connection therewith.

(c) "Governing body" shall mean the city council, board of commissioners, board of trustees or other body having charge of the locality in which the association desires to undertake a housing project.

(d) "Federal government" shall include the United States of America, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(e) "City" shall mean any city in the state of Idaho, including each city having a special charter.

(f) "County" or "counties" shall include all counties in the state of Idaho as designated in chapter 1, title 31, Idaho Code.

(g) "Clerk" shall mean the clerk of the city or county as the case may be or the officer charged with the duties customarily imposed on such clerk.

(h) "Area of operation" shall mean the state of Idaho.

(i) "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors, are detrimental to safety, health or morals.

(j) "Person of ~~low-income~~ low income" means persons deemed by the association, including those defined as "elderly" in the United States Housing Act of 1937 42 U.S.C., section 1437 et seq., as amended, to require assistance available under this act on account of insufficient personal or family income, to pay the rents or carrying charges required by the unaided operation of private enterprise in providing an adequate supply of decent, safe and sanitary housing and in making such determination the association shall take into consideration, without limitation, such factors as:

(1) The amount of the total income of such persons available for housing needs;

(2) The size of the family;

(3) The cost and condition of housing facilities available;

(4) Standards established for various federal programs determining eligibility based on income of such persons; and

(5) The ability of such persons to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing decent, safe and sanitary housing.

(k) "Bonds," "notes" or "bond anticipation notes," and "obligations" shall mean any bonds, notes, interim certificates, debentures or other evidences of financial indebtedness issued by the association pursuant to this chapter.

(l) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature, appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(m) "Housing authority" or "authority" means a housing authority established pursuant to the "housing authorities and cooperation law" constituting chapter 19, title 50, Idaho Code.

(n) "Rent" shall mean the periodic payment made by a person of ~~low-income~~ low income in a housing project whether such money is being used as rent, or for the development of equity by such person.

(o) "Interim financing" means a short-term construction loan for planning and/or development of residential housing for persons of ~~low-income~~ low income and other persons which loan shall run until financing can be assumed through other federal, state or private financing.

(p) "Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, public bodies, trusts, firms, associations, or other legal entities or any combination thereof, and corporations, cooperatives, and condominiums, approved by the association as qualified either to own, construct, acquire, rehabilitate, operate, manage or maintain a housing project, subject to the regulatory powers of the association and other terms and conditions set forth in this chapter. A "housing sponsor" shall be either a "limited profit" sponsor or a "nonprofit" sponsor.

(q) "Mortgage lender" means any bank or trust company, savings bank, mortgage company, mortgage banker, credit union, national banking association, savings and loan association, building and loan association, life insurance company, and any other financial institution authorized to transact business in the state.

(r) "Mortgage loan" means an interest-bearing obligation secured by a deed of trust, a mortgage, bond, note, or other instrument which is a lien on property in the state except in the case of loans insured by the federal housing administration or the association and which are made for the rehabilitation or improvement of existing dwellings; in such case the loans need not be secured by an instrument constituting a lien on property in the state.

(s) "Mixed income housing project" means a housing project which contains dwellings occupied or to be occupied by persons of ~~low-income~~ low income constituting at least twenty percent (20%) of such occupancy.

(t) "Facilities" means land, rights in land, buildings, structures, equipment, landscaping, utilities, approaches, roadways and parking, handling and storage areas, and portions of any of the foregoing and similar ancillary facilities.

(u) "Nonprofit corporation" means a nonprofit corporation organized and operating in accordance with Idaho law or a nonprofit corporation organized and operating in accordance with comparable laws within another state or territory of the United States.

(v) "Nonprofit facilities" means facilities owned or used by a nonprofit corporation for a nonprofit purpose of the corporation; provided that facilities for health facilities which may be funded pursuant to chapter 14, title 39, Idaho Code, shall not be included in this definition, except for such health facilities as may be specifically approved by the Idaho health facilities authority. Facilities owned or used, consistent with its nonprofit purpose, by a nonprofit corporation recognized by a state

institution of higher education as its college or university foundation shall be considered nonprofit facilities under this chapter.

(w) "Project costs of a nonprofit facility" means costs of:

- (1) Acquisition, construction and improvement of any facilities included in a nonprofit facility;
- (2) Architectural, engineering, consulting, accounting and legal costs related directly to the development, financing and construction of a nonprofit facility, including costs of studies assessing the feasibility of a nonprofit facility;
- (3) Finance costs, including discounts, if any, the costs of issuing bonds, and costs incurred in carrying out any provisions thereof;
- (4) Interest during construction and during the six (6) months after estimated completion of construction, and capitalized debt service or repair and replacement or other appropriate reserves;
- (5) The refunding of any outstanding obligations incurred for any of the costs outlined in this subsection; and
- (6) Other costs incidental to any of the costs listed in this section.

(x) "Agricultural facility or facilities" means land, any building or other improvement thereon or thereto, to be owned by a beginning farmer or rancher and any personal properties deemed necessary or suitable for use, whether or not now in existence in farming or ranching, the production of agricultural commodities, including, without limitation, the products of aquaculture, hydroponics and silviculture, or the treating, processing or storing of such agricultural commodities when such activities are customarily engaged in by beginning farmers or ranchers as a part of farming or ranching.

(y) "Municipality" means any county, municipal corporation, highway district, taxing district or other political subdivision of this state.

(z) "State" means the state of Idaho.

(aa) "State body" means any department, board, commission or agency of the state of Idaho.

(bb) "Transportation board" means the Idaho transportation board and its successors.

(cc) "Transportation department" means the Idaho transportation department and its successors.

(dd) "Transportation project" means any transportation infrastructure project including, without limitation, a road, street, parkway, right-of-way, bridge, railroad crossing, drainage structure, sign, guardrail, structure, interstate, surface, resurface, shoulder, roadside, or any other work, and any planning development, management and construction related thereto, all as approved or recommended to the association by the transportation board.

(ee) "Economic development project or projects" means any commercial or industrial project including, without limitation, any manufacturing, processing, production, assembly, warehousing, solid waste disposal, recreation, office, research and development, energy or other business project owned by one (1) or more persons or other legal entities, any costs relating thereto including, without limitation, costs for buildings, land, equipment, furnishings, interest, costs of operation, financing, architectural, engineering and other professional costs and other related costs, as well as any working capital costs or expenses for such businesses.

(ff) "Department of labor" means the Idaho department of labor and its successors.

(gg) "Department of labor project" means any project to assist the department of labor in providing or financing unemployment compensation benefits all as approved or recommended to the association by the director of the department of labor pursuant to section 72-1346B, Idaho Code.

SECTION 2. That Section 67-6206, Idaho Code, be, and the same is hereby amended to read as follows:

67-6206. POWERS OF ASSOCIATION. The housing and finance association is an independent public body corporate and politic, exercising public and essential governmental functions, and having all the powers which are hereby declared to be public purposes necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

(a) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the association; and to make and from time to time amend and repeal bylaws, rules, not inconsistent with this chapter, to carry into effect the powers and purposes of the association.

(b) To conduct its operations within any or all of the counties of the state.

(c) To cooperate with housing authorities throughout Idaho in the development of housing projects.

(d) To assign priorities for action and revise or modify said priorities from time to time.

(e) To make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the association under this chapter, including contracts with any housing sponsor, mortgage lender, person, firm, corporation, governmental agency, or other entity; and to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project and to designate mortgage lenders to act for and in behalf of the association, with respect to originating or servicing and processing mortgage loans of the association, and to pay the reasonable value of service rendered to the association by such mortgage lenders pursuant to contracts with mortgage lenders.

(f) To lease, sell, construct, finance, reconstruct, restore, rehabilitate, operate or rent any housing projects, nonprofit facilities or any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project or nonprofit facilities and, subject to the limitations contained in this chapter, to establish and revise the rents or charges therefor.

(g) To own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein.

(h) To acquire any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein.

(i) To insure or provide for the insurance of any real or personal property or operation of the association against any risks or hazards, and to procure or agree to the procurement of insurance or guarantees from the federal government or other source for the payment or purchase of any bonds or parts thereof issued by the association, including the power to pay for any such insurance or guarantees.

(j) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which a bank, as defined in the "bank act," title 26, Idaho Code, may legally invest funds including without limitation, to agree to purchase the obligations of any federal, state or local government upon such conditions as the association may determine to be prudent and in its best interest.

(k) Within its area of operation: to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of adequate, safe and sanitary dwelling accommodations for persons of ~~low-income~~ low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstruction of slum areas and the problem of providing dwelling accommodations for persons of ~~low-income~~ low income, and to cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(l) To participate in cooperative ventures with any agencies, organizations and individuals in order to undertake the provision of housing for persons of ~~low-income~~ low income, to undertake the provision of nonprofit facilities, economic development projects or agricultural facilities.

(m) To provide research and technical assistance to eligible agencies, organizations and individuals eligible to develop low-cost housing and to research new low-cost housing development and construction methods.

(n) To make and undertake commitments to make or participate in the making of mortgage loans to persons of ~~low-income~~ low income and to housing sponsors, including without limitation federally insured mortgage loans, and to make temporary loans and advances in anticipation of permanent loans to housing sponsors; said mortgage loans to housing sponsors shall be made to finance the construction, improvement, or rehabilitation of housing projects for persons of ~~low-income~~ low income, and/or mixed income housing projects upon the terms and conditions set forth in this chapter; provided, however, that such loans shall be made only upon the determination by the association that mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions.

(o) To purchase, or make commitments to purchase or participate in the purchase of mortgage loans from mortgage lenders which loans have been made for the construction, improvement, or rehabilitation of housing projects for persons of ~~low-income~~ low income and/or mixed income housing projects or loans which have been made to persons of ~~low-income~~ low income for residential housing, upon terms set forth in this chapter; provided, however, that any such purchase shall be made only upon the determination by the association that the mortgage loans to be made are not otherwise being made by mortgage lenders upon reasonably equivalent terms and conditions. Also, to purchase, or make commitments to purchase or participate in the purchase of mortgage loans from mortgage lenders whether or not said loans were made to persons of ~~low-income~~ low income, upon terms set forth in this chapter; provided, however, that the proceeds from such purchase or the equivalent thereof shall be reinvested in obligations of the association, in mortgage loans to persons of ~~low-income~~ low income or in mortgage loans for housing projects for persons of ~~low-income~~ low income and/or mixed income housing projects, and provided that any such purchase shall be made only upon the determination by the association that the mortgage loans to be made are not otherwise being made by mortgage lenders upon reasonably equivalent terms and conditions.

(p) To provide interim financing for housing projects including mixed income housing projects approved by the association, provided that the association has determined that such financing is not otherwise available from mortgage lenders upon reasonably equivalent terms and conditions.

(q) To prescribe rules and policies in connection with the performance of its functions and duties.

(r) To do all other things deemed necessary and desirable to accomplish the objectives of this chapter.

(s) To borrow money and issue bonds and notes or other obligations, to invest the proceeds thereof in any lawful manner and to fund or refund the same, and to provide for the rights of the holders of its obligations as pro-

vided in this chapter and in connection therewith, to waive, by resolution or other document of the association, the exemption from federal income taxation of interest on any of the association's obligations under existing or future federal law and to establish, maintain and preserve the association's general obligation rating and any rating on its bonds, notes or other obligations.

(t) To receive and accept aid or contributions from any source.

(u) To employ architects, engineers, attorneys, accountants, housing construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix their compensation.

(v) To insure mortgage payments of any mortgage loan made for the purpose of constructing, rehabilitating, purchasing, leasing, or refinancing housing projects upon such terms and conditions as the association may prescribe.

(w) To fix and revise from time to time and charge and collect fees and charges in connection with loans made or other services provided by the association pursuant to this chapter, and to make and publish rules respecting the making and purchase of mortgage loans.

(x) To organize a nonprofit corporation to assist the association in providing for housing projects.

(y) To enter upon and inspect any housing project, including housing projects undertaken by housing sponsors, for the purpose of investigating the physical and financial condition thereof, and its construction, rehabilitation, operation, management and maintenance, and to examine all books and records with respect to capitalization, income and other matters relating thereto.

(z) To order such alterations, changes or repairs as may be necessary to protect the security of its investment in a housing project or the health, safety, and welfare of the occupants thereof.

(aa) To make or purchase secured loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the project costs of any nonprofit facility, economic development project or agricultural facility, including the refunding of any outstanding obligations, mortgages or advances issued, made or given by any person for the project costs of a nonprofit facility, economic development project or agricultural facility; provided that private financial institutions shall be involved in providing such financing for economic development projects, and further, that the association will work with private financial institutions as the primary or preferred credit enhancement providers if credit enhancement is needed for such financings, and to charge and collect interest on the loans for the loan payments upon such terms and conditions, including without limitation bond rating and issuance conditions, as the board of commissioners considers advisable which are not in conflict with this chapter.

(bb) As security for the payment of the principal of and interest on any revenue bonds issued and any agreements made in connection therewith, to mortgage, pledge, or otherwise encumber any or all of nonprofit facilities, economic development projects or agricultural facilities or any part or parts thereof, whether then owned or thereafter acquired, and to assign any mortgage and repledge any security conveyed to the association, to secure any loan made by the association and to pledge the revenues and receipts therefrom.

(cc) To issue bonds for the purpose of financing all or part of the project cost on any nonprofit facility, economic development project or agricultural facility and to secure the payment of the bonds as provided in this chapter.

(dd) To purchase or sell by installment contract or otherwise, and convey all or any part of any nonprofit facility, economic development project or agricultural facility for such purchase price and upon such terms and con-

ditions as this board of commissioners considers advisable which are not in conflict with this chapter.

(ee) To lease all or any part of any nonprofit facility, economic development project or agricultural facility for such rentals and upon such terms and conditions, including options to purchase, as the board of commissioners considers advisable and not in conflict with this chapter.

(ff) To construct and maintain one (1) or more nonprofit facilities, economic development projects or agricultural facilities, provided that the association shall not operate any nonprofit facility, economic development project or agricultural facility as a business other than as lessor, seller or lender. The purchase, holding and enforcing of mortgages, deeds of trust, or other security interests and contracting for any servicing thereof is not considered the operation of a nonprofit facility, economic development project or agricultural facility as a business.

(gg) To act as the designated housing resource clearinghouse in the state for matters relating to affordable housing.

(hh) To coordinate the development and maintenance of a housing policy for the state.

(ii) To enter into agreements or other transactions with and accept grants, reimbursements or other payments, ~~with and~~ and the cooperation of the United States or any agency thereof or of the state of Idaho or any agency thereof or municipality of the state in furtherance of the purposes of this act, including, but not limited to, the development, maintenance, operation and financing of any transportation project or the financing of any department of labor project and to do any and all things necessary in order to avail ~~the association itself~~ of such aid and cooperation.

(jj) To borrow money and issue bonds and notes or other evidences of indebtedness thereof as hereinafter provided to finance transportation projects approved and recommended by the transportation board.

(kk) To borrow money and issue bonds and notes or other evidences of indebtedness thereof as hereinafter provided to finance department of labor projects approved and recommended by the director of the department of labor pursuant to section 72-1346B, Idaho Code.

SECTION 3. That Section 67-6210, Idaho Code, be, and the same is hereby amended to read as follows:

67-6210. POWER TO ISSUE BONDS. The association shall have power and is hereby authorized to issue, from time to time, its negotiable notes and bonds in conformity with the applicable provisions of the uniform commercial code in such principal amount as the association shall determine to be necessary for sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of the association, establishment of reserves to secure such notes and bonds, and all other expenditures of the association incidental and necessary or convenient to carry out its corporate purposes and powers; provided, however, that the association shall provide in its resolution authorizing such bonds that all revenues received by the association as a result of the issuance of such bonds shall be pledged first to the payment of principal and interest on such bonds.

(a) The association shall have the power, from time to time, to issue:

(1) notes to renew notes and

(2) bonds to pay notes, including the interest thereon, and

(3) whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes.

The refunding bonds may be:

(1) exchanged for the bonds to be refunded or

(2) sold and the proceeds applied to the purchase, redemption or payment of such bonds.

(b) Except as may otherwise be expressly provided by the association, every issue of its notes and bonds shall be payable exclusively from the revenues or income of the association, including grants and contributions from the United States of America, subject only to any agreements with the holders of particular notes or bonds pledging any particular revenues.

(c) The notes and bonds shall be authorized by resolution or resolutions of the association, shall bear such date or dates and shall mature at such time or times as such resolution or resolutions may provide. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide. The notes and bonds of the association may be sold by the association, at public or private sale, at such price or prices as the association shall determine.

(d) Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenues to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with noteholders or bondholders as may then exist;

(2) pledging all or any part of the assets of the association including mortgages and obligations securing the same, to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist;

(3) the use and disposition of the gross income from mortgages owned by the association and payment of principal of mortgages owned by the association;

(4) the setting aside of reserves or sinking funds and the regulation and disposition thereof;

(5) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;

(6) limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; and the refunding of outstanding or other notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto; and the manner in which such consent may be given;

(8) limitations on the amount of moneys to be expended by the association for operating expenses of the association;

(9) vesting in a trustee or trustees such property, rights, powers and duties in trust as the association may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this act; and limiting or abrogating the right of the bondholders to appoint a trustee under this act, or limiting the rights, powers and duties of such trustee;

(10) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the association to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the general laws of the state and the other provisions of this act;

(11) pledging all or any part of funds allocated to the association under Idaho law or other revenues or the proceeds of notes or bonds to secure the payment of notes or bonds issued to finance transportation projects, subject to such agreements with noteholders or bondholders as may then exist;

(12) setting forth the provisions for any contracts relating to its bonds or notes, including, without limitation, any investment or interest rate contracts, or any contract providing for a credit enhancement, including, but not limited to, letters of credit, bond insurance and surety bonds provided by private financial institutions;

(13) setting forth the provisions for representations or certifications to be made by an officer of the association with respect to funds to be allocated to the association for transportation projects and provisions for the disbursements of the proceeds of the bonds or notes for payment of the costs of a transportation project, costs of issuance and other related costs;

(14) pledging all or any part of funds allocated to the association pursuant to section 72-1346B, Idaho Code, or the proceeds of notes or bonds to secure the payment of notes or bonds issued to finance a department of labor project, subject to such agreements with noteholders or bondholders as may then exist;

(15) setting forth the provisions for representations or certifications to be made by an officer of the association with respect to funds to be allocated to the association for a department of labor project and provisions for the disbursements of the proceeds of the bonds or notes for payment of the costs of a department of labor project, costs of issuance and other related costs;

(16) any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

(e) Any pledge made by the association shall be valid and binding from the time when the pledge is made; the revenues, moneys or property so pledged and thereafter received by the association shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the association, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(f) Neither the commissioners of the association nor any other person executing such notes or bonds shall be subject to any personal liability or accountability by reason of the issuance thereof.

(g) The association, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the association, which shall thereupon be canceled, at a price not exceeding:

(1) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon, or

(2) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.

(h) In the discretion of the association, the bonds may be secured by a trust indenture by and between the association and a corporate trustee, which may be any trust company or bank having the power of a trust company in the state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the association in relation to the exercise of its corporate powers and the custody, safeguarding and application of all moneys. The associa-

tion may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of the association. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

(i) Whether or not the notes and bonds are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, the notes and bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the notes and bonds for registration.

(j) In case any of the commissioners or officers of the association whose signatures appear on any notes or bonds or coupons shall cease to be such commissioners or officers before the delivery of such notes or bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery.

(k) The association shall not issue any bonds or notes to finance transportation projects unless:

(1) the Idaho transportation board has approved and recommended the transportation projects for financing through the association;

(2) the Idaho transportation board has certified to the association that sufficient funds are available to make the payments required for the bonds or notes to be issued to finance the transportation projects and that the annual, total cumulative debt service and bond-related expenses on federally-funded highway project financing do not exceed the limits specified in section 40-315(3), Idaho Code; and

(3) the association and the Idaho transportation board have entered into an agreement for the association to provide financing of the transportation projects.

(1) The association shall not issue any bonds or notes to finance a department of labor project unless:

(1) the director of the department of labor has approved and recommended the department of labor project for financing through the association pursuant to section 72-1346B, Idaho Code;

(2) the director of the department of labor has certified to the association that sufficient funds are available to make the payments required for the bonds or notes to be issued to finance the department of labor project; and

(3) the association and the director of the department of labor have entered into an agreement for the association to provide financing of the department of labor project.

SECTION 4. That Chapter 13, Title 72, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 72-1346B, Idaho Code, and to read as follows:

72-1346B. UNEMPLOYMENT BENEFIT BONDS. (1) The Idaho housing and finance association, upon the request from and agreement with the director, may contract indebtedness and issue or cause to be issued unemployment benefit bonds or notes evidencing such indebtedness in conformity with chapter 62, title 67, Idaho Code, for the benefit of the department when the director determines that the issuance of bonds for the repayment of federal advances under title XII of the social security act, 42 U.S.C. section 1321 et seq., will result in a savings to the state and to the state's employers.

(2) Until unemployment benefit bonds and notes as authorized in this section and chapter 62, title 67, Idaho Code, have been paid in full, the following provisions shall apply:

(a) In addition to the requirements of section 72-1347A, Idaho Code, within the employment security reserve fund there is created a bond principal payment account and a bond interest payment account. Fifty million dollars (\$50,000,000) is hereby appropriated to the bond principal payment account and twenty million dollars (\$20,000,000) is hereby appropriated to the bond interest payment account. Moneys in the bond principal payment account shall be used solely for the payment of bond and note principal and moneys in the bond interest payment account shall be used solely for the payment of bond and note interest and other amounts required for the unemployment benefit bonds or notes issued by the Idaho housing and finance association in accordance with this section and chapter 62, title 67, Idaho Code.

(b) Moneys in the bond principal payment account and the bond interest payment account are continuously appropriated in such amounts and at such times as, from time to time, shall be certified by the Idaho housing and finance association to the director, the state treasurer and the state controller as necessary for the payment of principal, interest and other amounts required for unemployment benefit bonds or notes issued by the Idaho housing and finance association in accordance with this section and chapter 62, title 67, Idaho Code, which amounts shall be paid over as directed by the association.

(c) Moneys paid out of the bond principal payment account for principal payments on unemployment benefit bonds or notes shall be repaid from the benefit account in the employment security fund, section 72-1346(2), Idaho Code, out of revenue the department derives from employer contributions payable under sections 72-1349 and 72-1350, Idaho Code.

(d) Moneys paid out of the benefit account to the bond principal payment account as authorized in this section shall be made as soon as possible and in such amounts as deemed necessary by the director to provide funds for the appropriations contained herein to make subsequent principal payments on unemployment benefit bonds or notes when due.

(e) At any time the balance in the benefit account reaches zero (0), the director shall immediately requisition funds from the state's account in the federal unemployment trust fund, and if funds therein are not then sufficient to pay unemployment insurance benefits, the director shall immediately obtain advances from the federal unemployment account in the unemployment trust fund as provided for in section 72-1346A, Idaho Code.

SECTION 5. That Section 72-1350, Idaho Code, be, and the same is hereby amended to read as follows:

72-1350. TAXABLE WAGE BASE AND TAXABLE WAGE RATES. (1) All remuneration for personal services as defined in section 72-1328, Idaho Code, equal to the average annual wage in covered employment for the penultimate calendar year, rounded to the nearest multiple of one hundred dollars (\$100), or the amount of taxable wage base specified in the federal unemployment tax act, whichever is higher, shall be the taxable wage base for purposes of this chapter.

(2) Prior to December 31 of each year, the director shall determine the taxable wage rates for the following calendar year for all covered employers, except cost reimbursement employers, in accordance with this section, provided however, and notwithstanding any other provision of the employment security law to the contrary, for calendar years 2005 and 2006, the taxable wage rates for all covered employers except cost reimbursement employers shall be determined as follows:

(a) For calendar year 2005, the taxable wage rate shall be determined using a base tax rate of one and fifty hundredths percent (1.50%);

(b) For calendar year 2006, the taxable wage rate shall be determined using a base tax rate of one and sixty-seven hundredths percent (1.67%) unless, at any time prior to September 30, 2005, the actual balance in the employment security fund, section 72-1346, Idaho Code, is fifty percent (50%) or less than the actual balance in the reserve fund, section 72-1347A, Idaho Code, in which case the taxable wage rate shall be determined using a base tax rate calculated in accordance with subsection (5) of this section.

(3) An average high cost ratio shall be determined by calculating the average of the three (3) highest benefit cost rates in the twenty (20) year period ending with the preceding year. For the purposes of this section, the "benefit cost rate" is the total annual benefits paid, including the state's share of extended benefits but excluding the federal share of extended benefits and cost reimbursable benefits, divided by the total annual covered wages excluding cost reimbursable wages. The resulting average high cost ratio is multiplied by the desired fund size multiplier of ~~eight-tenths (0.8)~~, and the result, for the purposes of this section, is referred to as the "average high cost multiple" (AHCM). The desired fund size multiplier shall be eight tenths (0.8) and shall increase to nine tenths (0.9) on and after January 1, 2012; to one (1) on and after January 1, 2013; to one and one-tenth (1.1) on and after January 1, 2014; to one and two-tenths (1.2) on and after January 1, 2015; to one and three-tenths (1.3) on and after January 1, 2016; to one and four-tenths (1.4) on and after January 1, 2017; and to one and five-tenths (1.5) on and after January 1, 2018.

(4) The fund balance ratio shall be determined by dividing the actual balance of the employment security fund, section 72-1346, Idaho Code, and the reserve fund, section 72-1347A, Idaho Code, on September 30 of the current calendar year by the wages paid by all covered employers in Idaho, except cost reimbursement employers, in the preceding calendar year.

(5) The base tax rate shall be determined as follows:

(a) Divide the fund balance ratio by the AHCM;

(b) Subtract the quotient obtained from the calculation in paragraph (5) (a) of this section from the number two (2);

(c) Multiply the remainder obtained from the calculation in paragraph (5) (b) of this section by two and one-tenth percent (2.1%). The product obtained from this calculation shall equal the base tax rate, provided however, that the base tax rate shall not be less than sixty-three hundredths percent (0.63%) and shall not exceed three and thirty-six hundredths percent (3.36%).

(6) The base tax rate calculated in accordance with subsection (5) of this section shall be used to determine the taxable wage rate effective the following calendar year for all covered employers except cost reimbursement employers as provided in subsections (7) and (8) of this section.

(7) Table of Rate Classes, Tax Factors and Minimum and Maximum Taxable Wage Rates

Rate Class	Cumulative Taxable Payroll Limits		Tax Factor	Eligible Employers	
	More Than (% of Taxable Payroll)	Equal to or Less Than (% of Taxable Payroll)		Minimum Taxable Wage Rate	Maximum Taxable Wage Rate
1	--	12	0.2857	0.180%	0.960%
2	12	24	0.4762	0.300%	1.600%
3	24	36	0.5714	0.360%	1.920%
4	36	48	0.6667	0.420%	2.240%
5	48	60	0.7619	0.480%	2.560%
6	60	72	0.8571	0.540%	2.880%
7	72	--	0.9524	0.600%	3.200%

  

Standard-Rated Employers		
Tax Factor	Minimum Taxable Wage Rate	Maximum Taxable Wage Rate
1.000	1.000%	3.360%

  

Rate Class	Cumulative Taxable Payroll Limits		Tax Factor	Deficit Employers	
	More Than (% of Taxable Payroll)	Equal to or Less Than (% of Taxable Payroll)		Minimum Taxable Wage Rate	Maximum Taxable Wage Rate
-1	--	30	1.7143	1.080%	4.800%
-2	30	50	1.9048	1.200%	5.200%
-3	50	65	2.0952	1.320%	5.600%
-4	65	80	2.2857	1.440%	6.000%
-5	80	95	2.6667	1.680%	6.400%
-6	95	--	2.6667	5.400%	6.800%

(8) Each covered employer, except cost reimbursement employers, will be assigned a taxable wage rate and a contribution rate as follows:

(a) Each employer, except standard-rated employers, will be assigned to one (1) of the rate classes for eligible and deficit employers provided in subsection (7) of this section based upon the employer's experience as determined under the provisions of sections 72-1319, 72-1319A, 72-1351 and 72-1351A, Idaho Code.

(b) For each rate class provided in subsection (7) of this section, the department will multiply the base tax rate determined in accordance with subsection (5) of this section by the tax factor listed for that rate class in the table provided in subsection (7) of this section. The product obtained from this calculation shall be the taxable wage rate for employers assigned to that rate class, provided however, that the taxable wage rate shall not be less than the minimum taxable wage rate assigned to that rate class and shall not exceed the maximum taxable wage rate assigned to that rate class in the table provided in subsection (7) of this section.

(c) For standard-rated employers, the department will multiply the base tax rate determined in accordance with subsection (5) of this section by the tax factor listed for standard-rated employers in the table provided in subsection (7) of this section. The product obtained from this calculation shall be the taxable wage rate for standard-rated employers, provided however, that the taxable wage rate shall not be less than the minimum taxable wage rate assigned to standard-rated employers and shall not exceed the maximum taxable wage rate assigned to standard-rated employers in the table provided in subsection (7) of this section.

(d) Deficit employers who have been assigned a taxable wage rate from deficit rate class six will be assigned contribution rates equal to their taxable wage rate.

(e) All other eligible, standard-rated and deficit employers will be assigned contribution rates equal to ninety-seven percent (97%) of their taxable wage rate. Provided however, that for each calendar year a reserve tax is imposed pursuant to section 72-1347A, Idaho Code, the contribution rates for employers assigned contribution rates pursuant to this paragraph shall be eighty percent (80%) of their taxable wage rate.

(9) Each employer shall be notified of his taxable wage rate as determined for any calendar year pursuant to this section and section 72-1351, Idaho Code. Such determination shall become conclusive and binding upon the employer, unless within fourteen (14) days after delivery or mailing of the notice thereof to his last known address, the employer files an application for redetermination, setting forth his reasons therefor. Reconsideration shall be limited to transactions occurring subsequent to any previous determination which has become final. The employer shall be promptly notified of the redetermination, which shall become final unless an appeal is filed within fourteen (14) days after delivery or mailing of notice to his last known address. Proceedings on the appeal shall be in accordance with the provisions of section 72-1361, Idaho Code.

SECTION 6. 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 the remaining portions of this act.

SECTION 7. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 22, 2011.

CHAPTER 112  
(H.B. No. 109)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1367A, IDAHO CODE, TO ADD AN ADDITIONAL TEMPORARY TOTAL UNEMPLOYMENT RATE INDICATOR FOR EXTENDED BENEFITS THAT QUALIFY FOR FEDERAL FUNDS AND TO MAKE TECHNICAL CORRECTIONS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-1367A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1367A. EXTENDED BENEFITS. The extended benefits program shall be administered pursuant to the provisions of this section.

(1) Definitions. As used in this section, unless the context clearly requires otherwise:

(a) "Extended benefit period" means a period which:

(i) Begins with the third week after a week for which there is a state "on" indicator; and

(ii) Ends with either of the following weeks, whichever occurs later:

1. The third week after the first week for which there is a state "off" indicator; or

2. The thirteenth consecutive week of such period;

provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(b) (i) There is a state "on" indicator for any week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted):

1. Equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years and equaled or exceeded five percent (5%); or

2. Equaled or exceeded six percent (6%).

(ii) With respect to weeks of unemployment beginning on or after February 1, 2009, and ending four (4) weeks prior to the last week for which federal sharing is authorized by section 2005(a) ("full federal funding of extended unemployment compensation for a limited period") of division B, title II, the assistance for unemployed workers and struggling families act, of the American recovery and reinvestment act of 2009, ~~public law~~ P.L. 111-5, as amended, there is a state "on" indicator for any week if the director determines, in accordance with the regulations of the United States secretary of labor that:

1. The average rate of seasonally adjusted total unemployment, as determined by the United States secretary of labor, for the period consisting of the most recent three (3) months for which data for all states are published before the close of such week equals or exceeds six and five-tenths percent (6.5%); and

2. The average rate of seasonally adjusted total unemployment in the state, as determined by the United States secretary of labor, for the three (3) month period referred to in subsection (1) (b) (ii) 1. equals or exceeds one hundred ten percent (110%) of such average for either or both of the corresponding three (3) month periods ending in the two (2) preceding calendar years.

3. With respect to weeks of unemployment beginning on or after January 1, 2011, and ending on December 31, 2011, or the expiration date in section 502 of the tax relief, unemployment insurance reauthorization and job creation act of 2010, P.L. 111-312, as amended, whichever is later, the average rate of seasonally adjusted total unemployment in the state, as determined by the United States secretary of labor, for the three (3) month period referred to in subsec-

tion (1) (b) (ii) 1. equals or exceeds one hundred ten percent (110%) of such average for any and all of the corresponding three (3) month periods ending in the three (3) preceding calendar years.

(c) There is a state "off" indicator for any week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks:

(i) The rate of insured unemployment (not seasonally adjusted) was less than six percent (6%) and was less than one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years; or

(ii) The rate of insured unemployment (not seasonally adjusted) was less than five percent (5%); or

(iii) The option specified in subsection (1) (b) (ii) does not result in an "on" indicator.

(d) "Rate of insured unemployment," for purposes of paragraphs (b) and (c) of this subsection, means the percentage derived by dividing:

(i) The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment for the most recent thirteen (13) consecutive week period, as determined by the director on the basis of his reports to the United States secretary of labor; by

(ii) The average monthly employment covered under this chapter for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen (13) week period.

(e) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(f) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(g) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. Eligibility period of an individual also means the period consisting of weeks which begin in his extended benefit period, without regard to his benefit year end date, if the individual qualifies for one hundred percent (100%) federally financed federal-state extended benefits and the one hundred percent (100%) federally financed federal-state extended benefit payment period began on or before the individual exhausted his rights to benefits under the federal emergency unemployment compensation program of 2008.

(h) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(i) Has received, prior to such week, all of the regular benefits that were available to him under this chapter or any regular or extended benefits available to him under any other state law (including benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week; provided that for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal with respect to wages that were not

considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(ii) His benefit year having expired prior to such week, has no or insufficient wages on the basis of which he could establish a new benefit year that would include such week; and

(iii) Has no right to unemployment benefits or allowances under the railroad unemployment insurance act and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment insurance law of Canada; but if he is seeking such benefits and the appropriate agency determines that he is not entitled to benefits under such law he is considered an exhaustee.

(i) "State law" means the unemployment insurance law of any state approved by the United States secretary of labor under section 3304 of the Internal Revenue Code of 1954.

(j) For purposes of this section only, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the department that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with applicable state law.

(2) Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits. Except when the result would be inconsistent with the other provisions of this section, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(3) Eligibility requirements for extended benefits. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the director finds that with respect to such week:

(a) The claimant is an "exhaustee" as defined in subsection (1) (h) of this section;

(b) The claimant has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits;

(c) The claimant has had twenty (20) weeks of full-time employment for covered employers during his base period, or earned wages for services performed for covered employers during his base period equal to at least one and one-half (1 1/2) times his high quarter wages, or has earned wages for services performed for covered employers during his base period equal to at least forty (40) times his most recent weekly benefit amount.

(d) (i) Notwithstanding the provisions of this section, payment of extended benefits under this chapter shall not be made to any individual for any week of unemployment in his eligibility period:

1. During which he fails to accept any offer of suitable work, as defined in subsection (1) (j) of this section, or fails to apply for any suitable work to which he was referred; or

2. During which he fails to actively engage in seeking work.

(ii) If any individual is ineligible for extended benefits for any week by reason of a failure described in subsection (3) (d) (i) 1. or (3) (d) (i) 2. of this section, the individual shall be ineligible

to receive extended benefits for any week which begins during a period which:

1. Begins with the week following the week in which such failure occurs; and
2. Does not end until such individual has been employed during at least four (4) weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of four (4) multiplied by the individual's average weekly benefit amount.

(iii) Extended benefits shall not be denied under subsection (3) (d) (i) 1. of this section to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work:

1. If the gross average weekly remuneration payable to such individual for the position does not exceed the sum of:
  - (A) The individual's average weekly benefit amount, as determined for purposes of subsection (b) (1) (C) of section 202 of the federal-state extended unemployment compensation act of 1970, for his benefit year; plus
  - (B) The amount, if any, of supplemental unemployment compensation benefits, as defined in section 501(c) (17) (D) of the Internal Revenue Code of 1954, payable to such individual for such week.
2. If the position was not offered to such individual in writing or was not listed with the department;
3. If such failure would not result in a denial of benefits under the provisions of this chapter to the extent that such provisions are not inconsistent with the provisions of subsections (1) (j) and (3) (d) (iv) of this section; or
4. If the position pays wages less than the higher of:
  - (A) The minimum wage provided by section 6 (a) (1) of the fair labor standards act of 1938, without regard to any exemption; or
  - (B) Any applicable state or local minimum wage.

(iv) For purposes of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if:

1. The individual has engaged in a systematic and sustained effort to obtain work during such week; and
2. The individual provides tangible evidence to the department that he has engaged in such an effort during such week.

(v) For purposes of this section only, the department shall refer applicants for extended benefits to any suitable work to which paragraphs 1., 2., 3. and 4. of subsection (3) (d) (iii) of this section would not apply.

(4) (a) Except as provided in paragraph (b) of this subsection, payment of extended benefits shall not be made to any individual for any week if:

- (i) Extended benefits would, but for this subsection have been payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and
- (ii) An extended benefit period is not in effect for such week in such state.

(b) Paragraph (a) of this subsection shall not apply with respect to the first two (2) weeks for which extended benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefits account established for the benefit year.

(c) Section 3304 (a) (9) (A) of the Internal Revenue Code of 1954 shall not apply to any denial of benefits required under this subsection.

(5) Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

(6) (a) Total extended benefit amount. The total extended benefit amount payable to an eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(i) Fifty percent (50%) of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;

(ii) Thirteen (13) times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year;

(iii) Provided that the amount so determined shall be reduced by the total amount of extended benefits paid, or being paid, to the individual for weeks of extended unemployment in the individual's benefit year which began prior to the effective date of the federal-state extended benefit period which is current in the week for which the individual first claims such benefits.

(iv) Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for the provisions of this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero (0), by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(b) (i) Effective with respect to weeks beginning in a high unemployment period, subsection (6) (a) of this section shall be applied by substituting:

1. "Eighty percent (80%)" for "fifty percent (50%)" in subsection (6) (a) (i) of this section; and

2. "Twenty (20)" for "thirteen (13)" in subsection (6) (a) (ii) of this section.

(ii) For purposes of subsection (6) (b) (i) of this section, the term "high unemployment period" means any period during which an extended benefit period would be in effect if subsection (1) (b) (ii) were applied by substituting "eight percent (8%)" in subsection (1) (b) (ii) 1. for "six and five-tenths percent (6.5%)."

(7) (a) Beginning and termination of extended benefit period. Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator, the director shall make a public announcement.

(b) Computations required by the provisions of subsection (1) (d) of this section shall be made by the director, in accordance with regulations prescribed by the United States secretary of labor.

(8) Notwithstanding any other provisions of this chapter, none of the benefits paid pursuant to the provisions of this section shall be charged to an employer's account for purposes of experience rating.

(9) Whenever a program of unemployment benefits becomes available that is financed entirely by the federal government, and such program will not allow payments to individuals who are entitled to extended benefits pursuant to this section, the governor may, by executive order, trigger off an extended benefit period as defined in subsection (1) (a) of this section in order to provide payment of such federal benefits to individuals who have

exhausted their right to regular benefits. When the federal benefits are exhausted, or if the director determines that payment of extended benefits would be more economically advantageous to the state of Idaho, the governor shall, by executive order, trigger extended benefits on if the criteria of subsection (1) (b) of this section are otherwise met.

(10) Until conformity with the federal-state extended unemployment compensation act of 1970 requires otherwise, the eligibility requirements in subsections (1) (j) and (3) (d) of this section are suspended. Except where inconsistent with the provisions of this section, the eligibility requirements of section 72-1366, Idaho Code, applicable to claims for regular benefits shall apply in lieu of the suspended provisions.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2011.

Approved March 22, 2011.

CHAPTER 113  
(H.B. No. 122)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW AND TO UNEMPLOYMENT BENEFIT FINANCING; AMENDING SECTION 72-1367, IDAHO CODE, TO REVISE THE RATIOS OF TOTAL BASE PERIOD EARNINGS TO THE HIGHEST QUARTER EARNINGS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-1367, Idaho Code, be, and the same is hereby amended to read as follows:

72-1367. BENEFIT FORMULA. (1) To be eligible an individual shall have the minimum qualifying amount of wages in covered employment in at least one (1) calendar quarter of his base period, and shall have total base period wages of at least one and one-quarter (1 1/4) times his high quarter wages. The minimum qualifying amount of wages shall be determined each January 1 and shall equal fifty percent (50%) of the product of the state minimum wage, as defined by section 44-1502, Idaho Code, multiplied by five hundred twenty (520) hours, rounded to the lowest multiple of twenty-six (26).

(2) The weekly benefit amount shall be one twenty-sixth (1/26) of highest quarter wages except that it shall not exceed the applicable maximum weekly benefit amount. The maximum weekly benefit amount shall be established as follows:

(a) For calendar year 2006 and the calendar years thereafter, prior to December 31 of each year, the director shall determine the state average weekly wage paid by covered employers for the preceding calendar year and the maximum weekly benefit amount to be effective for new claims filed in the first full week of the following January and filed thereafter until a new maximum weekly benefit amount becomes effective under this subsection (2). The maximum weekly benefit amount shall be determined based on the following table, using a percentage of the state average weekly wage paid by covered employers for the preceding calendar year and the base tax rate that has been calculated for the following calendar year pursuant to section 72-1350, Idaho Code:

Base Tax Rate	Maximum WBA Index		Average Weekly Wage Percentage
	At Least	Less Than	
0.630%	0.840%	60%	
0.840%	1.155%	59%	
1.155%	1.470%	58%	
1.470%	1.785%	57%	
1.785%	2.100%	56%	
2.100%	2.415%	55%	
2.415%	2.730%	54%	
2.730%	3.045%	53%	
3.045%	3.360%	52%	

(b) Effective for new claims filed in the first full week of July 2005, and filed thereafter until the first full week of the following January, the maximum weekly benefit amount shall be fifty-seven percent (57%) of the state average weekly wage paid by covered employers for the preceding calendar year. Prior to December 31, 2005, the director shall determine, by using the table provided in subsection (2) (a) of this section, the maximum weekly benefit amount to be effective for new claims filed in the first full week of the following January and filed thereafter until a new maximum weekly benefit amount becomes effective under subsection (2) (a) of this section.

(3) Any eligible individual shall be entitled during any benefit year to a total amount of benefits equal to his weekly benefit amount times the number of full weeks of benefit entitlement appearing in the following table based on his ratio of total base period earnings to highest quarter base period earnings.

Ratio of Total Base Period Earnings to Highest Quarter Earnings		Full Weeks of Benefit Entitlement
At Least	Less Than	
1.25	1.50	10
1.50	1.625	11
1.625	1.750	12
1.750	1.875	13
1.875	2.00	14
2.00	2.125	15
2.125	2.250	16
2.250	2.375	17
2.375	2.500	18
2.500	2.625	19
2.625	2.750	20
2.750	2.875	21
2.875	3.000	22
3.000	3.125	23
3.125	3.250	24
3.250	3.500	25
3.500	--	26

<u>Ratio of Total Base Period Earnings to Highest Quarter</u>		<u>Full Weeks of Benefit Entitlement</u>
<u>At Least</u>	<u>Earnings</u>	
	<u>Up To</u>	
<u>1.25</u>	<u>1.60</u>	<u>10</u>
<u>1.6001</u>	<u>1.80</u>	<u>11</u>
<u>1.8001</u>	<u>1.92</u>	<u>12</u>
<u>1.9201</u>	<u>2.01</u>	<u>13</u>
<u>2.0101</u>	<u>2.08</u>	<u>14</u>
<u>2.0801</u>	<u>2.14</u>	<u>15</u>
<u>2.1401</u>	<u>2.21</u>	<u>16</u>
<u>2.2101</u>	<u>2.29</u>	<u>17</u>
<u>2.2901</u>	<u>2.38</u>	<u>18</u>
<u>2.3801</u>	<u>2.49</u>	<u>19</u>
<u>2.4901</u>	<u>2.61</u>	<u>20</u>
<u>2.6101</u>	<u>2.75</u>	<u>21</u>
<u>2.7501</u>	<u>2.91</u>	<u>22</u>
<u>2.9101</u>	<u>3.10</u>	<u>23</u>
<u>3.1001</u>	<u>3.32</u>	<u>24</u>
<u>3.3201</u>	<u>3.56</u>	<u>25</u>
<u>3.5601</u>	<u>4.00</u>	<u>26</u>

(4) If the total wages payable to an individual for less than full-time work performed in a week claimed exceed one-half (1/2) of his weekly benefit amount, the amount of wages that exceed one-half (1/2) of the weekly benefit amount shall be deducted from the benefits payable to the claimant. For purposes of this subsection, severance pay shall be deemed wages, even if the claimant was required to sign a release of claims as a condition of receiving the pay from the employer. "Severance pay" means a payment or payments made to a claimant by an employer as a result of the severance of the employment relationship.

(5) Benefits payable to an individual shall be rounded to the next lower full dollar amount.

Approved March 22, 2011.

#### CHAPTER 114

(H.B. No. 142, As Amended in the Senate)

#### AN ACT

RELATING TO WATER SKIING; AMENDING SECTION 67-7024, IDAHO CODE, TO PROVIDE THAT VESSELS OPERATING WITHIN A REGULATION LEGAL AND PERMITTED SLALOM COURSE AND THAT ARE EQUIPPED WITH A REAR VIEW WIDE ANGLE MIRROR ARE EXEMPT FROM THE REQUIREMENT OF HAVING AN OBSERVER IN THE VESSEL AND TO PROVIDE REQUIREMENTS FOR MIRRORS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-7024, Idaho Code, be, and the same is hereby amended to read as follows:

67-7024. WATER SKIING. (1) It shall be unlawful for the operator of any vessel having in tow or otherwise assisting a person on water skis, aquaplane

or similar contrivance to operate or propel the same upon or above any waters of the state of Idaho unless that vessel shall be occupied by at least one (1) other competent person who shall act as an observer. This subsection shall not apply to vessels used by representatives of duly constituted water ski schools in the giving of instruction, or to vessels used in duly authorized water ski tournaments, competitions, expositions or trials.

(2) Vessels operating within a regulation legal and permitted slalom course and that are equipped with a rear view wide angle mirror are exempt from the requirement of having at least one (1) other competent person in the boat acting as an observer as provided in subsection (1) of this section. The size of the mirror must be no less than four (4) inches from bottom to top and across from side to side. It shall be mounted firmly to give the operator a full, complete view beyond the rear of the vessel at all times.

(3) No vessel shall have in tow or shall otherwise be assisting a person on water skis, aquaplane or similar contrivance from the period of one (1) hour after sunset to one (1) hour prior to sunrise. This subsection shall not apply to vessels used in duly authorized water ski tournaments, competitions, expositions or trials.

(34) All vessels having in tow or otherwise assisting a person on water skis, aquaplane or similar contrivance shall be operated in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person or create excessive wake.

(45) No person shall operate or manipulate any vessel's attached towrope or other device by which the direction or location of water skis, aquaplane or similar device may be affected or controlled in such a way as to cause the same or any person thereon to collide with or strike against any person or object other than a jumping ramp or in conjunction with skiing over a slalom course.

Approved March 22, 2011.

CHAPTER 115  
(H.B. No. 152)

AN ACT

RELATING TO DAIRY PRODUCTS; AMENDING THE HEADING FOR CHAPTER 5, TITLE 37, IDAHO CODE, TO REMOVE REFERENCE TO BABCOCK TESTS AND TO PROVIDE FOR MILK COMPONENTS AND QUALITY TESTING; AMENDING SECTION 37-503, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CERTAIN LICENSES AND TO REVISE DEFINITIONS; AMENDING SECTION 37-504, IDAHO CODE, TO PROVIDE FOR THE PRORATION OF LICENSE FEES AND TO REVISE PROVISIONS RELATING TO THE NON-ISSUANCE AND REVOCATION OF CERTAIN LICENSES; AMENDING SECTION 37-505, IDAHO CODE, TO REVISE REPORTING REQUIREMENTS; AMENDING SECTION 37-506, IDAHO CODE, TO REVISE TESTING PROVISIONS, TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO CONDUCT CERTAIN AUDITS RELATING TO PAYMENTS FOR MILK AND CREAM AND TO CORRECT A CODIFIER'S ERROR; AMENDING SECTION 37-507, IDAHO CODE, TO REVISE PROVISIONS RELATING TO STATEMENTS OF MILK AND CREAM PURCHASED; AMENDING SECTION 37-509, IDAHO CODE, TO REMOVE MISDEMEANOR PENALTY PROVISIONS AND TO PROVIDE FOR CIVIL PENALTIES AND TO PROVIDE THAT THE DIRECTOR OF THE IDAHO DEPARTMENT OF AGRICULTURE SHALL NOT BE REQUIRED TO REPORT MINOR VIOLATIONS; AMENDING SECTION 37-510, IDAHO CODE, TO REMOVE REFERENCE TO BABCOCK TESTS AND TO REQUIRE EVERY OPERATOR TESTING COMPONENTS IN MILK OR CREAM TO RETAIN SAMPLES FOR A SPECIFIED PERIOD OF TIME; AMENDING SECTION 37-513, IDAHO CODE, TO REMOVE REFERENCE TO BABCOCK TESTS AND TO REVISE CERTAIN EVIDENCE PROVISIONS; AMENDING SECTION 37-515, IDAHO CODE, TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO PROMULGATE CERTAIN RULES AND TO PROVIDE THAT

CERTAIN PAYMENTS AND REFUNDS SHALL BE MADE TO AGGRIEVED PARTIES WITHIN A SPECIFIED TIME PERIOD; REPEALING SECTION 37-517, IDAHO CODE, RELATING TO VIOLATIONS CONSTITUTING MISDEMEANORS; REPEALING SECTION 37-518, IDAHO CODE, RELATING TO PROSECUTIONS; REPEALING SECTION 37-519, IDAHO CODE, RELATING TO CONSTRUCTION OF SPECIFIED LAW WITH SANITARY AND HEALTH LAWS; AND REPEALING CHAPTER 6, TITLE 37, IDAHO CODE, RELATING TO THE STANDARDIZATION OF GLASSWARE FOR BABCOCK TESTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That the Heading for Chapter 5, Title 37, Idaho Code, be, and the same is hereby amended to read as follows:

#### CHAPTER 5

#### INSPECTION AND LICENSING OF DAIRY PRODUCT DEALERS AND ESTABLISHMENTS -- BABCOCK TESTS MILK COMPONENTS AND QUALITY TESTING

SECTION 2. That Section 37-503, Idaho Code, be, and the same is hereby amended to read as follows:

37-503. LICENSES -- RETAIL VENDOR EXCEPTED -- FEES -- POSTING -- DEFINITIONS. Every creamery, milk plant, shipping or cream buying station, milk condensing plant, cheese factory, mix making plant, ice cream factory, reprocessing plant, casein plant, powdered milk plant, or factory of milk products, or other person receiving or purchasing milk or cream in bulk other than a retail vendor of milk on the basis of ~~the amount of milk fat volume, milk components or milk quality~~ therein, shall annually obtain a license therefor. Such license shall be issued by the department upon being satisfied that the building, places, or premises where such milk or dairy products are to be received or purchased are maintained in a sanitary manner, ~~and that cream scales are protected and placed on a solid foundation and away from drafts,~~ and that a laboratory or ~~in~~enclosed test room is provided in which to test milk and cream, that ample light is provided therein, and that at all times the room is kept in a clean and sanitary condition, and upon payment of such license fee to the department according to the following schedule:

Milk condensery, one hundred dollars (\$100), reprocessing plant, one hundred dollars (\$100), creamery, fifty dollars (\$50.00), cheese factory, twenty dollars (\$20.00), ice cream factory, twenty dollars (\$20.00), mix making plant, twenty dollars (\$20.00), casein plant, twenty dollars (\$20.00), milk powder plant, thirty dollars (\$30.00), cream buying or shipping station, fifteen dollars (\$15.00). When one (1) or more kinds of dairy products are being manufactured by the same firm on the same premises, this shall be construed to require that a separate license be procured for each kind of product manufactured and sold. The license, when issued, shall be posted in a conspicuous place in the plant for which issued.

The term "creamery" shall mean any place, building or structure wherein milk or cream is manufactured into butter for sale.

The term "milk plant" shall mean any place, building or structure wherein milk is received for bottling, pasteurizing, clarifying or otherwise processing.

The term "shipping or cream buying station" shall mean any place where milk or cream is delivered by the producers to a buyer, not a manufacturer, or to the agent or representative of a manufacturer or processor of dairy products for shipment or transportation to such manufacturer or processor.

The term "milk condensing plant" shall mean any place, building or structure wherein milk is condensed or processed by evaporation of removing a considerable portion of the water or other milk constituents normally contained therein.

The term "cheese factory" shall mean any place, building or structure wherein milk is manufactured into cheese.

The term "ice cream factory" shall mean any place, building or structure wherein milk or cream, regardless of butterfat content, and with or without other constituents, shall be manufactured into a frozen or semi-frozen semifrozen product for human consumption and for sale at wholesale or retail. This term shall not include "frozen dessert machines."

The term "frozen dessert machine" shall mean the freezer or other device by which the liquid ingredients for frozen dessert are frozen to a solid or semisolid consistency and are discharged, expelled or drawn off for sale at retail.

The term "mix making plant" shall mean any place, building or structure wherein milk or cream, with or without other constituents, shall be mixed or processed for resale to ice cream factories; provided, that any duly licensed ice cream factory may carry on, as a part of its business, the business of mix making plant without being required to pay therefor, additional license for so doing.

The term "reprocessing plant" shall mean any place, building or structure wherein a cheese dairy product is made ~~by comminuting and mixing one or more lots of cheese of the same variety or of different varieties into a homogenous, plastic mass with or without the addition of water and emulsifying agents mixed, dried, shredded, packaged or further processed into a dairy product.~~ A reprocessing plant does not include retail stores, restaurants or similar institutions.

The term "casein plant" shall mean any place, building or structure wherein casein is manufactured for sale.

The term "powdered milk plant" shall mean any place, building or structure wherein milk or any product of milk is processed by evaporating or removing therefrom the water or moisture contained therein to a point where the product may be handled as a dry product. A powdered milk plant also includes a facility wherein dry milk products are blended or processed into other milk products.

SECTION 3. That Section 37-504, Idaho Code, be, and the same is hereby amended to read as follows:

37-504. LICENSES -- DURATION AND REVOCATION. Licenses shall be issued by the department for the period of one (1) year, fees for which shall be prorated for the appropriate number of months until renewal, and shall expire on December thirty-first of each year issued, and may be revoked by the department after a hearing on ten (10) days' notice to the licensee, if such licensee shall fail to comply with the provisions of this act. No such license shall be issued, and if issued may be revoked, in the following cases:

~~(a) If the milk or cream, or any product thereof, used in such manufacturing or processing operations, has reached an advanced state of fermentation or shows a stage of putrefactive fermentation;~~

~~(b) If the milk or cream or any product thereof be stored or kept in cans or other containers that have not been sterilized with boiling water or live steam after each delivery;~~

~~(c) If the utensils or apparatus that come in contact with milk or cream or the products thereof in the process of manufacture or processing are not thoroughly washed or sterilized by means of boiling water or live steam after each using;~~

~~(d) If the floor of the building or room in which the manufacturing or processing is conducted, or the product kept or stored, is so constructed or in such condition as to permit the flowing or soaking of water, milk or other liquids underneath such floor or among the interstices of such floor in such manner as to permit fermentation and decay to take place;~~

~~(e) If the condition of the floor in the building or room where the manufacturing or processing is conducted or the product stored or kept be such that it may not be readily kept free from dirt and filth;~~

~~(f) If drains are not provided that will convey refuse milk, water and sewage to a point at least fifty (50) yards distant from such building or room where the manufacturing or processing is conducted or the product stored;~~

~~(g) If any cesspool, privy vault, hog yard, slaughter-house, hen house, manure, or any decaying vegetable or animal matter that will emit or produce foul odors, shall be permitted to exist within such distance as will permit the odors therefrom to reach any such building or room where the manufacturing or processing is conducted or the product stored;~~

~~(h) If the building or room where the manufacturing or processing is conducted or the product stored is so constructed or so maintained as not to permit access thereto of sufficient light and air to secure good ventilation;~~

~~(i) If any room or building used in connection with the manufacturing or processing of the product, any insects, vermin or any species of animal life are permitted;~~

~~(j) If upon the floor of any room or building where the manufacturing or processing of such product is conducted, or upon the sides of walls thereof, any milk or its products or any other filth is allowed to accumulate, ferment or decay;~~

~~(k) If the body or wearing apparel of any person employed in the manufacturing and processing of the product, or coming in contact with the milk, cream or the product thereof while the manufacturing or processing is carried on shall be unclean, or shall not be washed from time to time with reasonable frequency;~~

(11) If there shall be permitted to exist any other cause or thing calculated or tending to render the milk or cream, or any product thereof, used or produced in such manufacturing or processing operations, unclean, impure and unhealthy.

(2) If the licensee does not meet rules adopted by the department of agriculture for the processing of grade A and manufacturing grade milk and milk products.

SECTION 4. That Section 37-505, Idaho Code, be, and the same is hereby amended to read as follows:

37-505. REPORTS OF LICENSEES. All buyers of butterfat, cream, milk or other dairy products, required to be licensed by the provisions of this act, shall report to the director of the department of agriculture monthly the number of pounds of each grade of cream, butterfat or other dairy products purchased or manufactured and prices paid at each station operated by any creamery, cheese factory, condensery, casein, milk powder or ice cream plant in the state. Such report blanks are to be furnished by the department and additional reports may be called for at the discretion of the department.

SECTION 5. That Section 37-506, Idaho Code, be, and the same is hereby amended to read as follows:

37-506. METHOD OF TESTING MILK AND CREAM. All milk and cream purchased or sold in the state of Idaho at a price based based upon or determined by the milkfat, butterfat, protein, lactose, or solids content nonfat or somatic cell counts thereof, shall be tested by the methods as are approved in the latest edition of the Methods of Analysis of the Association of Analytical Chemists and as approved by the director of the department of agriculture of the state of Idaho. Samples must be taken from every shipment of milk and cream. Daily composite samples in the case of milk or sweet cream must be taken and individual samples taken in the case of sour cream. Accurate ther-

mometers must be provided at all times. ~~All composite milk and sweet cream samples must be kept protected and in a tamper-proof place between forty (40) thirty-three (33) and fifty forty-five (45) degrees Fahrenheit, and be kept for three (3) days after testing in a protected place between forty (40) and fifty (50) degrees Fahrenheit.~~ Such samples may be examined and tested by the department of agriculture at any time. The department of agriculture is authorized to conduct audits of a person's, corporation's, cooperative's or company's payments for milk or cream to determine if such payments comply with established requirements.

SECTION 6. That Section 37-507, Idaho Code, be, and the same is hereby amended to read as follows:

37-507. ~~STATEMENT TO SHOW NUMBER OF POUNDS OF MILK OR CREAM PURCHASED.~~ Every person, corporation, cooperative or company operating a creamery, when using the Babcock test as a standard to that determines the value of any milk or cream received or bought by such person, corporation, cooperative or company to be manufactured into butter, on a milk volume, component or somatic cell count basis shall, when paying for such milk or cream, include in every statement or check issued to any patron in payment therefor a statement of the number of pounds of butterfat milk, milk components and the average somatic cell counts, if applicable, for which payment is made. Records for such transactions shall be retained by the purchaser of the milk or cream for at least one (1) year from the date the tests were conducted.

SECTION 7. That Section 37-509, Idaho Code, be, and the same is hereby amended to read as follows:

37-509. PENALTY FOR VIOLATIONS. (1) Whoever shall violate any of the provisions of sections 37-506 through 37-508, Idaho Code, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200), for each and every offense, or be imprisoned in the county jail not less than thirty (30) days nor more than sixty (60) days, or both such fine and imprisonment this chapter or the rules promulgated hereunder for carrying out any requirements herein specified may be assessed a civil penalty by the department or its duly authorized agent of not more than ten thousand dollars (\$10,000) for each offense.

(2) Assessment of a civil penalty may be made in conjunction with any other department administrative action.

(3) No civil penalty may be assessed unless the person, corporation, cooperative or company charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act.

(4) If the department is unable to collect such penalty or if any person, corporation, cooperative or company fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court.

(5) Any person, corporation, cooperative or company against whom the department has assessed a civil penalty under the provisions of this section may, within twenty-eight (28) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred.

(6) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action.

SECTION 8. That Section 37-510, Idaho Code, be, and the same is hereby amended to read as follows:

37-510. RETENTION OF TESTED SAMPLES. Every operator of a Babcock test for butterfat testing components in milk or cream for the purpose of determining their commercial value when purchased or sold shall keep for the period of forty-eight (48) hours after completing a test a portion sufficient for two (2) tests of each and every sample tested. These samples shall be accessible to the director or his representative at any and all times and legible record of all tests made by the operator of said tests shall be accessible to the department for a period of thirty (30) days following such tests.

SECTION 9. That Section 37-513, Idaho Code, be, and the same is hereby amended to read as follows:

37-513. FALSE TESTS -- EVIDENCE. No person shall falsely manipulate or misread the Babcock test or any other milk or cream testing apparatus. The writing of a check or payment of money by such person, corporation, cooperative or company for cream or milk shall constitute prima facie evidence that such test was made.

SECTION 10. That Section 37-515, Idaho Code, be, and the same is hereby amended to read as follows:

37-515. FEEES AND FINES -- DISPOSITION. Fees and fines collected under the provisions of this act shall be credited and paid into the dairy industry and inspection fund. The department is authorized by rule to set forth parameters relating to payments, refunds or other adjustments whenever the department determines milk or cream component testing fails to meet requirements. The payments or refunds shall be made to the aggrieved party within thirty (30) days.

SECTION 11. That Section 37-517, Idaho Code, be, and the same is hereby repealed.

SECTION 12. That Section 37-518, Idaho Code, be, and the same is hereby repealed.

SECTION 13. That Section 37-519, Idaho Code, be, and the same is hereby repealed.

SECTION 14. That Chapter 6, Title 37, Idaho Code, be, and the same is hereby repealed.

Approved March 22, 2011.

CHAPTER 116  
(H.B. No. 153)

AN ACT

RELATING TO WATER QUALITY; AMENDING SECTION 39-3601, IDAHO CODE, TO REVISE PROVISIONS OF LEGISLATIVE INTENT; AMENDING SECTION 39-3602, IDAHO CODE, TO DEFINE TERMS, TO REMOVE A DEFINITION AND TO REVISE A DEFINITION; AMENDING SECTION 39-3603, IDAHO CODE, TO PROVIDE A POLICY RELATING TO TIER I, II AND III PROTECTIONS ASSOCIATED WITH WATER QUALITY, TO PROVIDE FOR IMPLEMENTATION, TO PROVIDE FOR ANTIDegradation REVIEWS ASSOCIATED WITH THE ISSUANCE OF CERTAIN GENERAL PERMITS, TO PROVIDE THAT THE DEPARTMENT MAY PRESUME CERTAIN DISCHARGES ARE INSIGNIFICANT OR THAT CERTAIN POLLUTION CONTROLS ARE THE LEAST DEGRADING ALTERNATIVE IF SUPPORTED BY THE PERMIT RECORD, TO PROVIDE FOR THE IDENTIFICATION OF TIER II WATERS, TO PROVIDE FOR THE DETERMINATION OF APPROPRIATE

LEVELS OF PROTECTION, TO PROVIDE THAT THE DEPARTMENT SHALL DETERMINE WHETHER CERTAIN ACTIVITIES OR DISCHARGES ARE INSIGNIFICANT, TO PROVIDE A GUIDELINE AND TO PROVIDE THAT THE DEPARTMENT MAY REQUEST ADDITIONAL INFORMATION; AMENDING SECTION 39-3623, IDAHO CODE, TO PROVIDE FOR THE APPROVAL OF SPECIFIED RULES; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-3601, Idaho Code, be, and the same is hereby amended to read as follows:

39-3601. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE INTENT. The legislature, recognizing that surface water is one of the state's most valuable natural resources, has approved the adoption of water quality standards and authorized the director of the department of environmental quality in accordance with the provisions of this chapter, to implement these standards. In order to maintain and achieve existing and designated beneficial uses and to conform to the expressed intent of congress to control pollution of streams, lakes and other surface navigable waters of the United States, the legislature declares that it is the purpose of this chapter to enhance and preserve the quality and value of the surface water resources of navigable waters of the United States within the state of Idaho, and to define the responsibilities of public agencies in the control, and monitoring of water pollution, and, through implementation of this chapter, enhance the state's economic well-being. In consequence of the benefits resulting to the public health, welfare and economy, it is hereby declared to be the policy of the state of Idaho to protect this natural resource by monitoring and controlling water pollution; to support and aid technical and planning research leading to the control of water pollution, and to provide financial and technical assistance to municipalities, soil conservation districts and other agencies in the control of water pollution. The director, in cooperation with such other agencies as may be appropriate, shall administer this chapter. It is the intent of the legislature that the state of Idaho fully meet the goals and requirements of the federal clean water act and that the rules promulgated under this chapter not impose requirements beyond those of the federal clean water act.

SECTION 2. That Section 39-3602, Idaho Code, be, and the same is hereby amended to read as follows:

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:

(1) "Applicable water quality standard" means those water quality standards identified in the rules of the department.

(2) "Attainable" beneficial uses means uses that can be achieved by the implementation of required effluent limits for point sources and cost-effective and reasonable best management practices for nonpoint sources.

(3) "Best management practice" 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.

(4) "Board" means the board of environmental quality.

(5) "Control strategies" means cost-effective actions in TMDL implementation plans to control the discharge of pollutants that can reasonably be taken to improve the water quality within the physical, operational, economic and other constraints that affect individual enterprises and communities.

(6) "Degradation" or "lower water quality" means, for purposes of an- tidegradation review, a change in a pollutant that is adverse to designated or existing uses, as calculated for a new point source, and based upon moni- toring or calculated information for an existing point source increasing its discharge. Such degradation shall be calculated or measured after appropri- ate mixing of the discharge and receiving water body.

(7) "Department" means the department of environmental quality.

(78) "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 aquacul- ture; and the department of environmental quality for all other activities.

(89) "Designated use or designated beneficial use" means those uses as- signed to waters as identified in the rules of the department whether or not the uses are being attained. The department may adopt subcategories of a use.

(910) "Director" means the director of the department of environmental quality, or his or her designee.

(101) "Discharge" means any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. For the purposes of this chapter, discharge shall not include surface water runoff from nonpoint sources or natural soil disturbing events.

(112) "Existing use" means those surface water uses actually attained on or after November 28, 1975, whether or not they are designated uses. Ex- isting uses may form the basis for subcategories of designated uses.

(123) "Full protection, full support, or full maintenance of designated beneficial uses of water" means compliance with those levels of water quality criteria listed in the appropriate rules of the department, or where there is no applicable numerical criteria, compliance with the reference streams or conditions approved by the director in consultation with the appropriate basin advisory group.

~~(13) "Lower water quality" means a measurable adverse change in a chem- ical, physical, or biological parameter of water relevant to a designated beneficial use, and which can be expressed numerically. Measurable adverse change is determined by a statistically significant difference between sam- ple means using standard methods for analysis and statistical interpreta- tion appropriate to the parameter. Statistical significance is defined as the ninety-five percent (95%) confidence limit when significance is not oth- erwise defined for the parameter in standard methods or practices.~~

(14) "General permit" means an NPDES permit issued by the U.S. envi- ronmental protection agency authorizing a category of discharges under the federal clean water act or a nationwide or regional permit issued by the U.S. army corps of engineers under the federal clean water act.

(15) "Integrated report" means the consolidated listing and reporting of the state's water quality status pursuant to the federal clean water act.

(146) "National pollutant discharge elimination system (NPDES)" means the point source permitting program established pursuant to section 402 of the federal clean water act.

(157) "New nonpoint source activity" means a new nonpoint source ac- tivity or a substantially modified existing nonpoint source activity on or adversely affecting an outstanding resource water which includes, but is not limited to, new silvicultural activities, new mining activities and substantial modifications to an existing mining permit or approved plan, new recreational activities and substantial modifications to existing recreational activities, new residential or commercial development that includes soil disturbing activities, new grazing activities and substantial modifications to existing grazing activities, except that reissuance of existing grazing permits, or grazing activities and practices authorized

under an existing permit, is not considered a new activity. It does not include naturally occurring events such as floods, landslides, and wildfire including prescribed natural fire.

(168) "Nonpoint source activities" includes grazing, crop production, silviculture, log storage or rafting, construction, mining, recreation, septic systems, runoff from storms and other weather related events and other activities not subject to regulation under the federal national pollutant discharge elimination system. Nonpoint source activities on waters designated as outstanding resource waters do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments.

(179) "Nonpoint source runoff" means water which may carry pollutants from nonpoint source activities into the waters of the state.

(1820) "Outstanding resource water" means a high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. It constitutes an outstanding national or state resource that requires protection from point source and nonpoint source activities that may lower water quality.

(1921) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.

(202) "Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition.

(213) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged or released to water in excessive quantities cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities.

(224) "Reference stream or condition" means one (1) of the following:

- (a) The minimum biological, physical and chemical conditions necessary to fully support the designated beneficial uses; or
- (b) A water body representing natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin; or
- (c) A water body representing minimum conditions necessary to fully support the designated beneficial uses.

In highly mineralized areas or in the absence of such reference streams or water bodies, the director, in consultation with the basin advisory group and the technical advisers to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported.

(235) "Short-term or temporary activity" means an activity which is limited in scope and is expected to have only minimal impact on water quality as determined by the director. Short-term or temporary activities include, but are not limited to, maintenance of existing structures, limited road and

trail reconstruction, soil stabilization measures, and habitat enhancement structures.

(246) "Silviculture" means those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber.

(257) "Soil and water conservation commission" means an agency of state government as created in section 22-2718, Idaho Code.

(268) "Soil conservation district" means an entity of state government as defined in section 22-2717, Idaho Code.

(279) "State" means the state of Idaho.

(2830) "State water quality management plan" means the state management plan developed and updated by the department in accordance with sections 205, 208, and 303 of the federal clean water act.

(2931) "Subbasin assessment" means a document that describes a watershed or watersheds for which a total maximum daily load is proposed, the water quality concerns, the status and attainability of designated uses and water quality criteria for individual water bodies, the nature and location of pollutant sources, past and ongoing pollutant control activities, and such other information that the director with the advice of the local watershed advisory group determines is pertinent to the analysis of water quality and the development and implementation of a total maximum daily load.

(302) "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.

(313) "~~Waters or water body" means all the accumulations of surface water, natural and artificial, public and private, or parts thereof which are wholly or partially within, flow through or border upon this state the navigable waters of the United States as defined in the federal clean water act. For the purposes of this chapter, water bodies shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters of the state.~~

(324) "Water pollution" is such alteration of the thermal, chemical, biological or radioactive properties of any waters of the state, or such discharge or release of any contaminant into the waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other legitimate uses or to livestock, wild animals, birds, fish or other aquatic life.

(335) "Water quality standards" are the designated uses of a water body and water quality criteria necessary to support those uses, and an antidegradation policy.

(346) "Watersheds" means the land area from which water flows into a stream or other body of water which drains the area. For the purposes of this chapter, the area of watersheds shall be recommended by the basin advisory group described in section 39-3613, Idaho Code.

SECTION 3. That Section 39-3603, Idaho Code, be, and the same is hereby amended to read as follows:

39-3603. GENERAL WATER QUALITY STANDARD AND ANTIDEGRADATION POLICY AND IMPLEMENTATION. (1) Policy.

(a) Maintenance of existing uses for all waters -- Tier I protection. The existing instream beneficial uses of each water body and the level of water quality necessary to protect those uses shall be maintained and protected.

(b) High quality waters -- Tier II protection. Where the quality of waters exceeds levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water, that quality shall be maintained unless the department finds, after full satisfaction of the intergovernmental coordination and public participation provisions of this chapter, and the department's planning processes, along with appropriate planning processes of other agencies, that lowering water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such reductions in water quality, the department shall assure water quality adequate to protect existing uses fully.

(c) Outstanding resource waters -- Tier III protection. Where an outstanding resource water has been designated by the legislature that water quality shall be maintained and protected from the impacts of point and nonpoint source activities.

(2) Implementation.

(a) General permits. For general permits issued on or after July 1, 2011, the department will conduct an antidegradation review, including any required Tier II analysis, at the time at which general permits are certified. For general permits that the department determines adequately address antidegradation, review of individual applications for coverage will not be required unless it is required by the general permit. For general permits that the department determines do not adequately address antidegradation, the department may conclude that other conditions, such as the submittal of additional information or individual certification at the time an application is submitted for coverage under a general permit, may be necessary in the general permit to provide reasonable assurance of compliance with the antidegradation policy. If supported by the permit record, the department may also presume that discharges authorized under a general permit are insignificant or that the pollution controls required in the general permit are the least degrading alternative as specified in the department's rules.

(b) Identification of Tier II waters. The department will utilize a water body by water body approach in determining where Tier II protection is appropriate in addition to Tier I protection. This approach shall be based on an assessment of the chemical, physical, biological and other information regarding the water body. The most recent federally approved integrated report and supporting data will be used to determine the appropriate level of protection as follows:

(i) Water bodies identified in the integrated report as fully supporting assessed uses will be provided Tier II protection.

(ii) Water bodies identified in the integrated report as not assessed will be provided an appropriate level of protection on a case-by-case basis using information available at the time of a proposal for a new or reissued permit or license.

(iii) Water bodies identified in the integrated report as not fully supporting assessed uses will receive Tier I protection for the impaired aquatic life or recreational use, except as follows:

1. For aquatic life uses identified as impaired for dissolved oxygen, pH or temperature, if biological or aquatic habitat parameters show a healthy, balanced biological community is present, as described in the water body assessment

guidance published by the department, then the water body shall receive Tier II protection for aquatic life.

2. For recreational uses, if water quality data show compliance with those levels of water quality criteria listed in the department's rules, then the water body shall receive Tier II protection for recreational uses.

(iv) Special resource waters listed in the department's rules shall be evaluated in the same fashion as all other waters.

(c) Tier II analysis for insignificant activity or discharge. The department shall consider the size and character of an activity or discharge or the magnitude of its effect on the receiving stream and shall determine whether it is insignificant. If an activity or discharge is determined to be insignificant, then no further Tier II analysis for other source controls, alternatives analysis or socioeconomic justification is required.

(i) The department shall determine insignificance when the proposed change in an activity or discharge, from conditions as of July 1, 2011, will not cumulatively decrease assimilative capacity by more than ten percent (10%).

(ii) The department may request additional information from the applicant in making a determination whether a proposed change in an activity or discharge is insignificant.

SECTION 4. That Section 39-3623, Idaho Code, be, and the same is hereby amended to read as follows:

39-3623. EFFECT OF RULES. Every rule promulgated within the authority conferred in sections 39-3617 through 39-3622, Idaho Code, shall be of temporary effect and shall become permanent only by enactment of statute at the first regular session following adoption of the rule. Rules not approved in the above manner shall be rejected, null, void and of no force and effect on July 1, following submission of the rules to the legislature.

(1) The rules promulgated within the authority conferred in this act and adopted by the board of health and welfare on January 31, 1990, and contained in IDAPA 16.01.2003,31 and 16.01.2003,32 and 16.01.2053,01 through 16.01.2053,07, are hereby approved by the legislature.

(2) The rules promulgated within the authority conferred in this act and adopted by the board of environmental quality on November 10, 2010, and contained in IDAPA 58.01.02.010.71, 58.01.02.010.72, 58.01.02.051.03 and 58.01.02.052.09 are hereby approved by the legislature.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 22, 2011.

CHAPTER 117  
(H.B. No. 154)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1372, IDAHO CODE, TO PROVIDE A CIVIL PENALTY FOR PROFESSIONAL EMPLOYERS WHO FAILED TO FILE QUARTERLY WAGE REPORTS AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-1372, Idaho Code, be, and the same is hereby amended to read as follows:

72-1372. CIVIL PENALTIES. (1) The following civil penalties shall be assessed by the director:

(a) If a determination is made finding that an employer willfully filed a false report, a monetary penalty equal to one hundred percent (100%) of the amount that would be due if the employer had filed a correct report or two hundred fifty dollars (\$250), whichever is greater, shall be added to the liability of the employer for each quarter for which the employer willfully filed a false report. For the purposes of this section, a false report includes, but is not limited to, a report for a period wherein an employer pays remuneration for personal services which meets the definition of "wages" under section 72-1328, Idaho Code, and the payment is concealed, hidden, or otherwise not reported to the department.

(b) If a determination is made finding that an employer willfully failed to file the employer's quarterly unemployment insurance tax report when due, the director shall assess a monetary penalty equal to:

(i) Seventy-five dollars (\$75.00) or twenty-five percent (25%) of the amount that would be due if the employer had filed a timely quarterly report, whichever is greater, if the employer had not been found in any previous determination to have willfully failed to file a timely quarterly report for any of the sixteen (16) preceding consecutive calendar quarters; or

(ii) One hundred fifty dollars (\$150) or fifty percent (50%) of the amount that would be due if the employer had filed a timely quarterly report, whichever is greater, if the employer had been found in any previous determination to have willfully failed to file a timely quarterly report for no more than one (1) of the sixteen (16) preceding consecutive calendar quarters; or

(iii) Two hundred fifty dollars (\$250) or one hundred percent (100%) of the amount that would be due if the employer had filed a timely quarterly report, whichever is greater, if the employer had been found in any previous determination or determinations to have willfully failed to file a timely quarterly report for two (2) or more of the sixteen (16) preceding consecutive calendar quarters.

(c) If a determination is made finding that an employer, or any officer or agent or employee of the employer with the employer's knowledge, willfully made a false statement or representation or willfully failed to report a material fact when submitting facts to the department concerning a claimant's separation from the employer, a penalty in an amount equal to ten (10) times the weekly benefit amount of such claimant shall be added to the liability of the employer.

(d) If a determination is made finding that an employer has induced, solicited, coerced or colluded with an employee or former employee to file a false or fraudulent claim for benefits under this chapter, a penalty in an amount equal to ten (10) times the weekly benefit amount of such employee or former employee shall be added to the liability of the employer.

(e) If a determination is made finding that an employer failed to complete and submit an Idaho business registration form when due, as required by section 72-1337(1), Idaho Code, a penalty of five hundred dollars (\$500) shall be assessed against the employer.

(f) For purposes of paragraphs (c) and (d) of this subsection (1), the term "weekly benefit amount" means the amount calculated pursuant to section 72-1367(2), Idaho Code.

(g) If a determination is made finding that a person has made any unauthorized disclosure of employment security information in viola-

tion of the provisions of chapter 3, title 9, Idaho Code, or section 72-1342, Idaho Code, or rules promulgated thereunder, a penalty of five hundred dollars (\$500) for each act of unauthorized disclosure shall be assessed against the person.

(h) If a determination is made finding that a professional employer failed to submit a separate quarterly wage report for each client as required in section 72-1349B(4), Idaho Code, the director shall assess a monetary penalty equal to one hundred dollars (\$100) for each client not separately reported by the professional employer; provided that the maximum penalty for any quarter shall not exceed five thousand dollars (\$5,000).

(2) At the discretion of the director, the department may waive all or any part of the penalties imposed pursuant to subsections (1) ~~(a)~~ through ~~(1)~~ ~~(f)~~ of this section if the employer shows to the satisfaction of the director that it had good cause for failing to comply with the requirements of this chapter and rules promulgated thereunder.

(3) Determinations imposing civil penalties pursuant to this section shall be served in accordance with section 72-1368(5), Idaho Code. Penalties imposed pursuant to this section shall be due and payable twenty (20) days after the date the determination was served unless an appeal is filed in accordance with section 72-1368, Idaho Code, and rules promulgated thereunder. Such appeals shall be conducted in accordance with section 72-1368, Idaho Code, and rules promulgated thereunder.

(4) Civil penalties imposed by this section shall be in addition to any other penalties authorized by this chapter. The provisions of this chapter that apply to the collection of contributions, and the rules promulgated thereunder, shall also apply to the collection of penalties imposed pursuant to this section. Amounts collected pursuant to this section shall be paid into the state employment security administrative and reimbursement fund as established by section 72-1348, Idaho Code.

Approved March 22, 2011.

CHAPTER 118  
(H.B. No. 158)

AN ACT

RELATING TO THE STATE BOARD OF EDUCATION; AMENDING SECTION 33-107B, IDAHO CODE, TO PROVIDE THAT THE INSTITUTIONAL CONTRIBUTION OPTIONAL RETIREMENT PROGRAM RATE SHALL BE EQUAL TO PERSI CONTRIBUTION RATES AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-107B, Idaho Code, be, and the same is hereby amended to read as follows:

33-107B. BOARD MAY ESTABLISH AN OPTIONAL RETIREMENT PROGRAM FOR COMMUNITY COLLEGES AND POSTSECONDARY PROFESSIONAL-TECHNICAL EDUCATION INSTITUTIONS. (1) The state board of education may establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for members of the teaching staff and officers of community colleges and postsecondary professional-technical education institutions, including north Idaho college, college of southern Idaho and eastern Idaho technical college, hired on or after July 1, 1997; provided however, that no such employee shall be eligible to participate in an optional retirement program unless he would otherwise be eligible for membership in the public employee retirement system of Idaho. The benefits to be provided for or on

behalf of participants in an optional retirement program shall be provided through annuity contracts or certificates, fixed or variable in nature, or a combination thereof, whose benefits are owned by the participants in the program.

(2) The state board of education is hereby authorized to provide for the administration of the optional retirement program and to perform or authorize the performance of such functions as may be necessary for such purposes. The board shall designate the company or companies from which contracts are to be purchased under the optional retirement program and shall approve the form and contents of such contracts. In making the designation and giving approval, the board shall consider:

(a) The nature and extent of the rights and benefits to be provided by such contracts for participants and their beneficiaries;

(b) The relation of such rights and benefits to the amount of contributions to be made;

(c) The suitability of such rights and benefits to the needs of the participants and the interests of the institutions in the recruitment and retention of staff members; and

(d) The ability of the designated company to provide such suitable rights and benefits under such contracts.

(3) Elections to participate in an optional retirement program shall be as follows:

(a) Eligible employees are the teaching staff and officers initially appointed or hired on or after the effective date of this chapter. All eligible employees, except those who are vested members of the public employee retirement system of Idaho, shall participate in the optional retirement program.

(b) Eligible employees who are vested members of the public employee retirement system of Idaho may make a one (1) time irrevocable election to transfer to the optional retirement program. The election shall be made in writing and within sixty (60) days of the date of initial hire or appointment, or one hundred fifty (150) days after the effective date of this chapter, whichever occurs later. The election shall be filed with the administrative officer of the employing institution. The election shall be effective not later than the first day of the second pay period following the date of the election.

(c) Teaching staff and officers employed by the institution the day before the effective date of this chapter may make a one (1) time irrevocable election to participate in the optional retirement program. The election shall be made in writing and within one hundred fifty (150) days after the effective date of this chapter. The election shall be filed with the administrative officer of the employing institution. The election shall be effective not later than the first day of the second pay period following the date of the election.

(d) The accumulated contributions of employees who make the one (1) time irrevocable election or are required to participate in the optional retirement program may be transferred by the public employee retirement system of Idaho to such qualified plan, maintained under the optional retirement program, as designated in writing by the employee.

(e) An election by an eligible employee of the optional retirement program shall be irrevocable and shall be accompanied by an appropriate application, where required, for issuance of a contract or contracts under the program.

(4) (a) Each institution shall contribute on behalf of each participant in its optional retirement program the following:

(i) To the designated company or companies, an amount equal to seven and eighty-one hundredths percent (7.81%) of each participant's salary, reduced by any amount necessary, if any, to provide contributions to a total disability program provided either by the

state or by a private insurance carrier licensed and authorized to provide such benefits, or any combination thereof, but in no event less than five percent (5%) of each participant's salary; and

(ii) To the public employee retirement system, an amount equal to three and eighty-three hundredths percent (3.83%) of salaries of members who are participants in the optional retirement program. This amount shall be paid until July 1, 2011, and is in lieu of amortization payments and withdrawal contributions required pursuant to chapter 13, title 59, Idaho Code; and

(iii) Effective on and after July 1, 2011, the institutional contribution optional retirement program rate shall be equal to the PERSI contribution rates.

(b) For the purposes of section 59-1322, Idaho Code, the term "projected salaries" shall include the sum of the annual salaries of all participants in the optional retirement program established pursuant to this section.

(c) Each participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%). Employee contributions may be made by employer pick-up pursuant to section 59-1332, Idaho Code.

(5) Any person participating in the optional retirement program shall be ineligible for membership in the public employee retirement system of Idaho so long as he remains continuously employed in any teaching staff position or as an officer with any of the institutions under the jurisdiction of the state board of education.

(6) A retirement, death or other benefit shall not be paid by the state of Idaho or the state board of education for services credited under the optional retirement program. Such benefits are payable to participants or their beneficiaries only by the designated company or companies in accordance with the terms of the contracts.

Approved March 22, 2011.

CHAPTER 119  
(H.B. No. 203)

AN ACT

RELATING TO APPROPRIATIONS AND TRANSFERS OF FUNDS; PROVIDING AN APPROPRIATION AND A TRANSFER OF FUNDS TO THE FIRE SUPPRESSION DEFICIENCY FUND; PROVIDING AN APPROPRIATION AND A TRANSFER OF FUNDS TO THE PEST CONTROL DEFICIENCY FUND; PROVIDING AN APPROPRIATION AND A TRANSFER OF FUNDS TO THE HAZARDOUS SUBSTANCE EMERGENCY RESPONSE FUND; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated and the State Controller shall transfer \$3,080,400 from the General Fund to the Fire Suppression Deficiency Fund. Such moneys shall be used to reimburse costs incurred by the Range and Forest Fire Protection Program in the Department of Lands pursuant to Sections 38-131 and 38-131A, Idaho Code.

SECTION 2. There is hereby appropriated and the State Controller shall transfer \$209,000 from the General Fund to the Pest Control Deficiency Fund. Such moneys shall be used to reimburse costs incurred by the Plant Industries Program in the Department of Agriculture pursuant to Section 22-2019, Idaho Code.

SECTION 3. There is hereby appropriated and the State Controller shall transfer \$68,500 from the General Fund to the Hazardous Substance Emergency Response Fund. Such moneys shall be used to reimburse costs incurred by the Bureau of Homeland Security in the Military Division of the Office of the Governor pursuant to Section 39-7110, Idaho Code.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 22, 2011.

CHAPTER 120  
(H.B. No. 115)

AN ACT

RELATING TO ENFORCING EXECUTION OF PLATS; AMENDING SECTION 50-1314, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES, TO PROVIDE INSTRUCTION TO THE COUNTY RECORDER TO PERFORM CERTAIN TASKS, TO PERMIT BILLING OF PROPERTY OWNERS OF A CERTAIN ASSESSMENT, TO PROVIDE FOR PAYMENT WHEN NOT PAID AS REQUESTED, TO REVISE HOW THE ASSESSMENT WILL BE COLLECTED AND WHERE THE ASSESSMENT WILL GO AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 50-1314, Idaho Code, be, and the same is hereby amended to read as follows:

50-1314. ENFORCING EXECUTION OF PLAT -- ASSESSMENT OF COSTS. Whenever the owners of any tract of land have divided and sold or conveyed five (5) or more parts thereof, or invested the public with any right therein, and have failed and neglected to execute and file a plat for record, as provided in ~~the thirteen (13) foregoing sections of this act 50-1301 through 50-1313, Idaho Code~~, the county recorder, when instructed by the board of county commissioners, shall notify some or all of such owners and proprietors by mail or otherwise, and demand an execution of such plat; if such owners or proprietors, whether notified or not, fail and neglect to execute and file for record said plat within thirty (30) days after the issuance of such notice, the recorder shall cause to be made a plat of such tract and any surveying necessary therefor. Said plat shall be prepared in accordance with requirements in sections 50-1301 through 50-1325, Idaho Code, and in addition, be signed and acknowledged by the recorder, who shall certify that he executed it by reason of the failure of the owners or proprietors named to do so, and filed for record, and, when so filed for record, shall have the same effect for all purposes as if executed, acknowledged and recorded by the owners or proprietors themselves.

A correct statement of the costs and expenses of such plat, surveying and recording, verified by oath, shall be by the recorder laid before the next session of the county board, who shall allow the same and order the same to be paid out of the county treasury, and who shall, at the same time, assess the same amount pro rata upon all several lots or parcels of said subdivided tract; said assessment may be billed to the property owner and, if not paid as requested, shall be collected with, and in like manner as the general property taxes, and shall go to the general county current expenses fund; or said board may direct suit to be brought in the name of the county before any court having jurisdiction, to recover from the said original owners or proprietors, said cost and expense of preparing and recording said plat.

Approved March 22, 2011.

CHAPTER 121  
(H.B. No. 130)

AN ACT

RELATING TO IMMUNIZATION ASSESSMENTS; AMENDING SECTION 41-6005, IDAHO CODE, TO PROVIDE THE IDAHO IMMUNIZATION ASSESSMENT BOARD WITH ADDITIONAL POWERS; AMENDING SECTION 41-6006, IDAHO CODE, TO REVISE AND TO PROVIDE ADDITIONAL PROVISIONS RELATING TO CERTAIN ANNUAL IMMUNIZATION ASSESSMENTS; AND AMENDING SECTION 41-6007, IDAHO CODE, TO REVISE AND TO PROVIDE ADDITIONAL PROVISIONS RELATING TO THE IDAHO IMMUNIZATION DEDICATED VACCINE FUND.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-6005, Idaho Code, be, and the same is hereby amended to read as follows:

41-6005. POWER AND LIABILITY OF THE BOARD. (1) The board shall have the power to:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter, including contracts for administrative services;

(b) Determine the method of assessment and assess carriers in accordance with the provisions of section 41-6006, Idaho Code;

(c) Require carriers to provide to the board such statements and reports the board deems necessary to fulfill its duties under this chapter; and

(d) Establish policies and procedures as may be necessary or convenient for the implementation of this chapter and the operation of the assessments authorized by this chapter; and

(e) Consult with the Idaho department of health and welfare and other experts as the board may deem appropriate as necessary or proper to carry out the provisions and purposes of this chapter.

(2) Neither the board nor its members shall be liable for any obligations of the vaccine assessments. No member or employee of the board shall be liable, and no cause of action of any nature may arise against them, for any act or omission related to the performance of their powers and duties under this chapter, unless such act or omission constitutes willful or wanton misconduct. Participation by a carrier in the assessments authorized by this chapter or on the board under the provisions of this chapter shall not be grounds for any legal action, criminal or civil liability, or penalty against the fund or any of its carriers or board members, either jointly or separately.

SECTION 2. That Section 41-6006, Idaho Code, be, and the same is hereby amended to read as follows:

41-6006. ASSESSMENTS. (1) The department of health and welfare shall report to the board ~~on or before March 1, 2010, and on or before January 1 thereafter,~~ the total number of program eligible children in the Idaho immunization reminder information system registry who received vaccines, the doses and the total nonvaccine-for-children funds expended for vaccines purchased and administered through the Idaho immunization program for the previous state fiscal year and any other information appropriate or necessary to enable the board to properly determine assessments under the provisions of this chapter.

(2) The assessments to fund vaccine purchases for program eligible children shall be made annually by the board. Each carrier's proportion of the assessment and the dates upon which the carrier must pay the assessment into the fund shall be determined by the board based on annual statements and other reports deemed necessary by the board. In making the assessment determination, the board shall also consider such factors as any surplus funds remaining from a prior assessment, the number and cost of vaccine doses expected to be administered in the pertinent time period and the number of program eligible children in the pertinent time period, as well as any necessary costs and expenses to administer the fund and discharge the duties of the board. The annual assessment shall be calculated to provide funding that, at a minimum, is expected to be sufficient to cover the administrative costs of the board and fund the purchase of vaccines for program eligible children that have in effect a recommendation from the advisory committee on immunization practices of the centers for disease control and prevention on the date the board makes its assessment determination.

(3) For late or nonpayment of assessments by a carrier, the director shall impose interest at the rate provided by section 28-22-104(1), Idaho Code, and may impose such other penalties as provided in title 41, Idaho Code.

(4) Except as otherwise provided in this subsection, a carrier shall pay an assessment made by the board within sixty (60) days of the notice of assessment being sent to the carrier. For good cause, a carrier may seek from the director a deferment from all or part of an assessment imposed by the board. The director may defer all or part of the assessment if the director determines that the payment of the assessment would place the carrier in a financially impaired condition, as provided in title 41, Idaho Code. If all or part of an assessment against a carrier is deferred, the amount deferred shall be assessed against the other carriers in a manner consistent with the basis for assessment set forth in this section. The carrier receiving the deferment shall remain liable to the fund for the amount deferred and shall be prohibited from insuring any new individuals in the state of Idaho until such time as it pays the assessments.

~~(5) The initial assessments as determined by the board shall be paid into the fund on or before April 1, 2010.~~

~~(6) The moneys raised by the assessment authorized in this section shall be used solely for the purposes expressly authorized by this chapter.~~

SECTION 3. That Section 41-6007, Idaho Code, be, and the same is hereby amended to read as follows:

41-6007. IDAHO IMMUNIZATION DEDICATED VACCINE FUND. There is hereby created in the state treasury the Idaho immunization dedicated vaccine fund. Moneys in the fund shall be appropriated solely for purposes established by this chapter. All funds in excess to the cost required to develop and amend a plan of operation as permitted in section 41-6004, Idaho Code, perform the administrative functions required under this chapter shall be paid to the Idaho department of health and welfare for the sole purposes of purchasing vaccine for use in the Idaho immunization program. Any moneys in excess of the amount needed to fund the Idaho immunization program for a given period shall be retained by the Idaho department of health and welfare to be used to fund the program in subsequent periods, including a subsequent period after the date this chapter is no longer in effect. The fund and any assessments imposed or collected pursuant to the operation of the fund shall at all times be free from taxation of every kind.

Approved March 22, 2011.

CHAPTER 122  
(H.B. No. 131)

AN ACT

RELATING TO THE IDAHO HEALTH CARRIER EXTERNAL REVIEW ACT; AMENDING SECTION 41-5903, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 41-5904, IDAHO CODE, TO REMOVE LANGUAGE RELATING TO CERTAIN FINAL ADVERSE BENEFIT DETERMINATIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-5905, IDAHO CODE, TO REVISE PROVISIONS RELATING TO NOTICE OF THE RIGHT TO AN EXTERNAL REVIEW; AMENDING SECTION 41-5906, IDAHO CODE, TO REMOVE PROVISIONS RELATING TO THE DUTY OF THE DIRECTOR TO PRESCRIBE A CERTAIN RULE AND TO CORRECT A CODIFIER'S ERROR; AMENDING SECTION 41-5907, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE EXHAUSTION OF THE INTERNAL GRIEVANCE PROCESS; AMENDING SECTION 41-5908, IDAHO CODE, TO REVISE AND TO PROVIDE ADDITIONAL PROVISIONS RELATING TO A STANDARD EXTERNAL REVIEW AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 41-5909, IDAHO CODE, TO REVISE PROVISIONS RELATING TO AN EXPEDITED EXTERNAL REVIEW; AMENDING SECTION 41-5915, IDAHO CODE, TO REMOVE PROVISIONS RELATING TO THE AUTHORITY OF THE DIRECTOR TO PROVIDE BY RULE FOR A CERTAIN FEE; AND AMENDING SECTION 41-5916, IDAHO CODE, TO PROVIDE ADDITIONAL DISCLOSURE REQUIREMENTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-5903, Idaho Code, be, and the same is hereby amended to read as follows:

41-5903. DEFINITIONS. For purposes of this chapter:

(1) "Administrative record" means all nonprivileged documents, records or other health information which was submitted, considered, generated or relied upon by the health carrier in the course of making the adverse benefit determination, including, but not limited to, documents, records or other information that constitutes the plan's policy statements or guidance concerning the denied treatment or benefit, all records provided by the covered person or the covered person's medical care provider related to the denied treatment or benefit, all records provided to an independent review organization as part of the independent review of the denied treatment or benefit and the opinion issued by the independent review organization.

(2) "Adverse benefit determination" means a determination by a health carrier or its designee utilization review organization that an admission, availability of care, continued stay or other health care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, effectiveness or has been determined to be an investigational service, and the requested service or payment for the service is therefore terminated, denied or reduced.

(3) "Ambulatory review" means utilization review of health care services performed or provided in an outpatient setting.

(4) "Authorized representative" means:

(a) A person to whom a covered person has given express written consent to represent the covered person in an external review;

(b) A person authorized by law to provide substituted consent for a covered person; or

(c) A family member of the covered person or the covered person's treating health care professional only when the covered person is unable to provide consent.

(5) "Best evidence" means evidence based on randomized clinical trials.

- (a) If randomized clinical trials are not available, then cohort studies or case-control studies;
- (b) If studies in paragraph (a) of this subsection (5) are not available, then case-series.
- (6) "Case-control study" means a retrospective evaluation of two (2) groups of patients with different outcomes to determine which specific interventions the patients received.
- (7) "Case management" means a coordinated set of activities conducted for individual patient management of serious, complicated, protracted or other health conditions.
- (8) "Case-series" means an evaluation of a series of patients with a particular outcome, without the use of a control group.
- (9) "Certification" means a determination by a health carrier or its designee utilization review organization that an admission, availability of care, continued stay or other health care service has been reviewed and, based on the information provided, satisfies the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care and effectiveness.
- (10) "Clinical review criteria" means the written screening procedures, decision abstracts, clinical protocols and practice guidelines used by a health carrier to determine the necessity and appropriateness of health care services.
- (11) "Cohort study" means a prospective evaluation of two (2) groups of patients with only one (1) group of patients receiving a specific intervention(s).
- (12) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.
- (13) "Covered benefits" or "benefits" means those health care services to which a covered person is entitled under the terms and conditions of a health benefit plan.
- (14) "Covered person" means a policyholder, subscriber, enrollee or other individual participating in a health benefit plan. A covered person includes the authorized representative of the covered person.
- (15) "Director" means the director of the Idaho department of insurance.
- (16) "Discharge planning" means the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives following discharge from a facility.
- (17) "Disclose" means to release, transfer or otherwise divulge protected health information to any person other than the individual who is the subject of the protected health information.
- (18) "Evidence-based standard" means the conscientious, explicit and judicious use of the current best evidence based on the overall systematic review of the research in making decisions about the care of individual patients.
- (19) "Expedited external review" is the procedure available for urgent care requests for external review.
- (20) "Expert" means a specialist with experience in a specific area about the scientific evidence pertaining to a particular service, intervention or therapy.
- (21) "Facility" means an institution providing health care services or a health care setting, including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers and rehabilitation and other therapeutic health settings.
- (22) "Final adverse benefit determination" means an adverse benefit determination, as defined in section 41-5903(2), Idaho Code, involving a covered benefit that has been upheld by a health carrier, or its designee utilization review organization, at the completion of the health carrier's

internal grievance process procedures as set forth in the covered person's health benefit plan.

(23) "Health benefit plan" means a policy, contract, certificate or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services.

(24) "Health care professional" means a physician or other health care practitioner licensed, accredited or certified to perform specified health care services consistent with state law.

(25) "Health care provider" or "provider" means a health care professional or a facility.

(26) "Health care services" means services for the diagnosis, prevention, treatment, cure or relief of a health condition, illness, injury or disease.

(27) "Health carrier" means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the director, that contracts or offers to contract to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services, including a disability insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits or health care services.

(28) "Health information" means information or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships that relates to:

- (a) The past, present or future physical, mental or behavioral health or condition of an individual or a member of the individual's family;
- (b) The provision of health care services to an individual; or
- (c) Payment for the provision of health care services to an individual.

(29) "Independent review organization" means an entity that conducts independent external reviews of final adverse benefit determinations.

(30) "Investigational" means the definition provided in the covered person's health benefit plan; if the health benefit plan does not provide a definition of "investigational," it shall be defined as follows: Any treatment, procedure, facility, equipment, drug, device or commodity, regardless of its medical necessity, which is experimental, or in the early developmental stage of medical technology, for which there are no randomized clinical trials or, absent such trials, for which there are no cohort studies or case-control studies or, absent such studies, then for which there is no case-series. The determination by the health carrier will be based on objective data and information obtained by the health carrier and reviewed, by competent medical personnel, according to the following:

- (a) The technology has final approval from the appropriate government regulatory bodies;
- (b) Medical or scientific evidence regarding the technology is sufficiently comprehensive to permit well substantiated conclusions concerning the safety and effectiveness of the technology;
- (c) The technology's overall beneficial effects on health outweigh the overall harmful effects on health; and
- (d) The technology is as beneficial as any established alternative.

When used under the usual conditions of medical practice, the technology should be reasonably expected to satisfy the criteria of paragraphs (c) and (d) of this subsection (30).

(31) "Medically necessary" or "Medical necessity" means the definition provided in the covered person's health benefit plan; if the covered person's health benefit plan does not define "medically necessary" or "medical necessity," these terms shall mean health care services and supplies that a physician or other health care provider, exercising prudent clinical judgment, would provide to a covered person for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are:

- (a) In accordance with generally accepted standards of medical practice;
- (b) Clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for the covered person's illness, injury or disease;
- (c) Not primarily for the convenience of the covered person, physician or other health care provider; and
- (d) Not more costly than an alternative service or sequence of services or supply, and at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the covered person's illness, injury or disease.

For these purposes, "generally accepted standards of medical practice" means standards that are based on credible medical or scientific evidence.

(32) "Medical or scientific evidence" means evidence found in the following sources:

- (a) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;
- (b) Peer-reviewed medical literature, including literature relating to therapies reviewed and approved by a qualified institutional review board, biomedical compendia and other medical literature that meet the criteria of the national institutes of health's library of medicine for indexing in index medicus (MEDLINE) and elsevier science ltd. for indexing in excerpta medicus (EMBASE);
- (c) Medical journals recognized by the U.S. secretary of health and human services under section 1861(t)(2) of the federal social security act;
- (d) The following standard reference compendia:
  - (i) The American hospital formulary service -- drug information;
  - (ii) Drug facts and comparisons;
  - (iii) The United States pharmacopoeia -- drug information; and
  - (iv) The American dental association accepted dental therapeutics.
- (e) Findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including:
  - (i) The federal agency for healthcare research and quality;
  - (ii) The national institutes of health;
  - (iii) The national cancer institute;
  - (iv) The national academy of sciences;
  - (v) The centers for medicare and medicaid services;
  - (vi) The federal food and drug administration; and
  - (vii) Any national board recognized by the national institutes of health for the purpose of evaluating the medical value of health care services; or
- (f) Any other medical or scientific evidence that is comparable to the sources listed in paragraphs (a) through (e) of this subsection (32).

(33) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing.

(34) "Post service review" means a review of medical necessity conducted after services have been provided to a patient, but does not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding or adjudication for payment.

(35) "Pre-service review" means utilization review conducted prior to an admission or a course of treatment.

(36) "Protected health information" means health information:

- (a) That identifies an individual who is the subject of the information; or
- (b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

(37) "Randomized clinical trial" means a controlled, prospective study of patients who have been randomized into an experimental group and a control group at the beginning of the study with only the experimental group of patients receiving a specific intervention, which includes study of the groups for variables and anticipated outcomes over time.

(38) "Second opinion" means an opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health care service to assess the clinical necessity and appropriateness of the initial proposed health care service.

(39) "Urgent care request" means a claim relating to an admission, availability of care, continued stay or health care service for which the covered person received emergency services but has not been discharged from a facility, or any pre-service or concurrent care claim for medical care or treatment for which application of the time periods for making a regular external review determination:

- (a) Could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function;
- (b) In the opinion of the treating health care professional with knowledge of the covered person's medical condition, would subject the covered person to severe pain that cannot be adequately managed without the disputed care or treatment; or
- (c) The treatment would be significantly less effective if not promptly initiated.

The opinion of the covered person's treating health care professional with knowledge of the covered person's medical condition that a request is an urgent care request should be treated with deference.

(40) "Utilization review" means a set of formal techniques designed to monitor the use of, or evaluate the clinical necessity, appropriateness, efficacy or efficiency of health care services, procedures or settings. Techniques may include ambulatory review, pre-service review, second opinion, certification, concurrent review, case management, discharge planning or post service review.

(41) "Utilization review organization" means an entity that conducts utilization review, other than a health carrier performing a review for its own health benefit plans.

SECTION 2. That Section 41-5904, Idaho Code, be, and the same is hereby amended to read as follows:

41-5904. APPLICABILITY AND SCOPE. (1) Except as provided in subsection (2) of this section, this chapter shall apply to all health carriers<sup>1</sup> ~~final adverse benefit determinations which involve an issue of medical necessity or investigational service or supply.~~

(2) The provisions of this chapter shall not apply to a plan, policy or certificate that provides coverage only for a specified disease, specified accident or accident-only coverage; nor shall this chapter apply to a credit, dental, disability income, hospital indemnity, long-term care insurance, vision care, limited benefit health plans or any other limited supplemental benefit; nor shall this chapter apply to a medicare advantage plan or medicare supplemental policy of insurance, as defined by the director by rule, coverage under a plan through medicare, medicaid, or the federal employees health benefits program, any coverage issued under chapter 55, title 10, of the United States Code and any coverage issued as supplemental to that coverage; nor shall this chapter apply to any coverage issued as supple-

mental to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance or any insurance under which benefits are payable with or without regard to fault, whether written on a group blanket or individual basis; nor shall this chapter apply to a single employer self-funded employee benefit plan subject to and operated in compliance with the employee retirement income security act of 1974 (ERISA).

(3) The availability or use of external review pursuant to this chapter shall not alter the standard of review used by a court of competent jurisdiction when adjudicating the health carrier's final adverse benefit determination.

SECTION 3. That Section 41-5905, Idaho Code, be, and the same is hereby amended to read as follows:

41-5905. NOTICE OF RIGHT TO EXTERNAL REVIEW. (1) ~~If at the conclusion of the health carrier's internal grievance process the decision is adverse to the covered person, based upon a determination that the service or supply to be provided or which was provided did not meet medical necessity criteria or is investigational~~ When a final adverse benefit determination is made, the health carrier shall notify the covered person in writing of the covered person's right to request an external review to be conducted pursuant to section 41-5908, 41-5909 or 41-5910, Idaho Code, and include the appropriate statements and information set forth in subsection (2) of this section at the same time the health carrier sends written notice of the final adverse benefit determination.

(2) The director may prescribe by rule the form and content of the notice required under this section, which shall include:

(a) The following, or substantially equivalent, language:

"We have denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed by health care professionals who have no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care or effectiveness of your health care service or supply, or your health care service or supply was denied based upon a determination that it was investigational. You may request an external review by submitting a written request to the department of insurance."

The notice shall include contact information for the department of insurance, including the website, address and telephone number.

(b) ~~If the adverse benefit determination is for a pre-service or concurrent service and was denied based upon a failure to meet medical necessity criteria or because the service was determined to be investigational,~~ the health carrier shall notify the covered person of the right to an expedited external review if the request is an urgent care request. The notification shall include the definition of urgent care request.

(c) The health carrier shall include a copy of the description of both the standard and expedited external review procedures the health carrier is required to provide pursuant to section 41-5916, Idaho Code, highlighting the provisions in the external review procedures that give the covered person the opportunity to submit additional information, and include any forms used to process an external review.

(d) The health carrier shall include an authorization form, or other document approved by the director, that complies with the requirements of 45 CFR section 164.508, by which the covered person, for purposes of conducting an external review pursuant to this chapter, authorizes the health carrier and the covered person's treating health care providers to disclose protected health information, including medical records,

concerning the covered person that are pertinent to the external review. Until the director receives this form from the covered person, duly executed, the external review process is stayed and the health carrier has no obligations under this chapter.

SECTION 4. That Section 41-5906, Idaho Code, be, and the same is hereby amended to read as follows:

41-5906. ~~REQUEST TO FOR~~ EXTERNAL REVIEW. A covered person may make a request for an external review of a final adverse benefit determination. Except for a request for an expedited external review as set forth in section 41-5909, Idaho Code, all requests for external review shall be made in writing to the director. The director may prescribe by rule the form and content of external review requests required to be submitted under this section. ~~The director shall prescribe by rule the amount of the administrative filing fee, if any, to be paid by the covered person when the external review request is submitted.~~

SECTION 5. That Section 41-5907, Idaho Code, be, and the same is hereby amended to read as follows:

41-5907. EXHAUSTION OF INTERNAL GRIEVANCE PROCESS. (1) Except as provided in subsection (2) of this section, a request for an external review pursuant to section 41-5908, 41-5909 or 41-5910, Idaho Code, shall not be made until the covered person has exhausted the health carrier's internal grievance process.

~~(a)~~ A covered person shall be considered to have exhausted the health carrier's internal grievance process for purposes of this section, if the covered person:

(ia) Has filed and completed a grievance, involving an adverse benefit determination, according to the terms and conditions of the covered person's health benefit plan; or

(iib) Except to the extent the covered person requested or agreed to a delay, has not received a written decision on the grievance from the health carrier within thirty-five (35) days following the date the covered person filed the grievance with the health carrier, or the covered person filed a grievance on an urgent care request on a pre-service or concurrent care adverse benefit determination and has not received a determination from the health carrier within three (3) business days after filing.

(b2) A request for an external review of an adverse benefit determination may be made before the covered person has exhausted the health carrier's internal grievance procedures as set forth in the health carrier's grievance appeal process whenever:

(a) Tthe health carrier agrees to waive the exhaustion requirement;

(b) The health carrier has failed to strictly follow its duties in affording a timely, full and fair opportunity for the covered person to take advantage of the internal grievance procedures; or

(c) The urgent care request involves a medical condition for which the time frame for completion of the carrier's internal grievance process pursuant to this section would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function, and the covered person has applied for expedited external review at the same time as applying for an expedited internal review.

~~(2) If the requirement to exhaust the health carrier's internal grievance procedures is waived under subsection (1) (b) of this section, the covered person may file a request in writing for a standard external review, or where appropriate, an expedited external review.~~

SECTION 6. That Section 41-5908, Idaho Code, be, and the same is hereby amended to read as follows:

41-5908. STANDARD EXTERNAL REVIEW. (1) Within four (4) months after the date of issuance of a notice of a final adverse benefit determination pursuant to section 41-5905, Idaho Code, a covered person may file a request for an external review with the director. The request shall be made on such form as may be designated by the director.

(2) Within seven (7) days after the date of receipt of a request for external review pursuant to subsection (1) of this section, the director shall send a copy of the request to the health carrier.

(3) Within fourteen (14) days following the date of receipt of the copy of the external review request from the director pursuant to subsection (2) of this section, the health carrier shall complete a preliminary review of the request to determine whether:

(a) The individual is or was a covered person in the health benefit plan at the time the health care service was requested or, in the case of a post service review, was a covered person in the health benefit plan at the time the health care service was provided;

(b) The health care service that is the subject of the final adverse benefit determination is a covered service under the covered person's health benefit plan, but for a determination by the health carrier that the health care service is not covered because it does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, effectiveness or the service or supply is investigational;

(c) The covered person has exhausted the health carrier's internal grievance process as set forth in the covered person's health benefit plan, unless the covered person is not required to exhaust the health carrier's internal grievance process pursuant to section 41-5907, Idaho Code; and

(d) The covered person has provided all the information and forms required to process an external review, including the release form provided under section 41-5905(2)(d), Idaho Code.

(4) Within five (5) business days after completion of the preliminary review, the health carrier shall notify the director and covered person in writing whether the request is complete and whether the request is eligible for external review.

(5) If the request is not complete, the health carrier shall inform the covered person and the director in writing and include in the notice what information or materials are needed to make the request complete.

(6) If the request is not eligible for external review, the health carrier shall inform the covered person and the director in writing and include in the notice the reasons for its ineligibility.

(7) The director may prescribe by rule the form for the health carrier's notice of initial determination under this section and any supporting information to be included in the notice. The notice of initial determination shall include a statement informing the covered person that a health carrier's initial determination that the external review request is ineligible for review, may be appealed to the director.

(8) The director may determine that a request is eligible for external review notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review. The director's decision shall be made in accordance with the applicable procedural requirements of this chapter and the terms and conditions of the covered person's health benefit plan.

(9) Whenever the director receives a notice that a request is eligible for external review following the preliminary review conducted pursuant to

subsection (3) of this section, within seven (7) days after the date of receipt of the notice, the director shall:

(a) Assign an independent review organization from the list of approved independent review organizations compiled and maintained by the director pursuant to section 41-5911, Idaho Code, to conduct the external review and notify the health carrier of the name of the assigned independent review organization; and

(b) Notify, in writing, the covered person of the request's eligibility and acceptance for external review.

(c) The director shall include in the notice provided to the covered person a statement that the covered person may submit, in writing, to the assigned independent review organization within seven (7) days following the date of receipt of the notice provided pursuant to subsection (9) (b) of this section, additional information that the independent review organization shall consider when conducting the external review.

(10) In reaching a decision, the assigned independent review organization is not bound by the exercise of discretion or any decisions or conclusions reached during the health carrier's utilization review process or the health carrier's internal grievance process.

(11) Within fourteen (14) days after the date of receipt of the notice provided pursuant to subsection (9) (a) of this section, the health carrier or its designee utilization review organization shall provide to the assigned independent review organization the documents and any information considered in making the adverse benefit determination or final adverse benefit determination.

(12) Except as provided in subsection (13) of this section, failure by the health carrier or its utilization review organization to provide the documents and information within the time specified in subsection (11) of this section, shall not delay the conduct of the external review.

(13) If the health carrier or its utilization review organization fails to provide the documents and information within the time specified in subsection (11) of this section, the assigned independent review organization may terminate the external review and make a decision to reverse the adverse benefit determination or final adverse benefit determination.

(14) Within one (1) business day after making the decision to terminate the external review pursuant to subsection (13) of this section, the independent review organization shall notify the covered person, the health carrier and the director.

(15) The assigned independent review organization shall review all of the information and documents received pursuant to subsection (11) of this section, and any other information submitted in writing to the independent review organization by the covered person pursuant to subsection (9) (c) of this section; provided however, that if the covered person does submit new information in writing to the ~~internal~~ independent review organization pursuant to subsection (9) (c) of this section, then the health carrier is entitled to seven (7) days following its receipt thereof to submit additional responsive information to the internal review organization.

(16) Upon receipt of any information submitted by the covered person pursuant to subsection (9) (c) of this section, the assigned independent review organization shall within one (1) business day forward the information to the health carrier.

(17) Upon receipt of the information, if any, required to be forwarded pursuant to subsection (16) of this section, the health carrier may reconsider its adverse determination or final adverse benefit determination that is the subject of the external review. Reconsideration by the health carrier of its adverse determination or final adverse determination shall not delay or terminate the external review. The assigned independent review organization shall review all of the information and documents received pursuant to subsection (15) of this section.

(18) The external review may be terminated if the health carrier decides to reverse its final adverse benefit determination and provide coverage or payment for the health care service that is the subject of the final adverse benefit determination. Within two (2) business days after making the decision to reverse its final adverse benefit determination, the health carrier shall notify the covered person, the assigned independent review organization and the director in writing of its decision.

(19) In addition to the documents and information provided pursuant to subsection (11) of this section, the assigned independent review organization, to the extent the information or documents are available, shall consider the following in reaching a decision:

- (a) The covered person's medical records;
- (b) The attending health care professional's recommendation;
- (c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person or the covered person's treating provider;
- (d) The terms and conditions of coverage under the covered person's health benefit plan with the health carrier to ensure that the independent review organization's decision is controlled by the terms and conditions of coverage under the covered person's health benefit plan with the health carrier to the extent the health plan's terms and conditions are not in conflict with this chapter;
- (e) The most appropriate practice guidelines, which shall include the applicable evidence-based standards and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards and associations, health carrier's internal guidelines and medical policies;
- (f) Any applicable clinical review criteria developed and used by the health carrier or its designee utilization review organization;
- (g) Medical or scientific evidence, as defined in section 41-5903(32), Idaho Code;
- (h) The opinion of the independent review organization's clinical reviewer or reviewers after considering paragraphs (a) through (g) of this subsection (19) to the extent the information or documents are available.

(20) Within forty-two (42) days after the date of receipt of the request for an external review, the assigned independent review organization shall provide written notice of its decision to uphold or reverse the final adverse benefit determination to the covered person, the health carrier and the director. The independent review organization shall include in the notice:

- (a) A general description of the reason for the request for external review;
- (b) The date the independent review organization received the assignment from the director to conduct the external review;
- (c) The date the external review was conducted;
- (d) The date of its decision;
- (e) The principal reason or reasons for its decision, including an explanation of the scientific or clinical judgment applied to reach its decision;
- (f) References to the evidence or documentation, including the evidence-based standards, considered in reaching its decision; and
- (g) References to the terms and conditions of the health benefit plan at issue, including an explanation of how its decision is consistent with them.

(21) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the final adverse

benefit determination and other circumstances, including conflict of interest concerns pursuant to section 41-5912, Idaho Code.

(22) Upon receipt of a notice of a decision pursuant to subsection (20) of this section reversing the adverse benefit determination or final adverse benefit determination, the health carrier shall approve as soon as reasonably practicable but not later than one (1) business day after receipt of the notice the coverage that was the subject of the adverse benefit determination or final adverse benefit determination.

SECTION 7. That Section 41-5909, Idaho Code, be, and the same is hereby amended to read as follows:

41-5909. EXPEDITED EXTERNAL REVIEW. (1) ~~After having exhausted the health carrier's internal grievance process as provided in section 41-5907, Idaho Code, a~~A covered person may make a request for an expedited external review of a pre-service or concurrent service adverse benefit determination based on medical necessity or investigational, where the requested service meets the definition of an urgent care request and the covered person has exhausted the health carrier's internal grievance process or is entitled to request external review before exhausting the health carrier's internal grievance process as provided in section 41-5907, Idaho Code.

(2) Upon receipt of a request for an expedited external review, the director shall send a copy of the request to the health carrier.

(3) Upon receipt of the request pursuant to subsection (2) of this section, the health carrier shall determine, as soon as possible but not later than the second full business day thereafter, whether the carrier agrees that the request meets the reviewability requirements set forth in section 41-5908(3), Idaho Code. The health carrier shall notify the director and the covered person of its eligibility determination as soon as reasonably practicable but not later than one (1) business day after making the determination.

(a) The director may prescribe by rule the form for the health carrier's notice of initial determination under this subsection and any supporting information to be included in the notice.

(b) The notice of initial determination shall include a statement informing the covered person that a health carrier's initial determination that an external review request is ineligible for review, may be appealed to the director.

(4) The director may determine that a request is eligible for external review pursuant to section 41-5908(3), Idaho Code, notwithstanding a health carrier's initial determination that the request is ineligible, and require that it be referred for external review. In making a determination under this subsection (4), the director's decision shall be made in accordance with the applicable procedural requirements of this chapter and the terms and conditions of the covered person's health benefit plan.

(5) Upon receipt of the notice that the request meets the reviewability requirements, the director shall assign an independent review organization to conduct the expedited external review from the list of approved independent review organizations compiled and maintained by the director pursuant to section 41-5911, Idaho Code. The director shall notify the health carrier and the covered person of the name of the assigned independent review organization.

(6) In reaching a decision in accordance with subsection (9) of this section, the assigned independent review organization is not bound by the exercise of discretion or any decisions or conclusions reached during the health carrier's internal grievance process.

(7) Upon receipt of the notice from the director of the name of the independent review organization assigned to conduct the expedited external review pursuant to subsection (5) of this section, the health carrier or its

designee utilization review organization shall provide or transmit all necessary documents and information considered in making the adverse benefit determination and the final adverse benefit determination to the assigned independent review organization electronically or by telephone or facsimile or any other available expeditious method.

(8) In addition to the documents and information provided or transmitted pursuant to subsection (7) of this section, the assigned independent review organization, to the extent the information or documents are available and the independent review organization considers them appropriate, shall consider the following in reaching a decision:

- (a) The covered person's pertinent medical records;
- (b) The attending health care professional's recommendation;
- (c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person or the covered person's treating provider;
- (d) The terms and conditions of coverage under the covered person's health benefit plan with the health carrier to ensure that the independent review organization's decision is controlled by the terms and conditions of coverage under the covered person's health benefit plan with the health carrier to the extent the health plan's terms and conditions are not in conflict with this chapter;
- (e) The most appropriate practice guidelines, which shall include evidence-based standards, and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards and associations, the health carrier's internal guidelines and medical policies;
- (f) Any applicable clinical review criteria developed and used by the health carrier or its designated utilization review organization in making the adverse benefit determination;
- (g) Medical or scientific evidence, as defined in section 41-5903(32), Idaho Code;
- (h) The opinion of the independent review organization's clinical reviewer or reviewers after considering paragraphs (a) through (g) of this subsection (8) to the extent the information and documents are available.

(9) As expeditiously as the covered person's medical condition or circumstances require, but in no event more than seventy-two (72) hours after the date of receipt of the request for an expedited external review that meets the reviewability requirements set forth in section 41-5908(3), Idaho Code, the assigned independent review organization shall:

- (a) Make a decision to uphold or reverse the final adverse benefit determination; and
- (b) Notify the covered person, the health carrier and the director of the decision.

(10) If the notice provided pursuant to subsection (9) (b) of this section was not in writing, within forty-eight (48) hours after the date of providing that notice, the assigned independent review organization shall:

- (a) Provide written confirmation of the decision to the covered person, the health carrier and the director, which shall include an explanation of the scientific or clinical judgment for the determination ~~addressing the medical necessity criteria as defined in this chapter or, where the appeal is based upon a denial of a service as investigational, addressing the criteria for determination of investigational status as defined in this chapter;~~ and
- (b) Include the information set forth in section 41-5908(20), Idaho Code.

(11) Upon receipt of the notice of a decision pursuant to subsection (10) of this section reversing the final adverse benefit determination, the health carrier shall notify the director and the covered person of its

~~eligibility determination intent to pay the covered benefit as soon as reasonably practicable but not later than one (1) business day after making the determination receiving the notice of decision.~~

(12) An expedited external review shall not be provided for post service final adverse benefit determinations.

(13) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the final adverse benefit determination and other circumstances, including conflict of interest concerns pursuant to section 41-5912, Idaho Code.

SECTION 8. That Section 41-5915, Idaho Code, be, and the same is hereby amended to read as follows:

41-5915. FUNDING OF EXTERNAL REVIEW. The health carrier against which a request for a standard external review or an expedited external review is filed shall pay the reasonable cost of the independent review organization for conducting the external review. ~~The director may provide by rule for an administrative fee to offset the department's costs associated with external review to be paid by the covered person at the time he makes a request for external review.~~

SECTION 9. That Section 41-5916, Idaho Code, be, and the same is hereby amended to read as follows:

41-5916. DISCLOSURE REQUIREMENTS. (1) Each health carrier shall include a summary description of the external review procedures in or attached to the policy, certificate, membership booklet, outline of coverage or other evidence of coverage it provides to covered persons. The disclosure shall be in a format prescribed by the director.

(2) The description required under subsection (1) of this section shall include:

(a) A statement that informs the covered person of the right of the covered person to file a request for an external review of a final adverse benefit determination with the director;

(b) An explanation that external review and, in certain circumstances, expedited external review are available when the final adverse benefit determination involves an issue of medical necessity, appropriateness, health care setting, level of care, effectiveness or investigational service or supply;

(c) The website, telephone number and address of the director; and

(d) A statement informing the covered person that, when filing a request for an external review, the covered person will be required to authorize the release of any medical records of the covered person that may be required to be reviewed for the purpose of reaching a decision on the external review including any judicial review of the external review decision pursuant to ERISA, if applicable.

(e) If the health plan is not subject to ERISA, a statement informing the covered person that the plan is not subject to ERISA and that if the covered person elects to request external review, the external review decision of the independent review organization shall be final and binding on both the covered person and the health carrier, as provided in section 41-5910, Idaho Code. If the health plan is subject to ERISA, the statement shall inform the covered person that the plan is subject to ERISA and that if the covered person elects to request external review, the external review decision of the independent review organization shall be final and binding on the health carrier but not

the covered person, as provided in section 41-5910, Idaho Code, and that the covered person may have the right to judicial review under ERISA in a court of competent jurisdiction.

Approved March 22, 2011.

CHAPTER 123  
(H.B. No. 164)

AN ACT

RELATING TO ADVISORY COUNCILS; AMENDING SECTION 39-3330, IDAHO CODE, TO REVISE THE NUMBER OF MEMBERS OF THE RESIDENTIAL CARE OR ASSISTED LIVING ADVISORY COUNCIL, TO REMOVE A LISTING OF WHO SHALL SERVE, THE TERM OF SERVICE AND THE FILLING OF VACANCIES ON THE COUNCIL AND TO PROVIDE FOR HOW THE MEMBERS OF THE COUNCIL SHALL BE DETERMINED; AMENDING SECTION 39-3331, IDAHO CODE, TO REVISE THE POWERS AND DUTIES OF THE RESIDENTIAL CARE OR ASSISTED LIVING ADVISORY COUNCIL; AMENDING SECTION 39-3332, IDAHO CODE, TO PROVIDE FOR AN ADDITIONAL DEPARTMENT OF HEALTH AND WELFARE DUTY; AND AMENDING SECTION 39-3511, IDAHO CODE, TO REVISE THE NUMBER OF MEMBERS OF THE IDAHO CERTIFIED FAMILY HOMES ADVISORY COUNCIL, TO REMOVE PROVISIONS ON WHO SHALL SERVE, TERM OF SERVICE AND FILLING OF VACANCIES ON THE COUNCIL AND TO PROVIDE FOR HOW THE MEMBERS OF THE COUNCIL SHALL BE DETERMINED.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-3330, Idaho Code, be, and the same is hereby amended to read as follows:

39-3330. ADVISORY COUNCIL. ~~(1)~~ The department shall establish a state level advisory council consisting of twenty-two (22) members appointed by the organizations and/or agencies represented on the council. The chairman of the council shall be elected from the membership. The members of the council shall be determined by the bylaws of the council

- ~~(a) The director or his designee.~~
- ~~(b) The state ombudsman for the elderly or his designee.~~
- ~~(c) The director of the state protection and advocacy system or his designee.~~
- ~~(d) The director of the state developmental disabilities council or his designee.~~
- ~~(e) The director of the Idaho health care association or his designee.~~
- ~~(f) An advocate for citizens with mental illness in the state.~~
- ~~(g) Five (5) administrators or licensees of residential care or assisted living facilities, one (1) of whom shall be the president of the state association representing the largest number of residential care or assisted living facilities in Idaho, two (2) of whom shall be designees representing such associations, and two (2) at-large designees appointed by the department. The administrators or licensees shall be selected so as to represent residential care or assisted living facilities providing care to the elderly, individuals with mental illness, and individuals with developmental disabilities, respectively.~~
- ~~(h) Four (4) certified family home providers.~~
- ~~(i) Six (6) residents, three (3) of whom reside in residential care or assisted living facilities and three (3) of whom reside in certified family homes. A resident may be represented by his family member.~~
- ~~(j) The local representative of the American association of retired persons (AARP).~~

~~(2) Members who are not state agency representatives shall serve three (3) year terms. A vacancy shall be filled for the remainder of the unexpired term from the same class of persons represented by the outgoing member.~~

SECTION 2. That Section 39-3331, Idaho Code, be, and the same is hereby amended to read as follows:

39-3331. POWERS AND DUTIES OF THE ADVISORY COUNCIL. The residential care or assisted living advisory council shall have the following powers and duties:

(1) To make policy recommendations regarding the coordination of licensing and enforcement standards in residential care or assisted living facilities and the provision of services to residents of residential care or assisted living facilities.

(2) To advise the agency during development and revision of rules.

(3) To review and comment upon any proposed rules pertaining to residential care or assisted living.

(4) To submit an annual report to the legislature stating opinions and recommendations which would further the state's capability in addressing residential care or assisted living facility issues.

SECTION 3. That Section 39-3332, Idaho Code, be, and the same is hereby amended to read as follows:

39-3332. MEETINGS. The residential care or assisted living advisory council shall meet as necessary but not less than four (4) times a year. Meetings of the council shall be open to the public. The department shall provide:

(1) Staff necessary to assist the council in performing its duties.

(2) Space for meetings of the council.

(3) Accommodations for alternative meeting formats.

SECTION 4. That Section 39-3511, Idaho Code, be, and the same is hereby amended to read as follows:

39-3511. ADVISORY COUNCIL. ~~(1)~~ The department shall establish a state level advisory council consisting of twenty-two (220) members appointed by the organizations and/or agencies represented on the council. The chairman of the council shall be elected from the membership. The members of the council shall be: determined by the bylaws of the council

~~(a) The director or his designee;~~

~~(b) The state ombudsman for the elderly or his designee;~~

~~(c) The director of the state protection and advocacy system or his designee;~~

~~(d) The director of the state developmental disabilities council or his designee;~~

~~(e) The director of the Idaho health care association or his designee;~~

~~(f) An advocate for citizens with mental illness in the state;~~

~~(g) Four (4) certified family home providers;~~

~~(h) Five (5) administrators or licensees of residential care or assisted living facilities, one (1) of whom shall be the president of the state association representing the largest number of residential care or assisted living facilities in Idaho, two (2) of whom shall be designees representing such associations, and two (2) at-large designees appointed by the department. The administrators or licensees shall be selected so as to represent residential care or assisted living facilities providing care to the elderly, individuals with mental illness, and individuals with developmental disabilities, respectively;~~

~~(i) Six (6) residents, three (3) of whom reside in residential care or assisted living facilities and three (3) of whom reside in certified family homes. A resident may be represented by his family member; and~~  
~~(j) The local representative of the American association of retired persons (AARP).~~

~~(2) Members who are not state agency representatives shall serve three (3) year terms. A vacancy shall be filled for the remainder of the unexpired term from the same class of persons represented by the outgoing member.~~

Approved March 22, 2011.

CHAPTER 124  
(H.B. No. 160)

AN ACT

RELATING TO MOTOR VEHICLE DRIVER'S LICENSES; AMENDING SECTION 49-326, IDAHO CODE, TO PROVIDE THAT A PHYSICIAN WHO HAS REASON TO BELIEVE THAT A PERSON IS INCOMPETENT TO DRIVE A MOTOR VEHICLE MAY SUBMIT A REPORT, TO PROVIDE FOR NOTICE AND TO PROVIDE THAT IF A PHYSICIAN SUBMITS A REPORT IN GOOD FAITH, NO PROFESSIONAL DISCIPLINARY PROCEDURE, NO MONETARY LIABILITY AND NO CAUSE OF ACTION MAY ARISE AGAINST THE PHYSICIAN FOR SUBMISSION OF THE REPORT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-326, Idaho Code, be, and the same is hereby amended to read as follows:

49-326. AUTHORITY OF DEPARTMENT TO SUSPEND, DISQUALIFY OR REVOKE DRIVER'S LICENSE AND PRIVILEGES. (1) If the court has not ordered the suspension of a license or privileges, the department is authorized to suspend, disqualify or revoke the license or privileges of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the driver:

- (a) Has committed an offense for which mandatory revocation, suspension or disqualification of license or privileges is required upon conviction, court order or administrative action;
- (b) Has been convicted in any court in this state of an offense against a municipal ordinance which would have been grounds for suspension, revocation or disqualification of his driver's license or privileges had the charge been prosecuted under a state law;
- (c) Is incompetent to drive a motor vehicle;

1. Any person who in the opinion of the department, based upon recommendation of the person's personal physician, is afflicted with or subject to any condition which brings about momentary or prolonged lapses of consciousness or control, which is or may become chronic, or when the person is suffering from a physical or mental disability or disease serving to prevent him from exercising reasonable and ordinary control over a motor vehicle while operating it upon the streets and highways, or any person who is unable to understand highway signs, warning, regulating or directing traffic, is incompetent to drive a motor vehicle.

2. Any person who shall not have minimum visual acuity with or without corrective lenses of 20/40 in at least one (1) eye as determined by the Snellen system or other available systems is incompetent to operate a motor vehicle, however, the department shall have the authority to license such person upon the recommendation of an ophthalmologist or qualified physician and upon

passage of a skills test. At 20/70 or more in both eyes with or without corrective lenses the department may suspend the driver's license and privileges. Any person who applies for or receives any type of tax, welfare or other benefits or exemptions for the blind shall be conclusively presumed incompetent to operate a motor vehicle.

3. Any person, department, or political subdivision of the state of Idaho who receives an application for any type of tax, welfare, aid or other benefits or exemptions for the blind shall immediately forward the name, address, sex, date of birth, and date of application of the applicant to the department.

4. Any physician who has reason to believe that a patient is incompetent to drive a motor vehicle as defined in this subsection, may submit a report to the department. Before submitting a report, a physician should notify the patient or the patient's family of the physician's concerns about the patient's ability to drive. If the physician submits a report, the physician shall provide a copy of the report to the patient or to a member of the patient's family. If a physician submits a report in good faith, no professional disciplinary procedure, no monetary liability and no cause of action may arise against the physician for submission of the report;

- (d) Has permitted an unlawful or fraudulent use of a driver's license;
- (e) Has committed an offense in another state or jurisdiction as evidenced by a conviction, court order or administrative action, which if committed in Idaho would be grounds for suspension, disqualification or revocation;
- (f) Has been convicted of the offense of reckless driving, or fleeing or attempting to elude a peace officer, and providing that the operating privilege shall be suspended for a period of thirty (30) days upon conviction and providing further, that if a second conviction occurs within a two (2) year period of time from the time of the first conviction, the suspension shall be for ninety (90) days, and if a third conviction shall occur within a three (3) year period of time from the time of the first conviction, the period of suspension shall be for one (1) year;
- (g) Has failed to satisfy a judgment as set forth in chapter 12, title 49, Idaho Code;
- (h) Has failed to maintain proof of financial responsibility as set forth in chapter 12, title 49, Idaho Code;
- (i) Has a driving record which shows a violation point count of twelve (12) or more points in any consecutive twelve (12) month period;
- (j) Is an habitual violator of traffic laws;
- (k) Has been convicted of the offense of violation of a restricted license and providing the driver's license and privileges be suspended for a period of thirty (30) days;
- (l) Has been convicted for the offense of leaving the scene of an accident involving damages to a vehicle, the period of revocation shall be one (1) year;
- (m) Has been convicted for the offense of leaving the scene of an accident resulting in injury or death, the period of revocation shall be one (1) year;
- (n) Is under the age of eighteen (18) years and is not satisfactorily enrolled in school, has not received a waiver pursuant to or has not completed school as provided in section 49-303A, Idaho Code;
- (o) Was cited under the age of seventeen (17) years and subsequently received a conviction involving a moving traffic violation arising out of the operation of a motor vehicle, and providing the driver shall be sent a written warning from the Idaho transportation department for a first conviction; the driver's license shall be suspended for a period

of thirty (30) days for a second conviction; and the driver's license shall be suspended for a period of sixty (60) days for a third or subsequent conviction; and providing further that no restricted driving privileges shall be issued during any period of suspension hereunder.

(2) A violation point is assessed for conviction of any charge or with proof of any infraction involving a moving traffic violation. A value of one (1) point shall be given for a less serious violation and up to four (4) points for a more serious violation. Conviction or proof of infraction for only one (1) violation arising from one (1) occasion of arrest or citation shall be counted in determining the violation point count.

(3) The department is authorized and directed to establish a violation point count system for various moving traffic violations and infractions occurring either within or without the state of Idaho, affecting all holders of driver's licenses issued by the department.

(4) Notification of suspension, revocation, cancellation or disqualification. Upon suspending, revoking, canceling or disqualifying the driver's license or driving privileges of any person, the department shall immediately notify the applicant or licensee in writing, at the licensee's address on file with the department pursuant to section 49-320, Idaho Code. Upon his request the department shall afford him an opportunity for a hearing before a hearing officer appointed by the director. The hearing may be held by telephone within twenty (20) days after receipt of the request, unless this period is for good cause shown, extended by the hearing officer for one ten-day period. The notice and hearing shall be required prior to the imposition of additional suspension or disqualification periods beyond the periods as set forth in this section. Upon a hearing the hearing officer may administer oaths, may issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and may require a reexamination of the licensee. Upon the hearing the department shall either rescind its order or, with good cause, may affirm or extend the suspension or disqualification of the driver's license or revoke the driver's license.

Whenever a driver's license, permit or driving privilege has been suspended or revoked by the department as provided in this section, other than as set forth in subsection (1) (c), (d), (g), (h), (m), (n) or (o) of this section, the department may issue a temporary restricted permit restricting the time, area and purpose of use. The application, eligibility requirements and form of the temporary restricted permit shall be provided by administrative rule. A temporary restricted permit may be issued to grant noncommercial driving privileges, but no temporary restricted permit shall be issued which grants driving privileges to operate a commercial motor vehicle.

(5) The department shall not suspend or revoke a driver's license or privileges for a period of more than one (1) year, unless otherwise provided by law. The provisions of this subsection shall not be applicable with respect to the issuance of temporary restricted permits as provided in section 49-325, Idaho Code, nor shall it be applicable to those suspensions placed on an individual's record for the purpose of administering suspensions ordered to take effect after an individual's release from confinement or imprisonment pursuant to chapter 80, title 18, Idaho Code.

(6) The department shall not disqualify a driver for a period longer than specified by 49 CFR part 383.

Approved March 23, 2011.

CHAPTER 125  
(S.B. No. 1066)

AN ACT

RELATING TO DISCONTINUING A SCHOOL; AMENDING SECTION 33-511, IDAHO CODE, TO SPECIFY PROCEDURES, TO PROVIDE FOR AN EXCEPTION AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-511, Idaho Code, be, and the same is hereby amended to read as follows:

33-511. MAINTENANCE OF SCHOOLS. The board of trustees of each school district shall have the following powers and duties:

(1-) Each elementary school district shall maintain at least one (1) elementary school, and each other school district shall maintain at least one (1) elementary school and one (1) secondary school;

(2-) To employ necessary help and labor to maintain and operate the schools of the district;

(3-) To discontinue any school within the district whenever it shall find such discontinuance to be in the best interests of the district and of the pupils therein. For the purposes of this section, discontinuing a school shall mean no longer maintaining a school of any kind, at the same location, except in the case of secondary units as herein provided.

(a) When any school proposed to be discontinued is one which was operated and maintained by a former district now wholly incorporated within the boundaries of the district operated by said board of trustees, and, immediately following reorganization and the dissolution of said former district, such school has been continuously operated and maintained at the same location by the presently organized district, the following procedures shall apply before discontinuing a school:

(i) ~~T~~he board of trustees must first give notice of such proposal not later than the first day of July next preceding the date of the proposed discontinuance. Such notice shall be posted, and published once, in the manner provided in section 33-401~~2~~, Idaho Code, and shall identify the school proposed to be discontinued.

(ii) If, not later than the first day of August following the posting and publishing of the notice of discontinuance, five (5) or more qualified school district electors residing within the school district shall petition the board of trustees for an election to be held within the school district on the question of discontinuance of that school, the board of trustees shall forthwith order an election to be held within fourteen (14) days of the date of said order~~7~~ and shall give notice of the election.

(iii) Notice of such election shall be posted at or near the main door of the school proposed to be discontinued and at or near the main door of the administrative offices of the school district~~7~~, and shall also be published in one (1) issue of a newspaper printed in the county in which is situate the school proposed to be discontinued. The notice shall state the date the election is to be held, the place of voting, and the hours between which the polls shall be open. In addition, the notice of election shall describe the area of the particular attendance unit of the school district and shall identify the school proposed to be discontinued; and it shall state that only qualified school district electors residing within the school district may vote on the question of discontinuing the school.

(iv) The election shall be held within the school district and there shall be submitted to the electors a ballot containing the proposal:

1. For discontinuing the school located at . . . . ,
2. Against discontinuing the school located at . . . . .

(v) If a majority of the qualified electors, hereinabove as defined in this section and voting in the election, shall vote against discontinuing that school, then said school shall not be discontinued; and no proposal to discontinue the same school shall be made by the board of trustees of the district within nine (9) months after the date of the election.

(vi) If a secondary unit which the trustees of a district propose to close is more than thirty (30) miles by all-weather road from the attendance unit to which it is proposed to transfer such students, then, notwithstanding other provisions of this section, five (5) electors residing within the attendance area of the unit proposed to be closed may, as provided by this section, petition the board of trustees requesting an election to determine whether or not such attendance unit, or any portion of it, shall be closed. The board shall forthwith call and hold an election as herein provided. However, for the purpose of this section relating to the secondary attendance unit thirty (30) miles or more distant from another secondary attendance unit, only the patrons resident in this attendance area shall be eligible to vote, except for attendance units, or portions of them, created after January 1, 2002, in which case qualified school district electors throughout the school district shall be eligible to vote. The election shall be deemed passed and the unit shall not be closed if a majority of those voting in the election vote in favor of retaining the attendance unit.

(b) The provisions of paragraph (a) of this subsection shall not apply when:

- (i) The administrator of the division of building safety has determined that the school constitutes an imminent public safety hazard and has issued an order or notice requiring the school district superintendent, principal, board member or other person in charge to cause all persons, except those necessary to eliminate the condition, to be withdrawn from, and to be restrained from entering the school, pursuant to section 39-8008, Idaho Code; and
- (ii) The school district board of trustees have voted at a public meeting to discontinue the school.

Approved March 23, 2011.

CHAPTER 126  
(S.B. No. 1074)

AN ACT

RELATING TO BLOOD DONATIONS BY MINORS; AMENDING SECTION 39-3701, IDAHO CODE, TO PROVIDE PROCEDURES FOR BLOOD DONATIONS BY PERSONS SIXTEEN YEARS OF AGE BUT NOT SEVENTEEN YEARS OF AGE IN A VOLUNTARY AND NONCOMPENSATORY BLOOD PROGRAM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-3701, Idaho Code, be, and the same is hereby amended to read as follows:

39-3701. BLOOD DONATIONS BY MINORS. (1) Any person who is seventeen (17) years of age or older shall be eligible to donate blood in a voluntary and noncompensatory blood program without the necessity of obtaining parental permission or authorization.

(2) A person who is sixteen (16) years of age but not seventeen (17) years of age may donate blood in a voluntary and noncompensatory blood program if the parent, guardian or custodian of the child has given informed consent to the blood donation. After informed consent has been given, the parent, guardian or custodian of a child may revoke such consent at any time by clearly communicating such revocation to staff of the blood donation program. When consent has been revoked, the blood donation facility shall promptly discontinue any further steps for blood donation. The blood donation program may require the parent, guardian or custodian to sign a written revocation of consent regarding the donation of blood.

Approved March 23, 2011.

CHAPTER 127  
(S.B. No. 1096)

AN ACT

RELATING TO THE ELECTRONIC RECORDING COMMISSION; AMENDING SECTION 31-2905, IDAHO CODE, TO PROVIDE FOR LOCATION OF THE COMMISSION IN THE OFFICE OF THE SECRETARY OF STATE AND TO PROVIDE A CERTAIN DUTY OF THE COMMISSION MEMBERS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 31-2905, Idaho Code, be, and the same is hereby amended to read as follows:

31-2905. COMMISSION CREATED -- OFFICERS -- STANDARDS. (1) An electronic recording commission consisting of seven (7) members appointed by the governor is hereby created in the office of the secretary of state to adopt standards to implement this chapter. A majority of the members of the commission must be recorders, and at least one (1) member shall be a representative from the title insurance industry. The governor shall appoint three (3) members, each for a term of two (2) years; two (2) members, each for a term of three (3) years; and two (2) members each for a term of four (4) years. Thereafter, the term of office shall be four (4) years. Vacancies in any unexpired term shall be filled by appointment by the governor for the remainder of the unexpired term.

(2) The commission shall annually elect a chairman and a secretary-treasurer from among its members. The commission shall meet regularly at least once each year, and at such other times as called by the chairman or when requested by two (2) or more members of the commission.

(3) To keep the standards and practices of recorders in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this uniform act and to keep the technology used by recorders in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this uniform act, the electronic recording commission, so far as is consistent with the purposes, policies and provisions of this chapter, shall adopt, amend or repeal standards, taking into account the following considerations:

- (a) Standards and practices of other jurisdictions;
- (b) The most recent standards promulgated by national standard-setting bodies, such as the property records industry association;

(c) The views of interested persons and governmental officials and entities;

(d) The needs of counties of varying size, population and resources; and

(e) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved and resistant to tampering.

(4) The commissioners shall appoint one (1) of their members to serve as a liaison to the property records industry association (PRIA) in order to stay informed of technological changes relative to electronic recordings and the standards of other jurisdictions.

Approved March 23, 2011.

CHAPTER 128  
(S.B. No. 1118)

AN ACT

RELATING TO POWERS AND DUTIES OF THE BOARD OF COUNTY COMMISSIONERS; AMENDING SECTION 31-878, IDAHO CODE, TO REQUIRE THAT THE BOARD OF COUNTY COMMISSIONERS PROVIDE FOR MISDEMEANOR PROBATION SERVICES THROUGH EMPLOYMENT OF STAFF, CONTRACT OR ANY OTHER PROCESS THAT WILL ACCOMPLISH CERTAIN PURPOSES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 31-3201D, IDAHO CODE, TO PROVIDE THAT A FEE BE USED TO OFFSET CERTAIN COSTS TO COUNTIES FOR CERTAIN TRAINING, EDUCATION AND CERTIFICATION OF MISDEMEANOR PROBATION OFFICERS WHETHER SUCH OFFICERS ARE EMPLOYEES OF OR BY PRIVATE SECTOR CONTRACT WITH A COUNTY; AMENDING SECTION 19-5109, IDAHO CODE, TO GRANT A CERTAIN COUNCIL THE AUTHORITY TO ESTABLISH CERTAIN TRAINING, EDUCATION AND CERTIFICATION STANDARDS FOR MISDEMEANOR PROBATION OFFICERS WHETHER SUCH OFFICERS ARE EMPLOYEES OF OR BY PRIVATE SECTOR CONTRACT WITH A COUNTY AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 19-5116, IDAHO CODE, TO REQUIRE THAT MONEYS RECEIVED INTO A CERTAIN FUND BE USED FOR SPECIFIED PURPOSES AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 31-878, Idaho Code, be, and the same is hereby amended to read as follows:

31-878. MISDEMEANOR PROBATION SERVICES. The board of county commissioners shall provide for misdemeanor probation services to supervise misdemeanor offenders, in those cases where such probation supervision has been ordered by the sentencing court, and perform such functions as prescribed by the administrative district judge in each judicial district. The board of county commissioners shall provide for misdemeanor probation services through employment of staff, contract or any other process that will accomplish the purposes of this section. Counties shall not be obligated to provide misdemeanor probation services beyond the funds generated by the fees collected pursuant to the provisions of section 31-3201D, Idaho Code, and any additional funds that may be annually appropriated by the board of county commissioners.

SECTION 2. That Section 31-3201D, Idaho Code, be, and the same is hereby amended to read as follows:

31-3201D. COUNTY MISDEMEANOR PROBATION SUPERVISION FEE. (1) Any person under a supervised probation program for a misdemeanor offense shall be

required to pay an amount not more than the maximum monthly felony probation or parole supervision fee set forth in section 20-225, Idaho Code, per month, or such lesser sum as determined by the administrative judge of the judicial district, as a misdemeanor probation supervision fee. Any failure to pay such fee shall constitute grounds for the revocation of probation by the court, but this shall not be the exclusive remedy for its collection. The court for good cause may exempt a person from the payment of all or any part of the foregoing fee.

(2) Any fee paid under this section on or after July 1, 2008, and regardless of whether the underlying judgment of conviction, withheld judgment or order imposing probation was entered before or after that date, shall be paid to the clerk of the district court, who shall pay the first one dollar (\$1.00) of each monthly payment to the state treasurer for deposit in the peace officers standards and training fund authorized in section 19-5116, Idaho Code, to help offset the costs to counties for the basic training, and continuing education and certification of misdemeanor probation officers whether those officers are employees of or by private sector contract with a county; the clerk of the district court shall deposit the remainder of each monthly payment into the county misdemeanor probation fund which is hereby created in each county, or at the option of the board of county commissioners, deposited in the county justice fund to be used for the purposes described in this section. Moneys from this fee may be accumulated from year to year and shall be expended exclusively for county misdemeanor probation services and related purposes.

SECTION 3. That Section 19-5109, Idaho Code, be, and the same is hereby amended to read as follows:

19-5109. POWERS OF THE COUNCIL -- STANDARDS OF TRAINING, EDUCATION AND EMPLOYMENT OF PEACE OFFICERS -- CERTIFICATION -- PENALTIES. (1) It shall be the duty of and the council shall have the power:

(a) To establish the requirements of minimum basic training which peace officers shall complete in order to be eligible for permanent employment as peace officers, and the time within which such basic training must be completed. One (1) component of minimum basic training shall be a course in the investigation of and collection of evidence in cases involving an allegation of sexual assault or battery.

(b) To establish the requirements of minimum education and training standards for employment as a peace officer in probationary, temporary, part-time, and/or emergency positions.

(c) To establish the length of time a peace officer may serve in a probationary, temporary, and/or emergency position.

(d) To approve, deny approval or revoke the approval of any institution or school established by the state or any political subdivision or any other party for the training of peace officers.

(e) To establish the minimum requirements of courses of study, attendance, equipment, facilities of all approved schools, and the scholastic requirement, experience and training of instructors at all approved schools.

(f) To establish such other requirements for employment, retention and promotion of peace officers, including minimum age, physical and mental standards, citizenship, moral character, experience and such other matters as relate to the competence and reliability of peace officers.

(g) To certify peace officers as having completed all requirements established by the council in order to be eligible for permanent employment as peace officers in this state.

(h) To receive and file for record copies of merit regulations or local ordinances passed by any political subdivision.

(i) To maintain permanent files and transcripts for all peace officers certified by the council to include any additional courses or advanced courses of instruction successfully completed by such peace officers while employed in this state and to include the law enforcement employment history by agency and dates of service of the officer. Such information shall be made available to any law enforcement agency upon request when a person applies for employment at the requesting law enforcement agency.

(j) To allow a peace officer of a federally recognized Indian tribe within the boundaries of this state to attend the peace officer standards and training academy if said peace officer meets minimum physical and educational requirements of the academy. The Indian tribal law enforcement agency shall reimburse the peace officer standards and training academy for the officer's training. Upon satisfactory completion of the peace officer standards and training academy, the tribal peace officer shall receive a certificate of satisfactorily completing the academy.

(2) After January 1, 1974, any peace officer as defined in section 19-5101(d), Idaho Code, employed after January 1, 1974, except any elected official or deputy serving civil process, the deputy director of the Idaho state police, or any person serving under a temporary commission with any law enforcement agency in times of natural or man-caused disaster declared to be an emergency by the board of county commissioners or by the governor of the state of Idaho, or those peace officers whose primary duties involve motor vehicle parking and animal control pursuant to city or county ordinance, or any peace officer acting under a special deputy commission from the Idaho state police, shall be certified by the council within one (1) year of employment; provided, however, that the council may establish criteria different than that required of other peace officers for certification of city police chiefs or administrators within state agencies having law enforcement powers, who, because of the number of full-time peace officers they supervise, have duties which are primarily administrative. Any such chief of police or state agency administrator employed in such capacity prior to July 1, 1987, shall be exempt from certification.

(3) No peace officer shall have or exercise any power granted by any statute of this state to peace officers unless such person shall have been certified by the council within one (1) year of the date upon which such person commenced employment as a peace officer, except in cases where the council, for good cause and in writing, has granted additional time to complete such training. The council shall decertify any officer who is convicted of any felony or offense which would be a felony if committed in this state. The council may decertify any officer who:

- (a) Is convicted of any misdemeanor;
- (b) Willfully or otherwise falsifies or omits any information to obtain any certified status; or
- (c) Violates any of the standards of conduct as established by the council's code of ethics, as adopted and amended by the council.

All proceedings taken by the council shall be conducted in accordance with chapter 52, title 67, Idaho Code.

(4) Any law enforcement agency as defined in section 19-5101(c), Idaho Code, in which any peace officer shall resign as a result of any disciplinary action or in which a peace officer's employment is terminated as a result of any disciplinary action, shall, within fifteen (15) days of such action, make a report to the council.

(5) The council shall, pursuant to the requirements of this section, establish minimum basic training and certification standards for county detention officers that can be completed within one (1) year of employment as a county detention officer.

(6) The council may, upon recommendation of the juvenile training council and pursuant to the requirements of this section, implement minimum basic training and certification standards for juvenile detention officers, juvenile probation officers, and employees of the Idaho department of juvenile corrections who are engaged in the direct care and management of juveniles.

(7) The council may, upon recommendation of the correction standards and training council, and pursuant to the requirements of this section, establish minimum basic training and certification standards for state correction officers and for adult probation and parole officers.

(8) The council may, upon recommendation of a probation training advisory committee and pursuant to the requirements of this section, establish minimum basic training, continuing education and certification standards for misdemeanor probation officers whether those officers are employees of or by private sector contract with a county.

(9) The council may reject any applicant for certification who has been convicted of a misdemeanor, and the council shall reject an applicant for certification who has been convicted of a felony, the punishment for which could have been imprisonment in a federal or state penal institution.

(10) As used in this section, "convicted" means a plea or finding of guilt, notwithstanding the form of judgment or withheld judgment, regardless of whether the sentence is imposed, suspended, deferred or withheld, and regardless of whether the plea or conviction is set aside or withdrawn or the case is dismissed or reduced under section 19-2604, Idaho Code, or any other comparable statute or procedure where the setting aside of the plea or conviction, or dismissal or reduction of the case or charge, is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the plea, finding of guilt or conviction.

SECTION 4. That Section 19-5116, Idaho Code, be, and the same is hereby amended to read as follows:

19-5116. PEACE OFFICERS STANDARDS AND TRAINING FUND. (a) There is hereby established in the state treasury, the peace officers standards and training fund. All moneys deposited to the fund shall be expended by the peace officers standards and training council for the following purposes:

(1) Training peace officers, county detention officers, and self-sponsored students, within the state of Idaho, including, but not limited to, sheriffs and their deputies, officers of the Idaho state police and conservation officers of the Idaho department of fish and game, and city and county prosecutors and their deputies;

(2) Salaries, costs and expenses relating to such training as provided in subsection (1) of this section;

(3) Such capital expenditures as the peace officers standards and training council may provide, for the acquisition, construction and/or improvement of a peace officers standards and training academy; and

(4) Such expenditures as may be necessary to aid approved peace officers training programs or county detention officer programs certified as having met the standards established by the peace officers standards and training council.

(b) The peace officers standards and training fund shall be funded as provided in sections 31-3201A and 31-3201B, Idaho Code.

(c) All contributions and other moneys and appropriations which are designated for peace officers standards and training shall be deposited in the peace officers standards and training fund.

(d) Moneys received into the fund as provided in subsection (c) of this section, shall be accounted for separately.

(e) If the fiscal year-end balance in the fund pursuant to sections 31-3201A and 31-3201B, Idaho Code, exceeds one million dollars (\$1,000,000) the excess shall revert to the general fund.

(f) Moneys received into the fund pursuant to the provisions of section 31-3201D, Idaho Code, shall be used for the purposes of providing basic training, continuing education and certification of misdemeanor probation officers whether those officers are employees of or by private sector contract with a county.

Approved March 23, 2011.

CHAPTER 129  
(H.B. No. 178)

AN ACT

RELATING TO THE ISSUANCE OF REVENUE BONDS BY POLITICAL SUBDIVISIONS; AMENDING SECTION 50-1029, IDAHO CODE, TO REVISE AND ADD DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 50-1030, IDAHO CODE, TO PROVIDE FOR AUTHORITY TO ISSUE AIRPORT REVENUE BONDS TO FINANCE AIRPORT FACILITIES TO BE HELD BY THE POLITICAL SUBDIVISION OF THE STATE OR REGIONAL AIRPORT AUTHORITY AS DEFINED BY LAW AND TO ISSUE SPECIAL FACILITY BONDS TO FINANCE AIRPORT FACILITIES FOR PRIVATE PERSONS, ASSOCIATIONS AND CORPORATIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 50-1035, IDAHO CODE, TO PROVIDE FOR ELECTIONS FOR THE ISSUANCE OF REVENUE BONDS FOR ELECTRIC SYSTEMS AND TO ALLOW FOR ISSUANCE OF AIRPORT REVENUE BONDS AND SPECIAL FACILITY BONDS; AND AMENDING SECTION 50-1039, IDAHO CODE, TO PROVIDE THAT SPECIAL FACILITY BONDS ISSUED TO FINANCE AIRPORT FACILITIES AND AIR NAVIGATION FACILITIES FOR PRIVATE PERSONS, ASSOCIATIONS AND CORPORATIONS SHALL BE SECURED BY A DEED OF TRUST, MORTGAGE OR OTHER SECURITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 50-1029, Idaho Code, be, and the same is hereby amended to read as follows:

50-1029. DEFINITIONS. For the purpose of this act, unless a different meaning clearly appears from the context, the following terms shall be ascribed the following meanings:

(a) The term "works" shall include water systems, drainage systems, sewerage systems, recreation facilities, off-street parking facilities, air-navigation airport facilities and air navigation facilities, electric systems or any of them as herein defined;

(b) The term "water system" shall include reservoirs, storage facilities, water mains, conduits, aqueducts, pipelines, pumping stations, filtration plants, and all appurtenances and machinery necessary or useful for obtaining, storing, treating, purifying or transporting water for domestic uses or purposes. The term "domestic uses or purposes" includes by way of example but not by way of limitation the use of water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic purposes;

(c) The term "sewerage system" shall include intercepting sewers, out-fall sewers, force mains, collecting sewers, pumping stations, ejector stations, treatment plants, structures, buildings, machinery, equipment, connections and all other appurtenances necessary, useful or convenient for the collection, transportation, treatment, purification, and disposal of the sewage of any city or any part of territory included within the territorial limits of any city;

(d) The term "off-street parking" shall include all machinery, equipment and appurtenances, including lands, easements, rights-of-way and buildings required, necessary or useful for the parking of motor vehicles on lands or places other than public highways;

(e) The term "airport facilities and ~~air-navigation~~ air navigation facilities" shall include land acquisition, construction costs, buildings, equipment, and other necessary appurtenances, either wholly or partly within or without the corporate limits of such city political subdivision of the state or owned or operated by a regional airport authority as defined by law, or wholly or partly within or without the state of Idaho, which are hereby deemed to be for a public purpose, which facilities are to be financed for, or to be leased, sold or otherwise disposed of to private persons, associations or corporations, or to be held by the political subdivision of the state or regional airport authority as defined by law;

(f) The term "rehabilitate existing electrical generating facilities" shall include the reconstruction, replacement, and betterment of existing generation facilities, properties and other related structures, together with all necessary equipment and appurtenances related thereto, used in or useful for the generation of electricity, including power plants, turbine generators, dams, penstocks, step-up transformers, electrical equipment and other facilities related to hydroelectric production plants, and related facilities for flood control, environmental, public recreation and fish and wildlife mitigation and enhancement purposes made necessary in order to comply with applicable state and federal requirements, but does not include transmission and distribution lines and their related structures, equipment and appurtenances-;

(g) The term "drainage system" shall include ditches, channels, creeks, ponds, intake structures, diversion structures, levies, storm sewers, pump stations, force mains, buildings, easements, machinery, equipment, connections and all other appurtenances necessary, useful or convenient for the collection, treatment and disposal of any surface water, nuisance ground or subsurface water or stormwater of any city; and

(h) The term "electric system" shall include all electric generation, transmission and distribution facilities comprising a municipal electric system and used to supply electricity to customers located within the service area of such system established by law, including all properties, structures, facilities, equipment and appurtenances used in or useful for the generation, transmission and distribution of electricity. The term "electric system" includes, by way of example, but not by way of limitation, power plants for the generation of electricity by any means, substations, transformers, transmission lines, distribution lines, and all other facilities, equipment and appurtenances necessary or desirable in connection with the generation, transmission or distribution of electricity, including energy conservation, public purpose and environmental facilities, programs and measures, and joint electric facilities as defined in section 50-342A, Idaho Code.

SECTION 2. That Section 50-1030, Idaho Code, be, and the same is hereby amended to read as follows:

50-1030. POWERS. In addition to the powers which it may now have, any city shall have power under and subject to the following provisions:

(a) To acquire by gift or purchase and to construct, reconstruct, improve, better or extend any works within or without the city, or partially within or partially without the city, or within any part of the city, and acquire by gift or purchase lands or rights in lands or water rights in connection therewith, including easements, rights-of-way, contract rights, leases, franchises, approaches, dams and reservoirs; to sell excess or surplus water under such terms as are in compliance with section 42-222, Idaho Code, and deemed advisable by the city; to lease any portion of the excess or surplus capacity of any such works to any party located within or without the city, subject to the following conditions: that such capacity shall be returned or replaced by the lessee when and as needed by such city for the purposes set forth in section 50-1028, Idaho Code, as determined by the city; that the city shall not be made subject to any debt or liability thereby; and the city shall not pledge any of its faith or credit in aid to such lessee;

(b) To rehabilitate existing electric generating facilities;

(c) To exercise the right of eminent domain for any of the works, purposes or uses provided by this act, in like manner and to the same extent as provided in section 7-720, Idaho Code;

(d) To operate and maintain any works or rehabilitated existing electrical generating facilities within or without the boundaries of the city, or partially within or without the boundaries of the city, or within any part of the city;

(e) To issue its revenue bonds hereunder to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment or extension of any works, or to finance, in whole or in part, the cost of the rehabilitation of existing electrical generating facilities;

(f) To prescribe and collect rates, fees, tolls, or charges, including the levy or assessment of such rates, fees, tolls or charges against governmental units, departments or agencies, including the state of Idaho and its subdivisions, for the services, facilities and commodities furnished by such works, or by such rehabilitated existing electrical generating facilities, and to provide methods of collections and penalties, including denial of service for nonpayment of such rates, fees, tolls or charges;

(g) To pledge an amount of revenue from such works or rehabilitated existing electrical generating facilities, ~~{including improvement, betterment or extensions thereto, thereafter constructed or acquired}~~, sufficient to pay said bonds and interest as the same shall become due, and to create and maintain reasonable reserves therefor. Such amount may consist of all or any part or portion of such revenues. In determining such cost, there may be included all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal and legal expenses and interest which it is estimated will accrue during the construction period and for six (6) months thereafter on money borrowed or which it is estimated will be borrowed pursuant to sections 50-1027 through 50-1042, Idaho Code, and the costs of any bond reserve funds or working capital deemed necessary in connection with the bond issue;

(h) In the procurement of off-street parking sites, facilities, equipment and appurtenances, any city shall have power, in addition to those heretofore conferred, to pledge the net revenues to be derived from on-street parking facilities not otherwise pledged, to be combined with the rates, fees, tolls and charges to be derived from the operation of off-street parking facilities, after the payment of all operative and maintenance costs, to the payment of revenue bonds and interest thereon issued under the authority of the revenue bond act;

(i) To issue bonds for the purpose of refunding any bonds theretofore issued under authority of the revenue bond act and to pay accrued interest and applicable redemption premiums on the bonds to be refunded, if the bonds

to be refunded are due, callable or redeemable by their terms on or prior to the date that the refunding bonds are issued, or will become due, callable or redeemable by their terms within twelve (12) months thereafter, or if the bonds to be refunded, even though not becoming due, callable or redeemable within such period, are voluntarily surrendered by the holders thereof, for cancellation at the time of the issuance of the refunding bonds. All or part of any issue may be refunded and all or part of several issues may be refunded into a single issue of refunding bonds. There may be included with the refunding bonds, as part of a single issue, or in combination in one (1) or more series, bonds for any other purpose or purposes for which bonds are authorized to be issued under the revenue bond act. Refunding bonds shall be issued and secured in such manner as may be provided in the proceedings authorizing their issuance and as otherwise provided in the revenue bond act, and such changes may be made in the security and revenue pledged to the payment of the bonds so refunded, as provided by the governing body in the proceedings authorizing such bonds. No election on the issuance of refunding bonds shall be required, but if by an increase in the amount of bonds or by changes in the security or pledged revenues, the requirements of the constitution for an election shall become applicable, or if refunding bonds are combined into a single issue with bonds authorized for nonrefunding purposes, then such bonds with changes in security or revenues, or such bonds in excess of the amount of bonds refunded, as the case may be, must have been approved at an election as otherwise provided in the revenue bond act and the constitution. Refunding bonds may be exchanged for not less than a like principal amount of bonds authorized to be refunded, may be sold, or may be exchanged in part and sold in part. If sold, the proceeds of the sale, not required for the payment of expenses, and in any event, in an amount sufficient to assure the retirement of the bonds refundable, when such bonds become available for retirement, if not applied to a simultaneous payment and cancellation of the bonds refunded shall be escrowed with a bank or trust company and may be invested in United States government obligations or in obligations unconditionally guaranteed by the United States of America in such manner as may be provided in the authorizing proceedings;

(j) To issue its revenue bonds for airport facilities and air navigation facilities to be held by the political subdivision of the state or regional airport authority as defined by law payable solely from fees, charges, rents, payments, grants or any other revenues derived from the airport or any of its facilities, structures, systems of projects, or from any land, facilities, buildings, projects or other property financed by such bonds; and to issue special facility bonds for airport facilities and air navigation facilities to be financed for, or to be leased, sold or otherwise disposed of to private persons, associations or corporations, to pledge to the payment of such bonds the fees, charges, rents, payments, grants, or any other revenues from the financed facilities and to secure such bonds by a deed of trust, mortgage or other lien on the financed property or by other security or credit enhancement; and neither airport revenue bonds nor special facility bonds shall be secured by the full faith and credit or the taxing power of the political subdivision of the state or regional airport authority as defined by law.

SECTION 3. That Section 50-1035, Idaho Code, be, and the same is hereby amended to read as follows:

50-1035. ORDINANCE PRIOR TO CONSTRUCTION -- ELECTION. Before any city shall construct or acquire any works or rehabilitated existing electrical generating facilities under this chapter, the council of such city shall enact an ordinance or ordinances which shall, (a) set forth a brief and general description of the works or rehabilitated existing electrical generating facilities, and if the same are to be constructed, a reference to the

preliminary report or plans and specifications which shall theretofore have been prepared and filed by an engineer chosen for that purpose; (b) set forth the cost thereof estimated by the engineer chosen as aforesaid; (c) order the construction or acquisition of such works or the rehabilitation of such existing electrical generating facilities; (d) direct that revenue bonds of the city shall be issued pursuant to this chapter in such amount as may be necessary to pay the cost of the works or rehabilitated existing electrical generating facilities; and (e) contain such other provisions as may be necessary in the proposal.

Such ordinance shall be passed, approved and published as provided by law for the enactment of general ordinances, but such city shall not incur or authorize in any year any indebtedness or liability under said ordinance exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds (2/3) of the qualified electors of such city voting at an election held for the purpose of authorizing or refusing to authorize the indebtedness or liability provided for in said ordinance; provided, that any city may, with the assent of a majority of the qualified electors voting at an election to be held for such purpose, issue revenue bonds for the purpose of providing funds to own, purchase, construct, extend or equip, within and without the corporate limits of such city, water systems, sewerage systems, water treatment plants, sewerage treatment plants, electric systems, or to rehabilitate existing electrical generating facilities, the principal and interest of which to be paid solely from the revenue derived from rates and charges for the use of, and the service rendered by such systems, plants and facilities. In accordance with section 3E, article VIII of the constitution of the state of Idaho, any political subdivision of the state or regional airport authority as defined by law, operating an airport may issue revenue bonds payable solely from fees, charges, rents, payments, grants or any other revenues derived from or relating to airport facilities and air navigation facilities to finance the costs of acquiring, constructing, installing and equipping airport facilities and air navigation facilities and such bonds shall not be secured by the full faith and credit or the taxing power of the political subdivision of the state or regional airport authority as defined by law.

Said ordinances shall provide for the holding of said election in accordance with the dates authorized in section 50-405, Idaho Code, by the county clerk in accordance with the provisions of title 34, Idaho Code. The notice of election shall set forth the purpose of said ordinance, the amount of bonds authorized by it, the maximum number of years from their respective dates for which such bonds may run, the voting places, the hours between which the polls will be open and the qualifications of voters who may vote thereat. In all other respects such election shall be conducted as are other city elections. The voting at such elections must be by ballot, and the ballots used shall be substantially as follows:

"In favor of issuing revenue bonds for the purposes provided by Ordinance No. . . . ."

"Against the issuance of revenue bonds for the purposes provided by Ordinance No. . . . ."

If, at such election, the required vote is in favor of issuing such revenue bonds, then such city may issue such bonds and create such indebtedness or liability in the manner and for the purpose specified in said ordinance.

SECTION 4. That Section 50-1039, Idaho Code, be, and the same is hereby amended to read as follows:

50-1039. LIEN OF BONDS. All bonds of the same issue shall, subject to the prior and superior rights of outstanding bonds, claims or obligations, have prior and paramount lien on the revenue of the works or rehabilitated existing electrical generating facilities for which said bonds have been is-

sued, except that where provision is made in the ordinance authorizing any issue or series of bonds for the issuance of additional bonds in the future on a parity therewith pursuant to procedures or restrictions provided in such ordinance, additional bonds may be issued in the future on a parity with such issue or series in the manner so provided in such ordinance. All bonds of the same issue shall be equally and ratably secured without priority by reason of number, date of bonds, date of sale, date of execution, or date of delivery, by a lien on said revenue in accordance with the provisions of the Revenue Bond Act and the ordinance authorizing said bonds. Special facility bonds issued for airport facilities and air navigation facilities to be owned by private persons, associations or corporations and not by the political subdivision of the state or regional airport authority as defined by law shall be additionally secured by a deed of trust, mortgage or other lien on the facilities or other security or credit enhancement provisions.

Approved March 25, 2011.

CHAPTER 130  
(S.B. No. 1114)

AN ACT

RELATING TO WINE; AMENDING SECTION 23-105, IDAHO CODE, TO REMOVE A DEFINITION OF WINE AND TO REVISE DEFINITIONS; AMENDING SECTION 23-203, IDAHO CODE, TO PROVIDE THAT THE STATE LIQUOR DIVISION SHALL BE AUTHORIZED TO BUY, IMPORT, TRANSPORT, STORE, SELL AND DELIVER CERTAIN WINE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 23-1302, IDAHO CODE, TO PROVIDE THAT THE PURPOSE OF SPECIFIED LAW IS TO REGULATE THE IMPORTATION, DISTRIBUTION AND SALE OF WINES WHILE RESERVING CERTAIN RIGHTS TO THE COUNTIES AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 23-1314, IDAHO CODE, TO REVISE PROVISIONS RELATING TO RECORDS REGARDING THE IMPORT OF WINE INTO THE STATE OF IDAHO AND SALE OF WINE IN THE STATE OF IDAHO BY WINERIES, DISTRIBUTORS AND IMPORTERS, TO REVISE PROVISIONS RELATING TO THE RIGHT OF THE DIRECTOR OF THE STATE LIQUOR DIVISION TO EXAMINE CERTAIN BOOKS, RECORDS AND PREMISES AS MAY ASSIST HIM IN VERIFYING ACCURACY OF REPORTS AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 23-105, Idaho Code, be, and the same is hereby amended to read as follows:

23-105. ALCOHOLIC LIQUOR DEFINED. "Alcoholic liquor," as the term is used in this act, includes:

(a) "Alcohol," meaning the product of distillation of any fermented liquor, rectified ~~either once or oftener~~ more than once, whatever may be the origin thereof, or synthetic ethyl alcohol.

(b) "Spirits," meaning any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, among other things, brandy, rum, whiskey, and gin.

(c) ~~"Wine," meaning any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits (grapes, apples, etc.) or other agricultural products containing sugar (honey, milk, etc.).~~

(d) Any liquid or solid, patented or not, containing alcohol, spirits, ~~or wine~~, and susceptible of being consumed by a human being, for beverage purposes, and containing more than ~~4 per cent~~ four percent (4%) of alcohol by weight.

SECTION 2. That Section 23-203, Idaho Code, be, and the same is hereby amended to read as follows:

23-203. POWERS AND DUTIES. The division shall have the following general powers and duties:

(a) Regulation of Liquor Traffic. To permit, license, inspect, and regulate the manufacture, importation, transportation, storage, sale, and delivery of alcoholic liquor for purposes permitted by this act.

(b) Traffic in Liquor. To buy, import, transport, store, sell, and deliver alcoholic liquor, wine containing more than sixteen percent (16%) alcohol by volume, table wine, as defined in section 23-1303, Idaho Code, that is manufactured in Idaho, and sparkling wine.

(c) Operation of Liquor Stores. To establish, maintain, and discontinue warehouses, state liquor stores and distribution stations, and in the operation thereof to buy, import, transport, store, sell and deliver such other nonalcohol merchandise as may be reasonably related to its sale of alcoholic liquor.

(d) Acquisition of Real Estate. To acquire, buy, and lease real estate, and to improve and equip the same for the conduct of its business.

(e) Acquisition of Personal Property. To acquire, buy, and lease personal property necessary and convenient for the conduct of its business.

(f) Making Reports. To report to the governor annually, and at such other times as he may require, concerning the condition, management, and financial transactions of the division.

(g) General Powers. To do all things necessary and incidental to its powers and duties under this act.

The division shall so exercise its powers as to curtail the intemperate use of alcoholic beverages. It shall not attempt to stimulate the normal demands of temperate consumers thereof, irrespective of the effect on the revenue derived by the state from the resale of intoxicating liquor.

SECTION 3. That Section 23-1302, Idaho Code, be, and the same is hereby amended to read as follows:

23-1302. PURPOSE AND CONSTRUCTION OF ACT. The purpose of this act is to regulate the importation, distribution, and sale, both at wholesale and retail, of wines ~~customarily used in home and family dining and cooking~~ while reserving to each county of this state the right to prohibit the distribution or sale of wine within ~~their~~ its borders. This act shall not be construed to affect laws regulating the retail sale of alcoholic beverages, nor shall it be construed to in any way enlarge the class of persons who may lawfully buy, possess, or consume any variety of wine whatever its alcoholic content.

SECTION 4. That Section 23-1314, Idaho Code, be, and the same is hereby amended to read as follows:

~~23-1314. RECORDS AND INSPECTION OF WINERIES, IMPORTERS AND DISTRIBUTORS -- CONTENTS -- REPORTS -- CONTENTS -- INSPECTION OF RECORDS, INVENTORY, AND PROPERTY. (1) Every winery, distributor and importer shall have, and notify the director, of, a place of business within the state of Idaho where such licensee will and shall keep a record of his or its imports into, and sales of wine within, the state, including the date, quantity, from whom purchased for import, the carrier or other person or means by whom or which transported for import, and the name and address of the purchaser, and shall so keep such record of each such sale or import for a period of four (4) years thereafter. Such licensee shall, on or before the fifteenth day of each month, make a return to the director of the amount of wine sold in, and imported by him into, the state of Idaho for the preceding month, which shall be upon forms furnished by the director.~~

(2) Each winery, distributor and importer shall keep at its place of business a record of its imports into, and sales of wine within, the state of Idaho. The import record shall include the date and quantity of import and the identity of the import seller and the import carrier or transporter. The sale record shall consist of a copy of the monthly report to the state tax commission required pursuant to section 23-1322, Idaho Code. Each winery, distributor and importer shall keep the record of each sale or import for a period of four (4) years thereafter and shall, on or before the fifteenth day of each month, file the report with the director. The director may require such additional information to be included in such returns as shall assist him in determining whether or not such licensee is complying with this act and whether or not all taxes and fees provided for by this act are being fully paid.

(3) The director shall have the right at any time to make an examination of each winery's, distributor's and importer's books, records and premises, and such other matters as may assist him in verifying the accuracy of such returns, and retain in his office for not less than two (2) years, a report thereof. An application for, and acceptance of a license by a winery, distributor, importer or retailer shall constitute consent to, and be authority for, entry by the director or his authorized agents, upon any premises related to the licensee's business, or wherein are, or should be, kept, any of the licensee's books, records, supplies or other property related to said business, and to make the inventory, check and investigations aforesaid with relation to said licensee or any other licensee reports.

Approved March 25, 2011.

CHAPTER 131  
(S.B. No. 1140)

AN ACT

APPROPRIATING MONEYS TO THE PUBLIC UTILITIES COMMISSION FOR FISCAL YEAR 2012; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Public Utilities Commission, the following amounts to be expended for the designated expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012.

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
Public Utilities Commission				
Fund	\$3,383,600	\$1,359,900	\$24,700	\$4,768,200
American Reinvestment				
Fund	149,400	71,000		220,400
Federal Grant				
Fund	<u>82,200</u>	<u>19,700</u>	<u>0</u>	<u>101,900</u>
TOTAL	\$3,615,200	\$1,450,600	\$24,700	\$5,090,500

SECTION 2. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Public Utilities Commission is authorized no more than forty-nine (49) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 25, 2011.

CHAPTER 132  
(S.B. No. 1142)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE OFFICE OF THE STATE APPELLATE PUBLIC DEFENDER FOR FISCAL YEAR 2011; APPROPRIATING MONEYS TO THE OFFICE OF THE STATE APPELLATE PUBLIC DEFENDER FOR FISCAL YEAR 2012; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 2, Chapter 229, Laws of 2010, and any other appropriation provided for by law, there is hereby appropriated \$86,200 from the General Fund to the Office of the State Appellate Public Defender, to be expended for operating expenditures, for the period July 1, 2010, through June 30, 2011.

SECTION 2. There is hereby appropriated to the Office of the State Appellate Public Defender from the General Fund, the following amounts to be expended for the designated expense classes, for the period July 1, 2011, through June 30, 2012:

FOR:	
Personnel Costs	\$1,613,700
Operating Expenditures	<u>381,400</u>
TOTAL	\$1,995,100

SECTION 3. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Office of the State Appellate Public Defender is authorized no more than twenty-two (22) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically

authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval.

Approved March 25, 2011.

CHAPTER 133  
(H.B. No. 2)

AN ACT

RELATING TO UNIFORM CONTROLLED SUBSTANCES; AMENDING SECTION 37-2723, IDAHO CODE, TO REVISE AND REMOVE PROVISIONS RELATING TO A PRESCRIPTION FOR A CONTROLLED SUBSTANCE; AMENDING SECTION 37-2725, IDAHO CODE, TO REVISE AND REMOVE PROVISIONS RELATING TO REQUIRED PRESCRIPTIONS FOR SCHEDULED DRUGS AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 37-2723, Idaho Code, be, and the same is hereby amended to read as follows:

37-2723. FORM AND CONTENTS OF PRESCRIPTION. No person shall write a prescription and no person shall fill, compound or dispense a prescription for a controlled substance in schedule II ~~unless it is dated as of, and signed on, the day when issued and bears the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use and the name, address and registration number of the practitioner. A practitioner should sign a prescription in the same manner as he would sign a check or legal document. Prescriptions shall be written with ink or indelible pencil and shall be manually signed by the practitioner. The prescriptions may be prepared by the secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to federal and state law, rules and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by unless it is in compliance with applicable federal law.~~

SECTION 2. That Section 37-2725, Idaho Code, be, and the same is hereby amended to read as follows:

37-2725. PRESCRIPTION REQUIRED -- PRESCRIPTION BLANKS -- POSSESSION -- TRANSFERENCE -- CONTENTS. (1) A prescription shall be required for all scheduled drugs. ~~Except as provided in subsection (7) of this section, written Paper prescriptions shall comply with federal law and shall utilize non-copyable paper that contains security provisions against copying that results in some indication on the copy that it is a copy and therefore rendering it null and void. Board rules, policies or requirements promulgated or issued to implement the provisions of house bill no. 331 of the first regular session of the fifty-sixth Idaho legislature that amended this section 37-2725, Idaho Code, shall be null and void and without effect after June 30, 2002. The board shall adopt rules using negotiated rulemaking procedures to implement the provisions of this section that are consistent with, but no more stringent than the requirements of this section and the federal requirements for prescription blanks.~~

(2) Prescription blanks shall not be transferable. Any person possessing any such blank otherwise than is herein provided is guilty of a misdemeanor.

(3) The prescription blank shall contain the name and address of the practitioner. Prescription blanks may contain the printed names of multiple practitioners who are affiliated; provided however, such prescription blanks shall contain a means,    {in addition to the signature of the practitioner}, such as a box or a check, for clear identification of the printed name and address of the practitioner issuing the prescription.

(4) Prescriptions written by a practitioner in a hospital, nursing home, ambulatory surgery center or other health care facility in which a practitioner may attend a patient, other than his or her regular place of business, may be written on prescription blanks kept or provided by that facility that contains the name and address of that facility,    {but not necessarily of the practitioner},    provided the practitioner's name must be stamped, written or printed on the completed prescription in a manner that is legible to a pharmacist.

(5) Failure of a practitioner to clearly mark the practitioner's printed name and address on the prescription as required in subsection (3) of this section, or to stamp, write or print the practitioner's name legibly as required in subsection (4) of this section shall subject the practitioner to appropriate discipline by the board. The disciplinary measures shall be established by the board in a rule developed through negotiated rulemaking.

(6) Except as provided in section 37-2722, Idaho Code, if a paper prescription is for a schedule II substance, the practitioner shall indicate the desired quantity of the scheduled drug on the prescription blank by both writing out the quantity and by indicating or writing the quantity in numerical form.

~~(7) Prescription blanks issued or approved by the board prior to the effective date of this act shall remain valid and may be used by practitioners after the effective date of this act.~~

~~(8) Prescription blanks or drugs lost or stolen must be immediately reported to the board.~~

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 25, 2011.

CHAPTER 134  
(H.B. No. 3)

AN ACT

RELATING TO UNIFORMED CONTROLLED SUBSTANCES; AMENDING SECTION 37-2705, IDAHO CODE, TO REMOVE PROVISIONS RELATING TO CERTAIN SCHEDULE I CONTROLLED SUBSTANCES; AND AMENDING SECTION 37-2707, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SCHEDULE II CONTROLLED SUBSTANCES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 37-2705, Idaho Code, be, and the same is hereby amended to read as follows:

37-2705. SCHEDULE I. (a) The controlled substances listed in this section are included in schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM);
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl;
- (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (9) Benzethidine;
- (10) Betacetylmethadol;
- (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
- (12) Beta-hydroxy-3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide);
- (13) Betameprodine;
- (14) Betamethadol;
- (15) Betaprodine;
- (16) Clonitazene;
- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;
- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;
- (26) Ethylmethylthiambutene;
- (27) Etonitazene;
- (28) Etoxeridine;
- (29) Furethidine;
- (30) Hydroxypethidine;
- (31) Ketobemidone;
- (32) Levomoramide;
- (33) Levophenacymorphan;
- (34) 3-Methylfentanyl;
- (35) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (36) Morpheridine;
- (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (38) Noracymethadol;
- (39) Norlevorphanol;
- (40) Normethadone;
- (41) Norpipanone;
- (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
- (43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (44) Phenadoxone;
- (45) Phenampromide;
- (46) Phenomorphan;
- (47) Phenoperidine;
- (48) Piritramide;

- (49) Proheptazine;
- (50) Properidine;
- (51) Propiram;
- (52) Racemoramide;
- (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
- (54) Tilidine;
- (55) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphanol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine;
- (23) Thebacon.

(d) Hallucinogenic substances. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

- (1) 4-bromo-2,5-dimethoxy amphetamine;
- (2) 2,5-dimethoxyamphetamine;
- (3) 4-bromo-2,5-dimethoxyphenethylamine (some other names: alpha-desmethyl DOB, 2C-B);
- (4) 2,5-dimethoxy-4-ethylamphetamine (another name: DOET);
- (5) 2,5-dimethoxy-4-(n)-propylthiophenethylamine;
- (6) 4-methoxyamphetamine (PMA);
- (7) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (8) 5-methoxy-N,N-diisopropyltryptamine;
- (9) 4-methyl-2,5-dimethoxy-amphetamine (DOM, STP);
- (10) 3,4-methylenedioxy amphetamine;
- (11) 3,4-methylenedioxymethamphetamine (MDMA);
- (12) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-ethyl MDA, MDE, MDEA);

- (13) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy) phenethylamine, and N-hydroxy MDA);
- (14) 3,4,5-trimethoxy amphetamine;
- (15) Alpha-ethyltryptamine (some other names: etryptamine, 3-(2-aminobutyl) indole);
- (16) Alpha-methyltryptamine;
- (17) Bufotenine;
- (18) Diethyltryptamine (DET);
- (19) Dimethyltryptamine (DMT);
- (20) Ibogaine;
- (21) Lysergic acid diethylamide;
- (22) Marihuana;
- (23) Mescaline;
- (24) Parahexyl;
- (25) Peyote;
- (26) N-ethyl-3-piperidyl benzilate;
- (27) N-methyl-3-piperidyl benzilate;
- (28) Psilocybin;
- (29) Psilocyn;
- (30) Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
  - $\Delta^1$  cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.
  - $\Delta^6$  cis or trans tetrahydrocannabinol, and their optical isomers.
  - $\Delta^{3,4}$  cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)
- (31) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;
- (32) Pyrrolidine analog of phencyclidine: 1-(phenylcyclohexyl) - pyrrolidine, PCPy, PHP;
- (33) Thiophene analog of phencyclidine 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP;
- (34) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine another name: TCPy;
- (35) Spores or mycelium capable of producing mushrooms that contain psilocybin or psilocin.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Gamma hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate, 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);
- (2) Flunitrazepam (also known as "R2," "Rohypnol");
- (3) Mecloqualone;
- (4) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on

the central nervous system, including its salts, isomers, and salts of isomers:

- (1) Aminorex (some other names: aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine);
- (2) Cathinone (some other names: alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone);
- (3) Fenethylamine;
- (4) Methcathinone (some other names: 2-(methyl-amino)-propionophenone, alpha-(methylamino)-propionophenone, N-methylcathinone, AL-464, AL-422, AL-463 and UR1423);
- (5) (+/-) cis-4-methylaminorex [(+/-) cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine];
- (6) N-benzylpiperazine (also known as: BZP, 1-benzylpiperazine);
- (7) N-ethylamphetamine;
- (8) N,N-dimethylamphetamine (also known as: N,N-alpha-trimethyl-benzeneethanamine).

~~(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:~~

- ~~(1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers.~~
- ~~(2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.~~

SECTION 2. That Section 37-2707, Idaho Code, be, and the same is hereby amended to read as follows:

37-2707. SCHEDULE II. (a) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, naltrexone and their respective salts, but including the following:

1. Raw opium;
2. Opium extracts;
3. Opium fluid extracts;
4. Powdered opium;
5. Granulated opium;
6. Tincture of opium;
7. Codeine;
8. Dihydroetorphine;
9. Diprenorphine;
10. Ethylmorphine;
11. Etorphine hydrochloride;
12. Hydrocodone;
13. Hydromorphone;
14. Metopon;
15. Morphine;
16. Oripavine;
17. Oxycodone;
18. Oxymorphone;
19. Tapentadol;
20. Thebaine.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b) (1) of this section, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(5) Benzoyllecgonine.

(6) Methylbenzoyllecgonine (Cocaine - its salts, optical isomers, and salts of optical isomers).

(7) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation, unless specifically excepted or unless listed in another schedule:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk Dextropropoxyphene (nondosage forms);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levo-alpha-acetylmethadol (also known as levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);
- (12) Levomethorphan;
- (13) Levorphanol;
- (14) Metazocine;
- (15) Methadone;
- (16) Methadone -- Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (17) Moramide -- Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl propane-carboxylic acid;
- (18) Pethidine (meperidine);
- (19) Pethidine -- Intermediate -- A, 4-cyano-1-methyl-4-phenyl-piperidine;
- (20) Pethidine -- Intermediate -- B, ethyl-4-phenylpiperidine-4-carboxylate;
- (21) Pethidine -- Intermediate -- C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (22) Phenazocine;
- (23) Piminodine;
- (24) Racemethorphan;
- (25) Racemorphan;
- (26) Remifentanil;
- (27) Sufentanil.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Lisdexamfetamine;
- (3) Methamphetamine, its salts, isomers, and salts of its isomers;
- (4) Phenmetrazine and its salts;
- (5) Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Amobarbital;
- (2) Glutethimide;
- (3) Pentobarbital;
- (4) Phencyclidine;
- (5) Secobarbital.
- (f) Hallucinogenic substances.
  - (1) Nabilone ..... (another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one) (21 C.F.R. 1308.12 (f)).

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) Immediate precursor to amphetamine and methamphetamine:
  - (a) Anthranilic acid;
  - (b) Ephedrine;
  - (c) Lead acetate;
  - (d) Methylamine;
  - (e) Methyl formamide;
  - (f) N-methylephedrine;
  - (g) Phenylacetic acid;
  - (h) Phenylacetone;
  - (i) Phenylpropanolamine;
  - (j) Pseudoephedrine.

Except that any combination or compound containing ephedrine, or any of its salts and isomers, or phenylpropanolamine or its salts and isomers, or pseudoephedrine, or any of its salts and isomers which is prepared for dispensing or over-the-counter distribution is not a controlled substance for the purpose of this section, unless such substance is possessed, delivered, or possessed with intent to deliver to another with the intent to manufacture methamphetamine, amphetamine or any other controlled substance in violation of section 37-2732, Idaho Code. For purposes of this provision, the requirements of the uniform controlled substances act shall not apply to a manufacturer, wholesaler or retailer of over-the-counter products containing the listed substances unless such person possesses, delivers, or possesses with intent to deliver to another the over-the-counter product with intent to manufacture a controlled substance.

- (2) Immediate precursors to phencyclidine (PCP):
  - (a) 1-phenylcyclohexylamine;
  - (b) 1-piperidinocyclohexanecarbonitrile (PCC).
- (3) Immediate precursor to fentanyl: 4-anilino-N-phenethyl-4-piperidine (ANPP).

CHAPTER 135  
(H.B. No. 4)

AN ACT

RELATING TO PHARMACISTS; AMENDING SECTION 37-3201, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 54-1705, IDAHO CODE, TO REVISE DEFINITIONS AND TO DEFINE A TERM; AMENDING SECTION 54-1729, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE REGISTRATION OF DRUG OUTLETS DOING BUSINESS IN IDAHO AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1733, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTIONS 54-1761, 54-4702 AND 54-5110, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 37-3201, Idaho Code, be, and the same is hereby amended to read as follows:

37-3201. DEFINITIONS. As used in this chapter:

(1) "Code imprint" means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug, or marks or monograms unique to the manufacturer or distributor of the drug, or both;

(2) "Distributor" means a person who distributes for resale a drug in solid dosage form under his own label even though he is not the actual manufacturer of the drug;

(3) "Solid dosage form" means capsules or tablets intended for oral use;

(4) "Legend drug" means any drug defined by section 54-1705(301), Idaho Code.

SECTION 2. That Section 54-1705, Idaho Code, be, and the same is hereby amended to read as follows:

54-1705. DEFINITIONS. In this chapter:

(1) "Board of pharmacy" or "board" means the Idaho state board of pharmacy.

(2) "Counseling" or "counsel" means the effective communication by the pharmacist of information as set out in this chapter, to the patient or caregiver, in order to improve therapeutic outcomes by maximizing proper use of prescription medications and devices. Specific areas of counseling shall include, but are not limited to:

(a) Name and strength and description of the medication;

(b) Route of administration, dosage, dosage form, continuity of therapy and refill information;

(c) Special directions and precautions for preparation, administration, storage and use by the patient as deemed necessary by the pharmacist;

(d) Side effects or adverse effects and interactions and therapeutic contraindications that may be encountered, including their avoidance, which may interfere with the proper use of the medication or device as was intended by the prescriber, and the action required if they occur;

(e) Techniques for self-monitoring drug therapy; and

(f) Action to be taken in the event of a missed dose.

(3) "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one (1) person to another, whether or not for a consideration.

(4) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar related article including any component part or accessory which is:

(a) Recognized in the official United States Pharmacopoeia or official National Formulary, other drug compendia or any supplement to them;

(b) Intended for use in the diagnosis of disease or other conditions, or the cure, mitigation, treatment or prevention of disease in man or other animal;

(c) Intended to affect the structure or any function of the body of man or other animal, and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animal, and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(5) "Dispense" or "dispensing" means the preparation and delivery of a prescription drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

(6) "Distribute" means the delivery of a drug other than by administering or dispensing.

(7) "Drug" means:

(a) Articles recognized as drugs in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, other drug compendia or any supplement to any of them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animal;

(c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and

(d) Articles intended for use as a component of any articles specified in paragraph (a), (b) or (c) of this subsection.

(8) "Drug order" means ~~an written order, in a hospital or other health care institution, for an ultimate user of any drug or device issued and signed by a practitioner, or an order transmitted by other means of communication from a practitioner, which is immediately reduced to writing by a pharmacist, registered nurse or other licensed health care practitioner authorized by the hospital or institution. The order shall for a patient of an institutional facility, or for other purposes when permitted by board rules that contains at least the name and bed number of the patient, date of issuance; the drug name, and strength, or size of the drug or device, unless specified by individual institution policy or guideline, the amount to be dispensed, either in quantity or days, adequate and route of administration; directions for the proper use; of the drug or device when it is administered to the patient, the name of the prescribing practitioner and, the name if written, the prescribing practitioner's signature or the signature of the prescriber practitioner's agent.~~

(9) "Drug outlets" means ~~all pharmacies, nursing homes, residential or assisted living facilities, convalescent homes, extended care facilities, drug abuse treatment centers, penal institutions, hospitals, family planning clinics, retail stores, wholesalers, manufacturers and mail order vendors with and other facilities located in this state which are with employees or personnel engaged in the practice of pharmacy, in the provision of pharmaceutical care, or in the dispensing, delivery delivering, or distribution of distributing or manufacturing of drugs and drug manufacturers and wholesalers with facilities located outside the state, but doing business within this state and institutions, as defined in the rules of the board, engaged in the practice of telepharmacy across state lines or devices.~~

(10) "Extern" means a bona fide student enrolled in an approved college of pharmacy who has not received his first professional degree in pharmacy.

(11) "Externship" means a structured practical experience program in pharmacy, approved by the board and administered by a college of pharmacy.

(12) "~~Health care~~Institutional facility" means a ~~health care facility as defined in section 54-1601, Idaho Code for which its primary purpose is to provide a physical environment for patients to obtain health care services and in which patients spend a majority of their time, as may be further defined by board rules.~~

(13) "Intern" means any person who has completed a course of study at an approved college of pharmacy, received the first professional degree in pharmacy and is registered with the board as an intern. Interns must register with the board prior to commencement of an internship program.

(14) "Internship" means a postgraduate practical experience program under the supervision of a preceptor at a preceptor site.

(15) "Investigational or new drug" means any drug which is limited by state or federal law to use under professional supervision of a practitioner authorized by law to prescribe or administer such drug.

(16) "Labeling" means the process of preparing and affixing of a label to any drug container, exclusive however, of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation.

(17) "Limited service outlet" means a facility that is subject to registration or licensure by the board, pursuant to section 54-1729(3), Idaho Code, in that it has employees or personnel engaged in the practice of pharmacy, in the provision of pharmaceutical care, or in the dispensing, delivering, distributing or manufacturing of drugs or devices but is not a retail pharmacy, institutional facility, manufacturer, wholesaler, veterinary drug outlet, telepharmacy across state lines or mail service pharmacy.

(18) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a drug by an individual for his own use or the preparation, compounding, packaging or labeling of a drug:

(a) By a pharmacist or practitioner as an incident to his administering or dispensing of a drug in the course of his professional practice; or

(b) By a practitioner or by his authorization under his supervision for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

(189) "Manufacturer" means a person who by compounding, cultivating, harvesting, mixing or other process, produces or prepares legend drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process, or who packages or repackages such drugs, but does not include pharmacists or practitioners in the practice of their profession.

(1920) "Nonprescription drugs" means medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government.

(201) "Person" means an individual, corporation, partnership, association or any other legal entity.

(212) "Pharmaceutical care" means drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the rules of the board.

(223) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy or a pharmacist licensed in another state who is

registered by the board of pharmacy to engage in the practice of telepharmacy across state lines.

(234) "Pharmacy" means any facility, department or other place where prescriptions are filled or compounded and are sold, dispensed, offered or displayed for sale, which has, as its principal purpose, the dispensing of drug and health supplies intended for the general health, welfare and safety of the public.

(245) "Practice of telepharmacy" means the provision of pharmaceutical care by registered or licensed pharmacies and pharmacists located within United States jurisdictions through the use of telecommunications or other technologies to patients at distances that are located within United States jurisdictions, as defined in the rules of the board.

(256) "Practice of telepharmacy across state lines" means the practice of telepharmacy when the patient is located within the state of Idaho and the pharmacist is located in a United States jurisdiction outside the state of Idaho, as defined in the rules of the board.

(267) "Practitioner" shall mean a ~~physician, dentist, veterinarian, scientific investigator or other person~~ licensed in this state and permitted by such license to dispense, conduct research with respect to or administer drugs in the course of professional practice or research in this state.

(278) "Precursor" means a substance, other than a legend drug which is an immediate chemical intermediate that can be processed or synthesized into a legend drug, and is used or produced primarily for use in the manufacture of a legend drug by persons other than persons licensed to manufacture such legend drugs by the Idaho board of pharmacy, registered by the state board of health and welfare, or licensed to practice pharmacy by the Idaho board of pharmacy.

(289) "Preceptor" means a pharmacist licensed in the state and in good standing, who supervises the internship training of a registered intern. The preceptor shall be actively engaged in the practice of pharmacy on a full-time employment basis at a registered preceptor site.

(2930) "Preceptor site" means any training site for pharmacy interns and externs registered with the board pursuant to board rule.

(301) "Prescription drug or legend drug" means a drug which, under federal law is required, prior to being dispensed or delivered, to be labeled with one (1) of the following statements:

- (a) "Caution: Federal law prohibits dispensing without a prescription"; or
- (b) "Rx Only"; or
- (c) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian";

or a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners only.

(312) "Prescription drug order" means a lawful written or verbal order of a practitioner for a drug or device for an ultimate user of the drug or device, issued and signed by a practitioner, or an order transmitted verbally from a practitioner or the practitioner's agent to a pharmacist in a pharmacy, or transmitted verbally from a practitioner and immediately reduced to writing by a licensed practical nurse or licensed professional nurse in a ~~health care~~ an institutional facility for a patient or resident of such facility.

(323) "Prospective drug review" includes, but is not limited to, the following activities:

- (a) Evaluation of the prescription or medication order for:
  - (i) Known allergies;
  - (ii) Rational therapy contraindications;
  - (iii) Reasonable dose and route of administration; and
  - (iv) Reasonable directions for use.

(b) Evaluation of the prescription or medication order for duplication of therapy.

(c) Evaluation of the prescription or medication order for interactions:

- (i) Drug-drug;
- (ii) Drug-food; and
- (iii) Drug-disease.

(d) Evaluation of the prescription or medication order for proper utilization:

- (i) Over or under utilization; and
- (ii) Abuse/misuse.

(334) "Record" means all papers, letters, memoranda, notes, prescriptions, drug orders, invoices, statements, patient medication charts or files, computerized records or other written indicia, documents or objects which are used in any way in connection with the purchase, sale or handling of any drug or device.

(345) "Sale" means every sale and includes:

- (a) Manufacturing, processing, transporting, handling, packaging or any other production, preparation or repackaging;
- (b) Exposure, offer, or any other proffer;
- (c) Holding, storing or any other possession;
- (d) Dispensing, giving, delivering or any other supplying; and
- (e) Applying, administering or any other usage.

(356) "Warehouseman" means a person who stores legend drugs for others and who has no control over the disposition of such drugs except for the purpose of such storage.

(367) "Wholesaler" means a person engaged in the business of distributing legend drugs that he himself has not produced or prepared, to persons included in any of the classes named in subsection (2) (a) through (f) of section 54-1734, Idaho Code.

SECTION 3. That Section 54-1729, Idaho Code, be, and the same is hereby amended to read as follows:

54-1729. REGISTRATION AND LICENSURE OF FACILITIES. (1) All drug or device outlets doing business in or into Idaho shall annually register with or be licensed by, as applicable, the board of pharmacy.

(2) ~~(a)~~ Each drug or device outlet shall apply for a certificate of registration or a license in one (1) of the following classifications:

- ~~(ia)~~ Retail drug-outlet pharmacy;
- ~~(iib)~~ Institutional drug-outlet facility;
- ~~(iiic)~~ Manufacturing drug-outlet Manufacturer;
- ~~(ivd)~~ Wholesale drug-outlet Wholesaler;
- ~~(ve)~~ Business Veterinary drug outlet selling prescription drugs for veterinary use;
- ~~(vif)~~ Telepharmacy drug-outlet across state lines;
- ~~(g)~~ Mail service pharmacy;
- ~~(h)~~ Limited service outlet.

~~(b) No individual who is employed by a corporation which is registered under paragraphs (a)(i) through (v) of this subsection need register under the provisions of this chapter. All employees or personnel of a drug-outlet registered pursuant to paragraph (a)(vi) of this subsection who are engaged in the practice of telepharmacy across state lines must be registered by the board pursuant to section 54-1723A, Idaho Code.~~

(3) The board shall establish by rule under the powers granted to it under sections 54-1718 and 54-1719, Idaho Code, the criteria which each drug outlet, that has employees or personnel engaged in the practice of pharmacy, must meet to qualify for registration or licensure in each classification designated in subsection (2) of this section. The board may issue various

types of certificates with varying restrictions to such limited service outlets referred to in this subsection (32) where the board deems it necessary by reason of the type of drug outlet requesting a certificate.

(4) It shall be lawful for a drug outlet registered or licensed under this section to sell and distribute nonprescription drugs. Drug outlets engaging in the sale and distribution of such items shall not be deemed to be improperly engaged in the practice of pharmacy. No rule will be adopted by the board under this chapter which shall require the sale of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist or otherwise apply to or interfere with the sale and distribution of such medicines.

(5) Drug outlets registered under subsection (2) (af) ~~(vi)~~ of this section shall pay the same registration fee as those registering under subsection (2) (ab) ~~(ii)~~ of this section, but shall also pay the actual costs of the out-of-state inspection of the drug outlet as may be required by the board, including the transportation, lodging and related expenses of the board's inspector. Nothing in this section shall preclude the board, in lieu of an inspection by the board, from relying on an inspection of the drug outlet conducted by the regulatory authority of the state within which the drug outlet is located.

SECTION 4. That Section 54-1733, Idaho Code, be, and the same is hereby amended to read as follows:

54-1733. VALIDITY OF PRESCRIPTION DRUG ORDERS. (1) A prescription drug order for a legend drug is not valid unless it is issued for a legitimate medical purpose arising from a prescriber-patient relationship which includes a documented patient evaluation adequate to establish diagnoses and identify underlying conditions and/or contraindications to the treatment. Treatment, including issuing a prescription drug order, based solely on an online questionnaire or consultation outside of an ongoing clinical relationship does not constitute a legitimate medical purpose. A prescription drug order may be issued either:

(a) By a practitioner acting in the usual course of his profession; or  
(b) By a physician, dentist, veterinarian, scientific investigator or other person, other than a pharmacist, who is licensed in a jurisdiction other than the state of Idaho and is permitted by such license to dispense, conduct research with respect to or administer the prescribed legend drugs in the course of his professional practice or research in such jurisdiction, so long as the individual is acting within the jurisdiction, scope and authority of his license when issuing the prescription drug order.

(c) The prescription drug order may be signed and sent electronically pursuant to chapter 50, title 28, Idaho Code.

(d) Transmission of prescription drug order. In addition to delivery of the original signed written prescription drug order to a licensed pharmacy:

(i) A prescription drug order that has been signed by the practitioner may be received by a licensed pharmacy for dispensing purposes through a facsimile transmission from the prescribing practitioner or the practitioner's agent, or from a health care an institutional facility for a patient or resident in such facility;

(ii) A prescription drug order may also be received by a licensed pharmacist verbally from the practitioner, the practitioner's agent or from a licensed practical nurse or licensed professional nurse in a health care an institutional facility for a patient or resident in such facility;

(iii) A prescription drug order received verbally from the practitioner by a licensed practical nurse or licensed professional

nurse in a licensed health-care institutional facility for a patient or resident in such facility may also be sent by facsimile transmission from the health-care institutional facility to a licensed pharmacy for dispensing purposes provided the transmitted document includes the name of the prescriber issuing the prescription drug order, the name of the nurse who transcribed the order and the name of the person who sent the facsimile.

(e) In the event that there are no refills remaining on an existing prescription drug order, and the pharmacist requests a new prescription drug order from the practitioner, the practitioner's agent, after obtaining practitioner authorization, may sign and return the request via facsimile so long as:

- (i) The request is generated from the pharmacy;
- (ii) The request is for medication that the patient is currently taking;
- (iii) There are no changes to the type of drug, its strength or directions for the continuation of therapy;
- (iv) The practitioner's agent's transmission is received via facsimile from the practitioner's office; and
- (v) The request, which is subsequently transmitted back to the requesting pharmacy by the practitioner's agent, contains all components of a valid prescription drug order.

(2) It is unlawful for a practitioner to knowingly issue an invalid prescription drug order for a legend drug.

(3) It is unlawful for a pharmacist or veterinarian to knowingly fill an invalid prescription drug order for a legend drug.

SECTION 5. That Section 54-1761, Idaho Code, be, and the same is hereby amended to read as follows:

54-1761. DEFINITIONS. As used in sections 54-1760 through 54-1765, Idaho Code:

(1) "Legend drug" has the same meaning as provided in section 54-1705(301), Idaho Code.

(2) "Medically indigent" means any person who is in need of a legend drug and who is not eligible for medicaid or medicare, who cannot afford private prescription drug insurance or who does not have income and other resources available sufficient to pay for the legend drug.

(3) "Qualifying charitable clinic or center" means a community health center as defined in section 39-3203, Idaho Code, and means a free medical clinic as defined in section 39-7702, Idaho Code, acting in consultation with a pharmacist licensed in the state of Idaho.

SECTION 6. That Section 54-4702, Idaho Code, be, and the same is hereby amended to read as follows:

54-4702. DEFINITIONS. As used in this chapter:

(1) "Acupuncture" means that theory of health care developed from traditional and modern Oriental medical philosophies that employs diagnosis and treatment of conditions of the human body based upon stimulation of specific acupuncture points on meridians of the human body for the promotion, maintenance, and restoration of health and for the prevention of disease. Therapies within the scope of acupuncture include manual, mechanical, thermal, electrical and electromagnetic treatment of such specific indicated points. Adjunctive therapies included in, but not exclusive to, acupuncture include herbal and nutritional treatments, therapeutic exercise and other therapies based on traditional and modern Oriental medical theory.

(2) "Board" means the Idaho state board of acupuncture.

(3) "NCCAOM" means "National Certification Commission for Acupuncture and Oriental Medicine."

(4) "Practice of acupuncture" means the insertion of acupuncture needles and use of similar devices and therapies, including application of moxibustion, to specific indicated points on the skin of the human body as indicated pursuant to traditional and modern theories of Oriental medicine. The "practice of acupuncture" does not include:

(a) surgery; or

(b) prescribing, dispensing or administering any prescription drug or legend drug as defined in section 54-1705(301), Idaho Code.

SECTION 7. That Section 54-5110, Idaho Code, be, and the same is hereby amended to read as follows:

54-5110. NATUROPATHIC MEDICAL FORMULARY COUNCIL ESTABLISHED. There is hereby established a naturopathic medical formulary council, which is separate and distinct from the board, to be composed of seven (7) members. Two (2) members shall be naturopathic physicians licensed under this chapter, appointed by the board of naturopathic medical examiners. Three (3) members shall be pharmacists licensed under chapter 17, title 54, Idaho Code, appointed by the board of naturopathic medical examiners from a list of nominees provided by the Idaho state board of pharmacy. Two (2) members shall be physicians licensed under chapter 18, title 54, Idaho Code, appointed by the board of naturopathic medical examiners from a list of nominees provided by the Idaho state board of medicine. The initial council shall be appointed as follows: One (1) naturopathic physician shall be appointed for a one (1) year term; one (1) physician licensed under chapter 18, title 54, Idaho Code, and one (1) pharmacist shall be appointed for a two (2) year term; and two (2) pharmacists, one (1) naturopathic physician and one (1) physician licensed under chapter 18, title 54, Idaho Code, shall be appointed for a three (3) year term. Thereafter, the term of office shall be three (3) years. A quorum shall consist of five (5) members and shall be required for any vote to be taken. It shall be the duty of the naturopathic medical formulary council to establish a formulary for use by naturopathic physicians, and immediately upon adoption or revision of the formulary, the council shall transmit the approved formulary to the board, which shall adopt the formulary by temporary rule. The formulary will be reviewed annually by the council, or at any time at the request of the board. The formulary list may not go beyond the scope of prescription medicines and medical devices covered by approved naturopathic medical education and training and existing naturopathic medical formularies, or board-approved continuing education. The naturopathic medical formulary shall not include medicines and devices that are inconsistent with the training provided by approved naturopathic medical colleges. Nothing herein shall allow a naturopathic physician to dispense, administer or prescribe any prescription drug as defined in section 54-1705(301), Idaho Code, or medical device unless such prescription drug or medical device is specifically included in the naturopathic medical formulary.

Approved March 25, 2011.

CHAPTER 136  
(H.B. No. 132)

AN ACT

RELATING TO ENGINEERS AND LAND SURVEYORS; AMENDING SECTION 40-117, IDAHO CODE, TO DEFINE TERMS; AMENDING SECTION 40-119, IDAHO CODE, TO DEFINE A TERM AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 40-120, IDAHO CODE, TO DEFINE A TERM; AMENDING CHAPTER 1, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-124, IDAHO CODE, TO DEFINE A TERM; AMENDING SECTION 40-209, IDAHO CODE, TO REVISE PROVISIONS RELATING TO HIGHWAY RIGHT-OF-WAY PLATS; AMENDING SECTION 50-1301, IDAHO CODE, TO DEFINE A TERM, TO REVISE A DEFINITION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 50-1302, IDAHO CODE, TO REVISE THE DUTIES OF AN OWNER CREATING A SUBDIVISION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 50-1303, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SURVEYS AND MONUMENTS AND TO REVISE TERMINOLOGY; AMENDING SECTION 50-1332, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 54-1202, IDAHO CODE, TO DEFINE TERMS AND TO REVISE A DEFINITION; AMENDING SECTION 54-1227, IDAHO CODE, TO REVISE THE AUTHORITY AND DUTIES OF PROFESSIONAL LAND SURVEYORS AND PROFESSIONAL ENGINEERS IN CONNECTION WITH LAND SURVEYS; AMENDING SECTION 54-1234, IDAHO CODE, TO PROVIDE ADDITIONAL PROVISIONS RELATING TO LIABILITY FOR DEFACING CERTAIN OBJECTS AND TO INCREASE THE PENALTY AMOUNT FOR EACH SUCH OFFENSE; AMENDING SECTION 55-1603, IDAHO CODE, TO DEFINE TERMS AND TO REVISE DEFINITIONS; AMENDING SECTION 55-1605, IDAHO CODE, TO REMOVE REFERENCE TO PROPERTY CORNER AND REFERENCE MONUMENT IN CONNECTION WITH FILINGS AND RECORDINGS; AMENDING SECTION 55-1608, IDAHO CODE, TO PROVIDE ADDITIONAL REQUIREMENTS RELATING TO THE RECONSTRUCTION AND REHABILITATION OF MONUMENTS; AMENDING SECTION 55-1613, IDAHO CODE, TO REVISE THE PROCEDURES AND REQUIREMENTS RELATING TO MONUMENTS DISTURBED BY CONSTRUCTION OR RELATED ACTIVITIES; AMENDING SECTION 55-1902, IDAHO CODE, TO DEFINE TERMS, TO REVISE A DEFINITION AND TO REMOVE A TERM; AMENDING SECTION 55-1904, IDAHO CODE, TO CLARIFY TERMINOLOGY, TO PROVIDE AN ADDITIONAL BASIS FOR WHICH A RECORD OF SURVEY SHALL BE FILED WITHIN A CERTAIN TIME FRAME AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 55-1908, IDAHO CODE, TO PROVIDE AN ADDITIONAL BASIS FOR WHICH A RECORD OF SURVEY IS NOT REQUIRED; AND AMENDING SECTION 55-1911, IDAHO CODE, TO REVISE PROVISIONS RELATING TO AN ERROR OF CLOSURE AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 40-117, Idaho Code, be, and the same is hereby amended to read as follows:

40-117. DEFINITIONS -- P. (1) "Person" includes every natural person, firm, fiduciary, copartnership, association, corporation, trustee, receiver or assignee for the benefit of creditors.

(2) "Place." (See "Maintain," section 40-114, Idaho Code)

(3) "Preliminary design," as used in section 40-904, Idaho Code, means the general project location and design concepts. It includes, but is not limited to, preliminary engineering and other activities and analyses, such as environmental assessments, topographic surveys, metes and bounds surveys, geotechnical investigations, hydrologic analyses, hydraulic analyses, utility engineering, traffic studies, financial plans, revenue estimates, hazardous materials assessments, general estimates of the types and quantities of materials and other work needed to establish parameters for the final design.

(4) "Price proposal" means the price submitted by a design-build firm to provide the required design and construction services described in the request for proposals or the price submitted by a construction manager/general contractor firm to provide the required construction services described in the request for proposal.

(5) "Primary system" or "primary highway" means any portion of the highways of the state, as officially designated, or as may hereafter be so designated, by the Idaho transportation board, and approved by the secretary of transportation, pursuant to the provisions of title 23, U.S. Code, "Highways."

(6) "Public highway agency" means the state transportation department, any city, county, highway district or other political subdivision of the state with jurisdiction over public highway systems and public rights-of-way.

(7) "Public highways" means all highways open to public use in the state, whether maintained by the state or by any county, highway district, city, or other political subdivision. (Also see "Highways," section 40-109, Idaho Code)

(8) "Public land survey corner" means any point actually established and monumented in an original survey or resurvey that determines the boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the United States general land office and the United States department of interior, bureau of land management.

(9) "Public right-of-way" means a right-of-way open to the public and under the jurisdiction of a public highway agency, where the public highway agency has no obligation to construct or maintain, but may expend funds for the maintenance of, said public right-of-way or post traffic signs for vehicular traffic on said public right-of-way. In addition, a public right-of-way includes a right-of-way which was originally intended for development as a highway and was accepted on behalf of the public by deed of purchase, fee simple title, authorized easement, eminent domain, by plat, prescriptive use, or abandonment of a highway pursuant to section 40-203, Idaho Code, but shall not include federal land rights-of-way, as provided in section 40-204A, Idaho Code, that resulted from the creation of a facility for the transmission of water. Public rights-of-way shall not be considered improved highways for the apportionment of funds from the highway distribution account.

(10) "Public street" means a road, thoroughfare, alley, highway or bridge under the jurisdiction of a public highway agency.

(11) "Public transportation services" means, but is not limited to, fixed transit routes, scheduled or unscheduled transit services provided by motor vehicle, bus, rail, van, aerial tramway and other modes of public conveyance; paratransit service for the elderly and disabled; shuttle and commuter service between cities, counties, health care facilities, employment centers, educational institutions or park-and-ride locations; subscription van and car pooling services; transportation services unique to social service programs; and the management and administration thereof.

SECTION 2. That Section 40-119, Idaho Code, be, and the same is hereby amended to read as follows:

40-119. DEFINITIONS -- R. (1) "Reference point" means a special monumented point that does not occupy the same geographical position as the corner itself, and where the spatial relationship to the corner is known and recorded, and that serves to locate the corner.

(2) "Request for proposals (RFP)" means a document used to solicit proposals from design-build firms to design and construct a highway project or

to solicit proposals from construction manager/general contractor firms to provide services prior to final design and then construct a highway project.

(23) "Request for qualifications (RFQ)" means a document issued by the department in the first step of a two-step selection process that describes the project in enough detail to let potential design-build firms determine if they wish to compete and forms the basis for developing a short-list of the most qualified design-build firms.

(34) "Responsive proposals" means proposals submitted by responsive proposers that comply with the request for proposals and all prescribed procurement procedures and requirements.

SECTION 3. That Section 40-120, Idaho Code, be, and the same is hereby amended to read as follows:

40-120. DEFINITIONS -- S. (1) "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way by or under public supervision or control, for convenience of the traveling public.

(2) "Short-listing" means the narrowing of the field of potential design-build firms through the selection of the most qualified design-build firms who have responded to a request for qualifications.

(3) "Sign." (See "Advertising structure," section 40-102, Idaho Code)

(4) "Single countywide highway district" means all public highways within the county, including those within all cities of the county, but excepting those within the state highway system and those under federal control.

(5) "State highway system" means the principal highway arteries in the state, including connecting arteries and extensions through cities, and includes roads to every county seat in the state.

(6) "State law" means a provision of the constitution or statutes of this state, or an ordinance, rule or regulation enacted or adopted by an agency or political subdivision of this state pursuant to the constitution or statutes.

(7) "Stipend" means a monetary amount that may be paid to unsuccessful design-build firms who have submitted responsive proposals in response to an RFP. The purpose of a stipend is to encourage competition by offering to compensate responsive but unsuccessful design-build firms for a portion of the proposal development costs.

(8) "Street" means a thoroughfare, alley, highway or a right-of-way that may be open for public use but is not part of a public highway system nor under the jurisdiction of a public highway agency.

(9) "Structure." (See "Advertising structure," section 40-102, Idaho Code)

(910) "System, city." (See "City system," section 40-104, Idaho Code)

SECTION 4. That Chapter 1, Title 40, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 40-124, Idaho Code, and to read as follows:

40-124. DEFINITIONS -- W. "Witness corner" means a monumented point on a lot line or boundary line of a survey, near a corner and established in situations where it is impracticable to occupy or monument the corner.

SECTION 5. That Section 40-209, Idaho Code, be, and the same is hereby amended to read as follows:

40-209. HIGHWAY RIGHT-OF-WAY PLATS. (1) A public highway agency may file in the office of the county recorder a highway right-of-way plat. The highway right-of-way plat shall show by outline and identify by parcel number, ~~tracts or~~ parcels of land to be acquired and shall be prepared in con-

formance with ~~chapter 19, title 55 sections 55-1905 through 55-1907~~, Idaho Code. The recording of a highway right-of-way plat as provided in this section shall not excuse a county or highway district from the requirements of abandonment or validation of a public highway or public right-of-way as provided in sections 40-203 and 40-203A, Idaho Code. The highway right-of-way plat shall contain the following:

(a) Project name and number;

~~(b) Monuments found, set, reset, replaced or removed describing their kind, size and location and giving other data relating thereto~~ The location and monumentation of the points where the right-of-way changes direction by angle point or curvature and its intersection with any public highway, street or trail right-of-way and all witness corners and reference points. All points shall be marked with magnetically detectable monuments conforming to the provisions of section 54-1227, Idaho Code, unless special circumstances preclude use of such monument. Monuments shall be marked such that measurements between them may be made to the nearest one-tenth (0.1) foot;

~~(c) Bearings, basis of bearings, length of lines, scale of map and north arrow~~ An outline showing the boundary of each parcel of land to be acquired based on ownership records and the right-of-way location survey;

~~(d) Section, or part of section, township, range and reference to adjoining plats or surveys of record; and ties to at least two (2) public land survey corners, or in lieu of public land survey corners, to two (2) monuments recognized by the city engineer or surveyor, or county engineer or surveyor~~ An identifying parcel number and the area for each parcel of land to be acquired;

~~(e) Outline of all parcels of land to be acquired, identifying them with parcel identification numbers;~~

~~(f) Acknowledgement of authorized agent of the public highway agency filing said plat;~~

~~(g) Certificate of land surveyor under whose responsible charge the plat is prepared.~~

(2) The highway right-of-way plat filed with the county recorder of any county shall be assigned an instrument number and shall be bound or filed with other plats of like character in a book on file designated "Highway Right-of-Way Plats."

(3) Any amendments, alterations, rescissions or changes in a highway right-of-way plat shall comply with subsection (1) of this section and shall be filed in a like manner. The recorder may make suitable notations on the appropriate highway right-of-way plat affected by the amendment, alteration, rescission or change to direct the attention of anyone examining the record to the proper plat.

(4) Highway right-of-way plats filed under this section shall not operate to transfer title to the real property described therein but such plat shall be used for delineation purposes. Acquisition of real property for highway right-of-way by conveyance or judicial decree may refer to said highway right-of-way plat, project number and parcel identification number, together with delineation of the parcel as a valid description of the real property for all purposes.

(5) The agency making the initial filing in a county shall reimburse the county recorder the actual cost of the plat book required in subsection (2) of this section.

SECTION 6. That Section 50-1301, Idaho Code, be, and the same is hereby amended to read as follows:

50-1301. DEFINITIONS. The following definitions shall apply to terms used in this section and sections 50-1302 through 50-1334, Idaho Code.

(1) **Basis of bearing:** The bearing in degrees, minutes and seconds, or equivalent, of a line between two (2) monuments or corners that serves as the reference bearing for all other lines on the survey;

(2) **Easement:** A right of use, falling short of ownership, and usually for a certain stated purpose;

(3) **Functioning street department:** A city department responsible for the maintenance, construction, repair, snow removal, sanding and traffic control of a public highway or public street system which qualifies such department to receive funds from the highway distribution account to local units of government pursuant to section 40-709, Idaho Code;

(4) **Idaho coordinate system:** That system of coordinates established and designated by chapter 17, title 55, Idaho Code;

(5) **Land survey:** Measuring the field location of corners that:

(a) Determine the boundary or boundaries common to two (2) or more ownerships;

(b) Retrace or establish land boundaries;

(c) Retrace or establish boundary lines of public roads, streets, alleys or trails; or

(d) Plat lands and subdivisions thereof.

(6) **Monument:** A physical structure or object that occupies the position of a corner;

(67) **Owner:** The proprietor of the land (having legal title);

(78) **Plat:** The drawing, map or plan of a subdivision, cemetery, town-site or other tract of land, or a replatting of such, including certifications, descriptions and approvals;

(89) **Private road:** A road within a subdivision plat that is not dedicated to the public and not a part of a public highway system;

(910) **Public highway agency:** The state transportation department, any city, county, highway district or other public agency with jurisdiction over public highway systems and public rights-of-way;

(101) **Public land survey corner:** Any point actually established and monumented in an original survey or resurvey that determines the boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the U.S. general land office and the U.S. department of interior, bureau of land management;

(112) **Public right-of-way:** Any land dedicated and open to the public and under the jurisdiction of a public highway agency, where the public highway agency has no obligation to construct or maintain said right-of-way for vehicular traffic;

(123) **Public street:** A road, thoroughfare, alley, highway or bridge under the jurisdiction of a public highway agency;

(134) **Reference monument point:** A special monumented point that does not occupy the same geographical position as the corner itself, but whose and where the spatial relationship to the corner is known and recorded and which that serves to witness locate the corner;

(145) **Sanitary restriction:** The requirement that no building or shelter which will require a water supply facility or a sewage disposal facility for people using the premises where such building or shelter is located shall be erected until written approval is first obtained from the state board of health and welfare by its administrator or his delegate approving plans and specifications either for public water and/or sewage facilities, or individual parcel water and/or sewage facilities;

(156) **Street:** A road, thoroughfare, alley, highway or a right-of-way which may be open for public use but is not part of a public highway system nor under the jurisdiction of a public highway agency;

(167) **Subdivision:** A tract of land divided into five (5) or more lots, parcels, or sites for the purpose of sale or building development, whether immediate or future; provided that this definition shall not include a bona

fide division or partition of agricultural land for agricultural purposes. A bona fide division or partition of agricultural land for agricultural purposes shall mean the division of land into lots, all of which are five (5) acres or larger, and maintained as agricultural lands. Cities or counties may adopt their own definition of subdivision in lieu of the above this definition;

(178) Witness corner: A monumented point usually on a lot line or boundary line of a survey, near a corner and established in situations where it is impracticable to occupy or monument the corner.

SECTION 7. That Section 50-1302, Idaho Code, be, and the same is hereby amended to read as follows:

50-1302. DUTY TO FILE. Every owner creating a subdivision, as defined above in section 50-1301, Idaho Code, shall cause ~~the same to be~~ a land surveyed and a plat ~~made thereof to be made~~ which shall particularly and accurately describe and set forth all the streets, easements, public grounds, blocks, lots, and other essential information, and shall record said plat. This section is not intended to prevent the filing of other survey maps or plats. Description of lots or parcels of land, according to the number and designation on such recorded plat, in conveyances or for the purposes of taxation, shall be deemed good and valid for all intents and purposes.

SECTION 8. That Section 50-1303, Idaho Code, be, and the same is hereby amended to read as follows:

50-1303. SURVEY -- ~~STAKES AND MONUMENTS~~ -- ACCURACY. The centerline intersections and points where the centerline changes direction on all streets, avenues, and public highways, and all points, witness corners and reference ~~monuments~~ points on the exterior boundary where the boundary line changes direction shall be marked with magnetically detectable monuments the minimum size of which shall be five-eighths (5/8) of an inch in least dimension and two (2) feet long iron or steel rod unless special circumstances preclude use of such monument and all lot and block corners, witness corners and reference ~~monuments~~ points for lot and block corners shall be marked with monuments conforming to the provisions of section 54-1227, Idaho Code. Monuments shall be ~~plainly and permanently marked so~~ such that measurements between them may be taken made to the marks within nearest one-tenth (1/10.1) of a foot. All lot corners of a burial lot within a platted cemetery need not be marked with a monument, but the block corners shall be monumented in order to permit the accurate identification of each burial lot within the cemetery. The monuments shall conform to the provisions of section 54-1227, Idaho Code. The locations and descriptions of all monuments within a platted cemetery shall be recorded upon the plat, and the courses and distances of all boundary lines shall be shown, but may be shown by legend. The survey for any plat shall be conducted in such a manner as to produce an unadjusted mathematical error of closure of each area bounded by property lines within the survey of not less more than one (1) part in five thousand (5,000).

SECTION 9. That Section 50-1332, Idaho Code, be, and the same is hereby amended to read as follows:

50-1332. SETTING INTERIOR MONUMENTS AFTER RECORDING OF PLAT -- BOND OR CASH DEPOSIT REQUIRED -- RELEASE OF BOND -- RETURN OF CASH DEPOSIT -- PAYMENT FOR SURVEY WORK -- COUNTY SURVEYOR PERFORMING SURVEY WORK. (1) If the interior monuments for a subdivision are to be set on or before a specified date after the recording of the plat of the subdivision, the person subdividing the land described in the plat shall furnish, prior to recording the plat, to the governing body of the city or county which approved the plat, either a

bond or cash deposit, at the option of the governing body, in an amount equal to one hundred twenty percent (120%) of the estimated cost of performing the work for the interior monumentation. The estimated cost of performing such work will be determined by the surveyor signing the plat.

(2) If the person subdividing the land described in subsection (1) of this section pays the surveyor for performing the interior monumentation work and notifies the governing body of such payment, the governing body, within two (2) months after such notice, shall release the bond or return the cash deposit upon a finding that such payment has been made. Upon written request from the person subdividing the land, the governing body may pay the surveyor from moneys within a cash deposit or bond held by it for such purpose and return the excess amount of the cash deposit, if any, to such person.

(3) In the event of the death, disability, or retirement from practice of the surveyor charged with the responsibility for setting interior monuments for a subdivision or upon the failure of such professional land surveyor to set such monuments, the governing body may direct the county surveyor in his official capacity or contract with a professional land surveyor in private practice to set such monuments and reference such monuments for recording as provided in section 50-1333, Idaho Code. Payment of the fees of a county surveyor or professional land surveyor in private practice performing such work shall be made as otherwise provided in this section.

(4) In the event any interior monument cannot be placed at the location shown on the plat, the professional land surveyor shall place a witness corner or reference monument point and he shall file a record of survey as provided in chapter 19, title 55, Idaho Code, to show the location of any witness corner or reference monument point in relation to the platted location of the corner.

SECTION 10. That Section 54-1202, Idaho Code, be, and the same is hereby amended to read as follows:

54-1202. DEFINITIONS. As used in this chapter, unless the context or subject matter requires otherwise:

(1) "Benchmark" means a material object, natural or artificial, whose elevation is referenced to an adopted datum.

(2) "Board" means the Idaho board of licensure of professional engineers and professional land surveyors, hereinafter provided by this chapter.

(23) "Business entity" means a corporation, professional corporation, limited liability company, professional limited liability company, general partnership, limited partnership, limited liability partnership, professional limited liability partnership or any other form of business except a sole proprietorship.

(34) "Consulting engineer" means a professional engineer whose principal occupation is the independent practice of professional engineering; whose livelihood is obtained by offering engineering services to the public; who is devoid of public, commercial and product affiliation that might tend to infer a conflict of interest; and who is cognizant of his public and legal responsibilities, and is capable of discharging them.

(45) "Engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences, and the principles and methods of engineering analysis and design, acquired by professional education and engineering experience.

(56) "Engineer intern" means a person who has qualified for, taken and passed an examination in the fundamentals of engineering subjects as provided in this chapter.

(7) "Land survey" means measuring the field location of corners that:

(a) Determine the boundary or boundaries common to two (2) or more ownerships;

(b) Retrace or establish land boundaries;

(c) Retrace or establish boundary lines of public roads, streets, alleys or trails; or

(d) Plat lands and subdivisions thereof.

(68) "Land surveyor intern" means a person who has qualified for, taken and passed an examination in the fundamentals of surveying subjects as provided in this chapter.

(79) "Professional engineer" means a person who has been duly licensed as a professional engineer by the board under this chapter.

(810) "Professional engineering" and "practice of professional engineering" mean any service or creative work offered to or performed for the public for any project physically located in this state, such as consultation, investigation, evaluation, planning, designing, teaching upper division engineering design subjects, and responsible charge of observation of construction in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects, wherein the public welfare or the safeguarding of life, health, or property is concerned or involved, when such service requires the application of engineering principles and data. A person shall be construed to practice or offer to practice professional engineering within the meaning and intent of this chapter who practices or offers to practice any of the branches of the profession of engineering for the public for any project physically located in this state or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is licensed under this chapter, or holds himself out as able to perform or who does perform for the public for any project physically located in this state, any engineering service or work or any other service designated by the practitioner which is the practice of professional engineering.

(911) "Professional land surveying" and "practice of professional land surveying" mean responsible charge of land surveying of land to determine the correct boundary description, ~~to convey~~, to establish or reestablish land boundaries, or to plat lands and subdivisions thereof. Any person shall be construed to practice or offer to practice professional land surveying who engages in professional land surveying, or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional land surveyor, or who represents himself as able to perform or who does perform any professional land surveying service or work or any other service designated by the practitioner which is professional land surveying.

(102) "Professional land surveyor" means a person who is qualified by reason of his knowledge of the principles of land surveying acquired by education and practical experience to engage in the practice of professional land surveying and who has been duly licensed as a professional land surveyor by the board under this chapter.

(113) "Public" means any person, firm, corporation, partnership, company, government agency, institution or any other entity recognized by law.

(124) "Responsible charge" means the control and direction of engineering work, or the control and direction of land surveying work, requiring initiative, professional skill, independent judgment and professional knowledge of the content of relevant documents during their preparation. Except as allowed under section 54-1223, Idaho Code, reviewing, or reviewing and correcting, documents after they have been prepared by others does not constitute the exercise of responsible charge.

(135) "Rules of professional responsibility" means those rules, if any, promulgated by the board, as authorized by the Idaho Code.

(146) "Signature" means either: an original handwritten message identification containing the name of the person who applied it; or a digital

signature which is an electronic authentication process attached to or logically associated with an electronic document. The digital signature must be unique to the person using it; must be capable of verification; must be under the sole control of the person using it; and must be linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

(157) "Standard design plan" means a building, structure, equipment or facility which is intended to be constructed or sited at multiple locations and for which some or all of the plans must be prepared by a professional engineer.

SECTION 11. That Section 54-1227, Idaho Code, be, and the same is hereby amended to read as follows:

54-1227. SURVEYS -- AUTHORITY AND DUTIES OF PROFESSIONAL LAND SURVEYORS AND PROFESSIONAL ENGINEERS. Every licensed professional land surveyor is hereby authorized to make land surveys ~~relating to the sale or subdivision of lands, the retracing or establishing of property or boundary lines, public roads, streets, alleys, or trails;~~ and it shall be the duty of each licensed professional land surveyor, whenever making any such land survey that is not preliminary in nature, to set permanent and reliable magnetically detectable monuments at all unmonumented corners field located, the minimum size of which shall be one-half (1/2) inch in least dimension and two (2) feet long iron or steel rod unless special circumstances preclude use of such monument; and such monuments must be permanently marked with the license number of the professional land surveyor responsible for placing the monument. Professional engineers qualified and duly licensed pursuant to this chapter may also perform those nonboundary surveys necessary and incidental to the work customarily performed by them.

SECTION 12. That Section 54-1234, Idaho Code, be, and the same is hereby amended to read as follows:

54-1234. MONUMENTATION -- PENALTY AND LIABILITY FOR DEFACING. If any person shall willfully deface, injure or remove any signal, monument or other object set as a permanent boundary survey marker, benchmark or point set in control surveys by agencies of the United States government or the state of Idaho by a professional land surveyor or an agent of the United States government or the state of Idaho, he shall forfeit a sum not exceeding one thousand five hundred dollars (\$1,500) for each offense, and shall be liable for damages sustained by the affected parties in consequence of such defacing, injury or removal, to be recovered in a civil action in any court of competent jurisdiction.

SECTION 13. That Section 55-1603, Idaho Code, be, and the same is hereby amended to read as follows:

55-1603. DEFINITIONS. Except where the context indicates a different meaning, terms used in this chapter shall be defined as follows:

(1) "Accessory to a corner" means any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference ~~monuments~~ points, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(2) "Benchmark" means a material object, natural or artificial, whose elevation is referenced to an adopted datum.

(3) "Board" means the board of licensure of professional engineers and professional land surveyors.

(4) "Control survey" means a survey that provides horizontal or vertical position data for the support or control of subordinate surveys or for mapping.

(35) "Corner," unless otherwise defined, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these.

(46) "Establish" means to determine the position of a corner either physically or mathematically.

(57) "Monument" means a physical structure that occupies the exact position of a corner.

(68) "Professional land surveyor" means any person who is authorized by the laws of this state to practice land surveying.

(79) "Property controlling corner" for a property means a public land survey corner, ~~or any property corner, which does not lie on a property line of the property in question, but which~~ reference point or witness corner that controls the location of one (1) or more of the property corners of the property in question.

(810) "Property corner" means a geographic point on the surface of the earth, and is on, a part of, and controls a property line.

(911) "Public land survey corner" means any point actually established and monumented in an original survey or resurvey that determines the boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the U.S. general land office and the U.S. department of interior, bureau of land management.

(102) "~~Reference monument point~~" means a special monumented point that does not occupy the same geographical position as the corner itself, ~~but whose and where the spatial relationship to the corner is recorded, and which serves to witness locate the corner.~~

(13) "Witness corner" means a monumented point on a lot line or boundary line of a survey, near a corner, and established in situations where it is impracticable to occupy or monument the corner.

SECTION 14. That Section 55-1605, Idaho Code, be, and the same is hereby amended to read as follows:

55-1605. FILING OR RECORDING. A professional land surveyor may file or record any corner record as to any ~~property corner,~~ property controlling corner, ~~reference monument~~ or accessory to a corner.

SECTION 15. That Section 55-1608, Idaho Code, be, and the same is hereby amended to read as follows:

55-1608. PROFESSIONAL LAND SURVEYOR TO RECONSTRUCT MONUMENTS. (1) In every case where a corner record of a survey corner is required to be filed or recorded under the provisions of this chapter, the professional land surveyor must reconstruct or rehabilitate the monument of such corner, and accessories to such corner.

(2) Any monument set shall conform to the provisions of section 54-1227, Idaho Code, and shall be surmounted with a cap of such material and size that can be permanently and legibly marked as prescribed by the manual of surveying instructions issued by the United States department of the interior, bureau of land management, including the license number of the professional land surveyor responsible for placing the monument. Monuments shall be marked such that measurements between them may be made to the nearest one-tenth (0.1) foot. If the monument is set by a public officer, it shall be marked by an appropriate official designation.

(3) When nonmetallic corner monuments were set in a survey conducted by an agency of the United States government, the corner location shall

be remonumented with a monument conforming to the provisions of section 54-1227, Idaho Code, and shall be surmounted with a cap of such material and size that can be permanently and legibly marked as prescribed by the manual of surveying instructions issued by the United States department of the interior, bureau of land management, including the license number of the professional land surveyor responsible for placing the monument. Monuments shall be marked such that measurements between them may be made to the nearest one-tenth (0.1) foot.

SECTION 16. That Section 55-1613, Idaho Code, be, and the same is hereby amended to read as follows:

55-1613. MONUMENTS DISTURBED BY CONSTRUCTION ACTIVITIES -- PROCEDURE -- REQUIREMENTS. ~~When professional engineers prepare construction documents for projects which may disturb land survey monuments, a field search shall be conducted by, or under the direction of, a professional land surveyor to determine whether monuments, reference monuments or accessories to corners physically exist at the location of, or referencing the location of, public land survey corners, property controlling corners or property corners. Such monuments, reference monuments or accessories to corners shall be located and referenced by or under the direction of a professional land surveyor prior to the time when construction or other activities may disturb them. Such monuments, reference monuments or accessories to corners shall be reestablished and remonumented by, or under the direction of, a professional land surveyor at the expense of the agency or person causing such loss or disturbance. Professional engineers who prepare construction documents which do not indicate the existence of corners, monuments, reference monuments and accessories to corners shall be deemed to be within the purview of section 54-1220, Idaho Code, and shall be subject to disciplinary action as provided in said section. Any person shall be subject to the penalties prescribed in section 54-1234, Idaho Code, if they prepare construction documents for the construction of any facility which do not indicate the existence of monuments, reference monuments and accessories to corners and construction of that facility results in the defacing, injury or removal of monuments, reference monuments or accessories to corners~~ The physical existence and location of the monuments of property controlling corners and accessories to corners, as well as benchmarks established and points set in control surveys by agencies of the United States government or the state of Idaho, shall be determined by a field search and location survey conducted by or under the direction of a professional land surveyor prior to the time when project construction or related activities may disturb them. Construction documents or plans prepared by professional engineers shall show the existence and location of all such monuments, accessories to corners, benchmarks and points set in control surveys. All monuments, accessories to corners, benchmarks and points set in control surveys that are lost or disturbed by construction shall be reestablished and remonumented, at the expense of the agency or person causing their loss or disturbance, at their original location or by the setting of a witness corner or reference point or a replacement benchmark or control point, by or under the direction of a professional land surveyor. Professional engineers who prepare construction documents or plans that do not indicate the existence and location of all such monuments, accessories to corners and benchmarks and points set in control surveys by agencies of the United States government or the state of Idaho shall be deemed to be within the purview of and subject to disciplinary action as provided in section 54-1220, Idaho Code.

SECTION 17. That Section 55-1902, Idaho Code, be, and the same is hereby amended to read as follows:

55-1902. DEFINITIONS. As used in this chapter:

(1) "Basis of bearing" means the bearing in degrees, minutes and seconds, or equivalent, of a line between two (2) monuments or corners which serves as the reference bearing for all other lines on the survey.

(2) "Corner" unless otherwise defined, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these.

(3) "GPS" is the abbreviation for global positioning system which is satellite surveying based on observations of the electromagnetic signals broadcast from the U.S. department of defense's NAVSTAR GPS system.

(4) "Idaho coordinate system" shall mean that system of plane coordinates as established and designated by chapter 17, title 55, Idaho Code.

(5) "Land survey" means measuring the field location of corners that:

(a) Determine the boundary or boundaries common to two (2) or more ownerships;

(b) Retrace or establish land boundaries;

(c) Retrace or establish boundary lines of public roads, streets, alleys or trails; or

(d) Plat lands and subdivisions thereof.

(6) "Monument" is a physical structure or object that occupies the exact position of a corner.

(67) "Property controlling corner" for a property is a public land survey corner, ~~or any property corner, which does not lie on a property line of the property in question, but which reference point or witness corner that~~ controls the location of one (1) or more of the property corners of the property in question.

(78) "Property corner" is a geographic point on the surface of the earth, and is on, a part of, and controls a property.

(89) "Public land survey corner" is any point actually established and monumented in an original survey or resurvey that determines the boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the U.S. general land office and the U.S. department of interior, bureau of land management.

~~(9) "Survey" shall mean the locating and monumenting of points of lines which define the exterior boundary or boundaries common to two (2) or more ownerships, except those boundaries defining ownership in established and ongoing mineral extraction operations; or which reestablish or restore public land survey corners in accordance with established principles of land surveying by or under the supervision of a surveyor.~~

(10) "Reference point" means a special monumented point that does not occupy the same geographical position as the corner itself, and where the spatial relationship to the corner is known and recorded, and that serves to locate the corner.

(101) "Surveyor" shall mean every person authorized by the state of Idaho to practice the profession of land surveying.

SECTION 18. That Section 55-1904, Idaho Code, be, and the same is hereby amended to read as follows:

55-1904. RECORDS OF SURVEY -- WHEN FILING REQUIRED. After making a land survey in conformity with established principles of land surveying, a surveyor shall file a record of survey with the county recorder in the county or counties wherein the lands surveyed are situated. A record of survey shall be filed within ninety (90) days after completing any survey which:

(1) Discloses a material discrepancy with previous surveys of record;

(2) Establishes boundary lines and/or corners not previously existing or of record;

(3) Results in the setting of monuments at corners of record which were not previously monumented; ~~or~~

(4) Produces evidence or information which varies from, or is not contained in, surveys of record relating to the public land survey, lost public land corners or obliterated land survey corners; or

(5) Results in the setting of monuments that conform to the requirements of section 54-1227, Idaho Code, at the corners of an easement or lease area.

SECTION 19. That Section 55-1908, Idaho Code, be, and the same is hereby amended to read as follows:

55-1908. WHEN RECORD OF SURVEY NOT REQUIRED. A record of survey is not required of any survey when:

(1) It is of a preliminary nature~~;~~

(2) A map is in preparation for recording or has been recorded under any other section of the Idaho Code, or pursuant to the laws of the United States~~;~~

(3) A survey is performed for a mineral claim location, amendment or relocation; or

(4) None of the conditions contained in section 55-1904, Idaho Code, exist and the principal purpose of the survey is to depict information other than the points of lines that define boundaries including, but not limited to, topographic surveys and construction surveys, staking and layout.

SECTION 20. That Section 55-1911, Idaho Code, be, and the same is hereby amended to read as follows:

55-1911. ERROR OF CLOSURE. Any survey of land involving property boundaries~~;~~ including, but not limited to, public land survey lines, shall be conducted in such a manner as to produce an unadjusted mathematical error of closure of each area bounded by property lines within the survey of not less more than one (1) part in five thousand (5,000).

Approved March 25, 2011.

CHAPTER 137  
(H.B. No. 174)

AN ACT

RELATING TO THE ABANDONMENT OF INTERESTS IN AND PROCEEDS FROM BUSINESS ASSOCIATIONS; AMENDING SECTION 14-510, IDAHO CODE, TO REVISE WHEN ABANDONMENT OCCURS AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 14-510, Idaho Code, be, and the same is hereby amended to read as follows:

14-510. STOCK AND OTHER INTANGIBLE INTERESTS IN BUSINESS ASSOCIATIONS. (1) Except as provided in subsections ~~(2) and (5)~~ (4) of this section, any stock, shareholding or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed considered abandoned if:

(a) and, with respect to the interest, in the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for five (5) years and the owner, owned by a person who within five (5) years, has not

~~communicated in writing with the association regarding the interest or failed to:~~

~~(i) Claim a dividend, distribution, or other sum payable as a result of the interest; or~~

~~(ii) Communicate with the association regarding the interest or a dividend, distribution or other sum payable as the result of the interest, as evidenced by memorandum or other record on file with the association prepared by an employee of the association; and~~

~~(b) The association does not know the location of the owner at the end of the five (5) year period. The return of official shareholder notifications or communications by the postal service as undeliverable is evidence that the association does not know the location of the owner.~~

~~(2) At the expiration of a five (5) year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least five (5) dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If five (5) dividends, distributions, or other sums are paid during the five (5) year period, the period leading to a presumption of abandonment commences on the date payment of the first such unclaimed dividend, distribution, or other sum became due and payable. If five (5) dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been five (5) dividends, distributions, or other sums that have not been claimed by the owner.~~

~~(3) The running of the five (5) year period of abandonment ceases immediately upon the occurrence of a communication referred to in subsection (1) of this section. If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.~~

~~(2) This chapter applies to:~~

~~(a) The underlying stock, shareholdings or other intangible ownership interests of an owner;~~

~~(b) Any stock, shareholdings or other intangible ownership interest of an owner when the business association is in possession of the certificate or other evidence of ownership; and~~

~~(c) The stock, shareholdings or other intangible ownership interests of dividend and nondividend paying business association, whether or not the interest is represented by a certificate.~~

~~(3) At the time an interest is presumed considered abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed considered abandoned.~~

~~(54) (a) This chapter does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless:~~

~~(i) The records available to the administrator of the plan show that the owner has not within five (5) years communicated in any manner described in subsection (1) of this section. The holder shall maintain the record of such communications; or~~

~~(ii) Five (5) years have elapsed since the location of the owner became unknown to the association, as evidenced by the return of official shareholder notifications or communications by the postal service as undeliverable, and the owner has not within those five (5) years communicated in any manner described in this chapter.~~

~~(b) The five (5) year period from the return of official notifications or communications begins at the earlier of the return of the second of~~

those notifications or communications or the time the holder discontinues mailings to the shareholder.

Approved March 25, 2011.

CHAPTER 138  
(H.B. No. 237)

AN ACT

APPROPRIATING MONEYS TO THE INDUSTRIAL COMMISSION FOR FISCAL YEAR 2012; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND PROVIDING LEGISLATIVE INTENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Industrial Commission, the following amounts to be expended according to the designated programs and expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
<b>I. COMPENSATION:</b>					
FROM:					
Industrial Administration					
Fund	\$2,729,200	\$1,243,400	\$95,900	\$1,103,100	\$5,171,600
Peace Officer and Detention Officer Temporary Disability					
Fund	3,900	3,800		160,000	167,700
Miscellaneous Revenue					
Fund		35,500			35,500
Federal Grant					
Fund	<u>3,700</u>	<u>1,400</u>	<u>0</u>	<u>0</u>	<u>5,100</u>
TOTAL	\$2,736,800	\$1,284,100	\$95,900	\$1,263,100	\$5,379,900
<b>II. REHABILITATION:</b>					
FROM:					
Industrial Administration					
Fund	\$2,767,500	\$734,200	\$31,700		\$3,533,400
<b>III. CRIME VICTIMS COMPENSATION:</b>					
FROM:					
Crime Victims Compensation					
Fund	\$657,900	\$262,400	\$1,600	\$3,717,900	\$4,639,800
Federal Grant					
Fund	<u>0</u>	<u>0</u>	<u>0</u>	<u>1,258,700</u>	<u>1,258,700</u>
TOTAL	\$657,900	\$262,400	\$1,600	\$4,976,600	\$5,898,500

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
IV. ADJUDICATION:					
FROM:					
Industrial Administration					
Fund	\$1,549,500	\$562,800	\$12,100		\$2,124,400
GRAND TOTAL	\$7,711,700	\$2,843,500	\$141,300	\$6,239,700	\$16,936,200

SECTION 2. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Industrial Commission is authorized no more than one hundred thirty-eight (138) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the Legislature, consistent with Executive Order No. 2007-21, Establishing a Policy to Reduce Fossil Fuel Use and Greenhouse Gas Emissions from State Vehicles, that the Idaho Industrial Commission shall consider fuel efficiency in identifying new vehicles for replacement of the outgoing fleet.

Approved March 25, 2011.

CHAPTER 139  
(H.B. No. 238)

AN ACT

APPROPRIATING MONEYS TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM FOR FISCAL YEAR 2012; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND CLARIFYING THE APPROPRIATION FOR THE PORTFOLIO INVESTMENT PROGRAM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Public Employee Retirement System, the following amounts to be expended according to the designated programs and expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. RETIREMENT ADMINISTRATION:				
FROM:				
PERSI Administrative				
Fund	\$3,240,600	\$9,033,100	\$90,800	\$12,364,500
II. PORTFOLIO INVESTMENT:				
FROM:				
PERSI Special				
Fund	\$643,500	\$220,000	\$11,500	\$875,000
GRAND TOTAL	\$3,884,100	\$9,253,100	\$102,300	\$13,239,500

SECTION 2. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Public Employee Retirement System is authorized no more than sixty-three (63) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. LEGISLATIVE INTENT. Notwithstanding Section 59-1311(4)(d), Idaho Code, moneys appropriated in Section 1 of this act for the Portfolio Investment Program are for administrative costs of the Portfolio Investment Program as provided in Section 59-1311(3), Idaho Code. Amounts necessary to pay all other investment expenses related to the Portfolio Investment Program are perpetually appropriated to the Public Employee Retirement System Board as provided in Section 59-1311(4)(a), (b) and (c), Idaho Code.

Approved March 25, 2011.

CHAPTER 140  
(S.B. No. 1141)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE ATTORNEY GENERAL FOR FISCAL YEAR 2011; APPROPRIATING MONEYS TO THE ATTORNEY GENERAL FOR FISCAL YEAR 2012; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; EXEMPTING APPROPRIATION OBJECT AND PROGRAM TRANSFER LIMITATIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 2, Chapter 227, Laws of 2010, and any other appropriation provided for by law, there is hereby appropriated to the Attorney General \$33,100 from the Consumer Protection Fund to be expended for the period July 1, 2010, through June 30, 2011.

SECTION 2. There is hereby appropriated to the Attorney General, the following amounts to be expended according to the designated programs and expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. STATE LEGAL SERVICES:				
FROM:				
General				
Fund	\$14,242,700	\$697,200	\$1,400	\$14,941,300
American Reinvestment				
Fund		333,000		333,000
Consumer Protection				
Fund	300,100	153,000		453,100
Professional Services				
Fund	500,000	20,000		520,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
Federal Grant				
Fund	<u>670,400</u>	<u>346,600</u>	<u>4,100</u>	<u>1,021,100</u>
TOTAL	\$15,713,200	\$1,549,800	\$5,500	\$17,268,500

## II. SPECIAL LITIGATION:

FROM:

General

Fund		\$669,400		\$669,400
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GRAND TOTAL	\$15,713,200	\$2,219,200	\$5,500	\$17,937,900
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SECTION 3. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Attorney General is authorized no more than two hundred seven and fifteen hundredths (207.15) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 4. EXEMPTIONS FROM OBJECT AND PROGRAM TRANSFER LIMITATIONS. For fiscal year 2012, the Attorney General is hereby exempted from the provisions of Section 67-3511(1), (2) and (3), Idaho Code, allowing unlimited transfers between object codes and between programs, for all moneys appropriated to it for the period July 1, 2011, through June 30, 2012. Legislative appropriations shall not be transferred from one fund to another fund unless expressly approved by the Legislature.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval.

Approved March 29, 2011.

CHAPTER 141  
(S.B. No. 1041)

## AN ACT

RELATING TO THE IDAHO STATE LOTTERY; REPEALING SECTION 67-7430, IDAHO CODE, RELATING TO A TEMPORARY LINE OF CREDIT FOR START-UP COSTS; AMENDING SECTION 67-7431, IDAHO CODE, TO REMOVE REFERENCE TO A CODE SECTION; AMENDING SECTION 67-7432, IDAHO CODE, TO REMOVE REFERENCE TO A CODE SECTION; AMENDING SECTION 67-7433, IDAHO CODE, TO REMOVE PROVISIONS RELATING TO LOW-TIER CLAIMS; AND AMENDING SECTION 67-7436, IDAHO CODE, TO REMOVE THE REQUIREMENT THAT ALL DRAWINGS OF THE STATE LOTTERY BE WITNESSED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-7430, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Section 67-7431, Idaho Code, be, and the same is hereby amended to read as follows:

67-7431. CASH RECEIPTS. The following moneys shall be deposited in the state lottery account, as established under section 67-7428, Idaho Code:

- (1) All moneys received from the sale of lottery tickets or shares; and
- (2) ~~Funds drawn against the temporary line of credit, as established under section 67-7430, Idaho Code; and~~
- (3) Any other moneys received by the lottery from whatever source.

SECTION 3. That Section 67-7432, Idaho Code, be, and the same is hereby amended to read as follows:

67-7432. CASH DISBURSEMENTS. The director is authorized to make the following disbursements from the state lottery account:

- (1) Payment of prizes directly to the holder of valid winning tickets or shares;
- (2) Purchase of annuities or investments to be utilized to pay future installments of winning tickets or shares;
- (3) Refunds, if any, due to lottery retailers or players;
- (4) Expenses of the lottery;
- (5) Payments to an Indian tribe pursuant to a state-tribal gaming compact negotiated pursuant to section 67-429A, Idaho Code;
- (6) ~~The payment of the lottery's obligations, including the funds advanced under the temporary line of credit, as provided for under section 67-7430, Idaho Code, and the purchase of property, buildings and equipment; and~~
- (7) The payment of dividends, as provided for under section 67-7434, Idaho Code.

SECTION 4. That Section 67-7433, Idaho Code, be, and the same is hereby amended to read as follows:

67-7433. PRIZE EXPENSE. Total prize expense, net of unclaimed prizes, as determined on an annual basis, shall be no less than forty-five percent (45%) of lottery revenues. ~~In addition, low-tier claims, if any, that are to be paid by the selling lottery game retailer and are not claimed, shall be construed to be a prize expense and shall inure to the benefit of the selling lottery retailer.~~

SECTION 5. That Section 67-7436, Idaho Code, be, and the same is hereby amended to read as follows:

67-7436. AUDITS. A certified public accounting firm appointed by the commission shall conduct audits of all accounts and transactions of the state lottery. The director and his agents conducting an audit under this chapter shall have access and authority to examine any and all lottery-related records of lottery vendors and retailers. Such records shall be subject to disclosure according to chapter 3, title 9, Idaho Code. ~~An independent certified public accountant, retained by the state lottery, shall witness all drawings of the state lottery.~~

Approved March 29, 2011.

CHAPTER 142  
(S.B. No. 1076)

AN ACT

RELATING TO THE COMMISSION ON AGING; AMENDING SECTION 67-5006, IDAHO CODE,  
TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5006, Idaho Code, be, and the same is hereby amended to read as follows:

67-5006. DEFINITIONS. For the purposes of this act chapter, the following terms are defined as follows:

(1) "Transportation" -- services designed to transport older persons to and from community facilities and resources for the purpose of applying for and receiving services, reducing isolation, or otherwise promoting independent living, but not including a direct subsidy for an overall transit system or a general reduced fare program for a public or private transit system.

(2) "In-home services" -- provide care for older persons in their own homes and help them maintain, strengthen, and safeguard their personal functioning in their own homes. These services shall include, but not be limited to case management, homemakers, chores, telephone reassurance, home delivered meals, friendly visiting and shopping assistance, and in-home respite care.

(3) "Congregate meals" -- meals prepared and served in a congregate setting which provide older persons with assistance in maintaining a well-balanced diet, including diet counseling and nutrition education.

(4) "Older persons" -- individuals sixty (60) years of age or older.

(5) "Adult day care" -- a structured day program which provides individually planned care, supervision, social interaction and supportive services for frail older persons in a protective setting, and provides relief and support for ~~care-givers~~ caregivers.

(6) "Information and assistance service" means a service for older individuals that:

(a) Provides the individuals with current information on opportunities and services available to the individuals within their communities, including information relating to assistive technology;

(b) Assesses the problems and capacities of the individuals;

(c) Links the individuals to the opportunities and services that are available;

(d) To the maximum extent practicable, ensures that the individuals receive the services needed by the individuals, and are aware of the opportunities available to the individuals, by establishing adequate follow-up procedures; and

(e) Serves the entire community of older individuals, particularly:

(i) Older individuals with the greatest social need;

(ii) Older individuals with the greatest economic need; and

(iii) Older individuals at risk for institutional placement.

(7) "Information and referral" means and includes information relating to assistive technology.

(8) "Aging and disability resource center" means an entity established by a state as part of the state system of long-term care, to provide a coordinated system for providing:

(a) Comprehensive information on the full range of available public and private long-term care programs, options, service providers and re-

sources within a community, including information on the availability of integrated long-term care;

(b) Personal counseling to assist individuals in assessing their existing or anticipated long-term care needs, and developing and implementing a plan for long-term care designed to meet their specific needs and circumstances; and

(c) Consumers' access to the range of publicly supported long-term care programs for which consumers may be eligible, by serving as a convenient point of entry for such programs.

(9) "Case management service":

(a) Means a service provided to an older individual at the direction of the older individual or a family member of the individual:

(i) By an individual who is trained or experienced in the case management skills that are required to deliver the services and coordination described in paragraph (b) of this subsection; and

(ii) To assess the needs and to arrange, coordinate and monitor an optimum package of services to meet the needs of the older individual; and

(b) Includes services and coordination such as:

(i) Comprehensive assessment of the older individual, including the physical, psychological and social needs of the individual;

(ii) Development and implementation of a service plan with the older individual to mobilize the formal and informal resources and services identified in the assessment to meet the needs of the older individual, including coordination of the resources and services:

1. With any other plans that exist for various formal services such as hospital discharge plans; and

2. With the information and assistance services provided herein;

(iii) Coordination and monitoring of formal and informal service delivery, including coordination and monitoring to ensure that services specified in the plan are being provided;

(iv) Periodic reassessment and revision of the status of the older individual with:

1. The older individual; or

2. If necessary, a primary caregiver or family member of the older individual; and

(v) In accordance with the wishes of the older individual, advocacy on behalf of the older individual for needed services or resources.

Approved March 29, 2011.

#### CHAPTER 143

(S.B. No. 1089, As Amended)

#### AN ACT

RELATING TO VEHICLE TITLES; AMENDING SECTION 49-524, IDAHO CODE, TO PROVIDE REQUIREMENTS TO ALLOW A SALVAGE POOL TO ISSUE A SALVAGE CERTIFICATE WITH AGREEMENT FROM THE INSURER TO A PURCHASER WITHOUT HAVING FIRST OBTAINED A PROPERLY RELEASED CERTIFICATE OF ORIGIN OR CERTIFICATE OF TITLE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-524, Idaho Code, be, and the same is hereby amended to read as follows:

49-524. SALVAGE CERTIFICATE OF OWNERSHIP OR ELECTRONIC FILE TO REPLACE CERTIFICATE OF TITLE OR CERTIFICATE OF ORIGIN ON VEHICLES. (1) Every person acquiring a vehicle which has been determined to be a salvage vehicle, shall obtain a salvage certificate of ownership on that vehicle.

(2) The salvage certificate shall replace the certificate of origin, certificate of title or other comparable ownership document and shall indicate ownership only; it shall not be valid for registration purposes.

(3) A salvage certificate of ownership shall be issued by the department or under the direction of the department and shall be on a form or electronic file as prescribed by the department. The form or electronic file shall provide for assignments of the salvage certificate.

(4) The fee for a salvage certificate or electronic filing of a salvage certificate shall be fifteen dollars (\$15.00). The fee shall be deposited in the state highway account.

(5) Every insurer making payment for a vehicle which has been determined to be a salvage vehicle, shall within thirty (30) days from receipt of the properly released certificate of origin or certificate of title, issue a salvage certificate to the purchaser and surrender to the department the ownership documents, a copy of the salvage certificate, the salvage certificate fee and other documents as required by the department for processing. The department shall mark its records appropriately.

(6) If a salvage pool receives a certificate of title for a vehicle which has been determined to be a salvage vehicle, he shall within thirty (30) days and upon receipt of the properly released certificate of origin or certificate of title, issue a salvage certificate to the purchaser and surrender to the department the ownership documents, a copy of the salvage certificate, the salvage certificate fee and other documents as required by the department for processing. The department shall mark its records appropriately.

(7) If an insurer has made payment for a salvage vehicle, or a salvage pool, is unable to obtain a properly released certificate of origin or certificate of title for the salvage vehicle within thirty (30) days after the acceptance by the owner of an amount in settlement of a total loss, then the salvage pool may issue a salvage certificate with agreement from the insurer to the purchaser without having first obtained the properly released certificate of origin or certificate of title. Within ten (10) days of the issuance of a salvage certificate to the purchaser, the insurer or the salvage pool shall submit to the department the following: a sworn statement that it made at least two (2) written attempts to obtain from the owner the properly released manufacturer's certificate of origin, manufacturer's statement of origin or certificate of title, by sending notice to the owner at the owner's address of record with the department; a copy of each such written attempt; proper evidence of the satisfaction or discharge of any lien or encumbrance properly noted upon the certificate of title or upon the electronic records of the department; a copy of the salvage certificate; the salvage certificate fee; indemnifying affidavit; and other documents as required by the department for processing. The department shall mark its records appropriately.

(8) It is a misdemeanor, punishable by up to six (6) months in jail, a fine of one thousand dollars (\$1,000) or both, if the owner of a retained salvage vehicle fails to surrender the title and be issued a salvage certificate, or to sell the vehicle and not tell the buyer that the vehicle is totaled.

(89) If an insurer has allowed the owner to retain ownership of the salvage vehicle, the owner must surrender the certificate of title for such vehicle to the department or the insurance company not later than thirty (30) days from the date that the claim was satisfied. The insurer must notify the department of a total loss payoff. The insurer or department shall issue a

salvage certificate to the owner prior to any sale or disposition of the salvage vehicle.

(910) If an insurer acquires the certificate of title of a vehicle in a settlement of a theft claim, the insurer shall immediately, upon receipt of the properly released certificate of origin or certificate of title, issue a salvage certificate in the name of the insurer and surrender to the department the ownership documents, a copy of the salvage certificate, the salvage certificate fee and other documents as required by the department for processing.

(101) If an insurer has acquired a vehicle in a settlement of a theft claim, has made application to and has been issued a new salvage certificate in the name of the insurer and the vehicle is subsequently recovered and is not a salvage vehicle, the insurer may complete an affidavit indemnifying the department stating the facts of acquisition and disposition of the vehicle in a form prescribed by the department and deliver the salvage certificate of ownership, affidavit and any other documents required by the department to the transferee at the time of delivery of the vehicle. A notation of "theft recovery" shall be made on the title record.

(112) Any person acquiring ownership of a salvage vehicle purchased in a state or jurisdiction which does not require surrender of the certificate of title or comparable ownership document shall, within thirty (30) days following delivery of the certificate of title or ownership document, surrender such title or document to the department and apply for a salvage certificate.

(123) An owner of a salvage vehicle who sells or transfers said vehicle shall provide a properly executed assignment of the salvage certificate of ownership to the transferee.

(134) A purchaser of a salvage vehicle shall not possess or retain a salvage vehicle without a salvage certificate. The salvage vehicle purchaser shall display the salvage certificate upon the request of any peace officer or agent of the department.

Approved March 29, 2011.

CHAPTER 144  
(S.B. No. 1102)

AN ACT

RELATING TO THE WHOLESALE DRUG DISTRIBUTION ACT; AMENDING SECTION 54-1752, IDAHO CODE, TO DEFINE TERMS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-1752, Idaho Code, be, and the same is hereby amended to read as follows:

54-1752. DEFINITIONS. As used in sections 54-1751 through 54-1759, Idaho Code:

(1) "Authentication" means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.

(2) "Authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in section 1504 of the Internal Revenue Code, complies with the following:

(a) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and

(b) The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.

(3) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of such drugs to a group of chain pharmacies that have the same common ownership and control.

(4) "Colicensed partner or product" means an instance where two (2) or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with the federal food and drug administration's implementation of the prescription drug marketing act.

(5) "Drop shipment" means the sale of a prescription drug to a wholesale distributor or chain pharmacy warehouse by the manufacturer of the prescription drug, or that manufacturer's colicensed product partner, that manufacturer's third party logistics provider or that manufacturer's exclusive distributor, whereby the wholesale distributor or chain pharmacy warehouse takes title but not physical possession of such prescription drug and the wholesale distributor invoices the pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or administer such drug to a patient, and the pharmacy or chain pharmacy warehouse or other authorized person receives delivery of the prescription drug directly from the manufacturer, or that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor.

(6) "Facility" means a facility of a wholesale distributor where prescription drugs are stored, handled, repackaged or offered for sale.

(7) "Manufacturer" means a person licensed or approved by the federal food and drug administration to engage in the manufacture of drugs or devices, consistent with the federal food and drug administration definition of "manufacturer" under its regulations and guidance implementing the prescription drug marketing act.

(8) "Manufacturer's exclusive distributor" means anyone who contracts with a manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug. Such manufacturer's exclusive distributor must be licensed as a wholesale distributor under section 54-1753, Idaho Code, and to be considered part of the normal distribution channel, must also be an authorized distributor of record.

(9) "Normal distribution channel" means a chain of custody for a prescription drug that goes from a manufacturer of the prescription drug, from that manufacturer to that manufacturer's colicensed partner, from that manufacturer to that manufacturer's third party logistics provider, from that manufacturer to that manufacturer's exclusive distributor, or from that manufacturer directly or through its colicensed partner, third party logistics provider or manufacturer's exclusive distributor to a repackager who is an authorized distributor of record for the manufacturer, whose facility is registered with the United States food and drug administration and who engages in the practice of repackaging the original dosage form of a prescription drug in accordance with applicable regulations and guidelines of the United States food and drug administration, either directly or by drop shipment, to:

(a) A pharmacy to a patient;

(b) Other designated persons authorized by law to dispense or administer such drug to a patient;

(c) A wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient;

(d) A wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or

(e) A chain pharmacy warehouse to the chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient.

(10) "Pedigree" means a document or electronic file containing information that records each wholesale distribution of any given prescription drug.

(11) "Prescription drug" means any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices, required by federal law or federal regulation to be dispensed only by a prescription, including finished dosage forms and bulk drug substances, subject to section 503(b) of the federal food, drug and cosmetic act.

(12) "Repackage" means repackaging or otherwise changing the container, wrapper or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing product to the patient.

(13) "Repackager" means a person who repackages.

(14) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. Such third party logistics provider must be licensed as a wholesale distributor under section 54-1753, Idaho Code, and to be considered part of the normal distribution channel, must also be an authorized distributor of record.

(15) "Veterinary pharmacy" means a business properly licensed as a pharmacy engaging exclusively in the preparation and dispensing of prescription drugs for veterinary prescribed use.

(16) "Wholesale distributor" means anyone engaged in the wholesale distribution of prescription drugs including, but not limited to:

- (a) Manufacturers;
- (b) Repackagers;
- (c) Own-label distributors;
- (d) Private-label distributors;
- (e) Jobbers;
- (f) Brokers;
- (g) Warehouses, including manufacturers' and distributors' warehouses;
- (h) Manufacturer's exclusive distributors;
- (i) Authorized distributors of record;
- (j) Drug wholesalers or distributors;
- (k) Independent wholesale drug traders;
- (l) Specialty wholesale distributors;
- (m) Third party logistics providers;
- (n) Retail pharmacies that conduct wholesale distribution; and
- (o) Chain pharmacy warehouses that conduct wholesale distribution.

To be considered part of the normal distribution channel, such wholesale distributor, except for a chain pharmacy warehouse not engaged in wholesale distribution, must also be an authorized distributor of record.

(167) "Wholesale distribution" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

(a) Intracompany sales of prescription drugs, meaning any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity, or any transaction or transfer between colicensees of a colicensed product.

(b) The sale, purchase, distribution, trade or transfer of a prescription drug or offer to sell, purchase, distribute, trade or transfer a prescription drug for emergency medical reasons.

(c) The distribution of prescription drug samples by manufacturers' representatives.

(d) Drug returns, when conducted by a hospital, health care entity or charitable institution in accordance with 21 CFR 203.23.

(e) Drug donations, when conducted in accordance with sections 54-1760 through 54-1765, Idaho Code.

(f) The sale of minimal quantities of prescription drugs by retail pharmacies to licensed practitioners for office use.

(g) The sale, purchase or trade of a drug, an offer to sell, purchase or trade a drug, or the dispensing of a drug pursuant to a prescription.

(h) The sale, transfer, merger or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets.

(i) The sale, purchase, distribution, trade or transfer of a prescription drug from one (1) authorized distributor of record to one (1) additional authorized distributor of record when the manufacturer has stated in writing to the receiving authorized distributor of record that the manufacturer is unable to supply such prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had, until that time, been exclusively in the normal distribution channel.

(j) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, and such common carrier does not store, warehouse or take legal ownership of the prescription drug.

(k) The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled prescription drugs to the original manufacturer or third party returns processor, including a reverse distributor.

(l) The sale of a prescription drug by a veterinary pharmacy to the prescribing veterinarian in which:

(i) The prescribing veterinarian takes title but not physical possession of such prescription drug and invoices the owner or person having custody of the animal for whom the prescription drug is intended; and

(ii) Pursuant to a valid prescription drug order the veterinary pharmacy labels and delivers the prescription drug directly to the owner or person having custody of the animal for whom the prescription drug is intended.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 29, 2011.

CHAPTER 145  
(S.B. No. 1107)

AN ACT

RELATING TO TRUSTEES OF COMMUNITY COLLEGE DISTRICTS AND ELECTION CAMPAIGN CONTRIBUTIONS AND EXPENDITURES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 33-2106, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO THE APPLICATION OF LAWS RELATING TO CERTAIN ELECTION CAMPAIGN CONTRIBUTIONS AND EXPENDITURES AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-2106, Idaho Code, be, and the same is hereby amended to read as follows:

33-2106. TRUSTEES OF COMMUNITY COLLEGE DISTRICTS. (1) The board of trustees of each community college district shall consist of five (5) school electors residing in the district who shall be appointed or elected as herein provided.

(a) Immediately following the establishment of a community college district, the state board of education shall appoint the members of the first board, who shall serve until the election and qualification of their successors.

(b) At the first election of trustees after the creation of a district, five (5) trustees shall be elected: two (2) for terms of two (2) years each, and three (3) for terms of four (4) years each. Thereafter the successors of persons so elected shall be elected for terms of four (4) years.

(c) Excluding any first election of trustees after the creation of a district, at any other election of trustees held in 2008, and in each trustee election thereafter, trustees shall be elected to terms of four (4) years. If more than two (2) trustee positions are eligible for election in 2008, one (1) trustee shall be elected to a term of four (4) years and two (2) trustees shall be elected to a term of six (6) years. Thereafter the successors of persons so elected in 2008 shall be elected for terms of four (4) years.

(d) The expiration of any term shall be at the regular meeting of the trustees next following the election for the successor terms.

(2) Elections of trustees of community college districts shall be biennially, in even-numbered years, and shall be held on a date authorized in section 34-106, Idaho Code. Vacancies on the board of trustees shall be filled by appointment by the remaining members, but if by reason of vacancies there remain on the board less than a majority of the required number of members, appointment to fill such vacancies shall be made by the state board of education. Any person so appointed shall serve until the next trustee election, at which time his successor shall be elected for the unexpired term. The trustees shall take and subscribe the oath of office required in the case of state officers and said oath shall be filed with the secretary of state.

(3) Notice of the election, the conduct thereof, the qualification of electors and the canvass of returns shall be as prescribed in chapter 14, title 34, Idaho Code.

(4) The person or persons, equal in number to the number of trustees to be elected for regular or unexpired terms, receiving the largest number of votes shall be declared elected. An individual shall be a candidate for a specific position of the board and each candidate must declare which position he seeks on the board of trustees. If it be necessary to resolve a tie between two (2) or more persons, the board of trustees shall determine by

lot which thereof shall be declared elected. The clerk of the board shall promptly notify any person by mail of his election, enclosing a form of oath to be subscribed by him as herein provided.

(5) When elections held pursuant to this section coincide with other elections held by the state of Idaho or any subdivision thereof, or any municipality or school district, the board of trustees may make agreement with the body holding such election for joint boards of election and the payment of fees and expenses of such boards of election on such proportionate basis as may be agreed upon.

(6) At its first meeting following the appointment of the first board of trustees, and at the first regular meeting following any community college trustee election, the board shall organize, and shall elect one (1) of its members chairman, one (1) a vice-chairman; and shall elect a secretary and a treasurer, who may be members of the board; or one (1) person to serve as secretary and treasurer, who may be a member of the board.

(7) The provisions of sections 67-6601 through 67-6616, Idaho Code, and sections 67-6623 through 67-6630, Idaho Code, are hereby made applicable to all community college trustee elections. Provided however, that the county clerk shall stand in place of the secretary of state and the county prosecutor shall stand in place of the attorney general. Any report or filing required to be filed by or for a candidate by such sections of Idaho Code shall be filed with the county clerk of the county where such candidate resides.

(8) The board shall set a given day of a given week in each month as its regular meeting time. Three (3) members of the board shall constitute a quorum for the transaction of official business.

(89) The authority of trustees of community college districts shall be limited in the manner prescribed in section 33-507, Idaho Code.

Approved March 29, 2011.

CHAPTER 146  
(S.B. No. 1150)

AN ACT

APPROPRIATING MONEYS TO THE ENDOWMENT FUND INVESTMENT BOARD FOR FISCAL YEAR 2012; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; PROVIDING A CONTINUOUS APPROPRIATION FOR CERTAIN COSTS; AND EXPRESSING LEGISLATIVE INTENT REGARDING THE TRANSFER OF MONEYS FROM THE EARNINGS RESERVE FUNDS TO THE INCOME FUNDS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Endowment Fund Investment Board, the following amounts to be expended for the designated expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
Miscellaneous Revenue				
Fund	\$97,100	\$40,400	\$1,500	\$139,000
Endowment Administrative				
Fund	287,600	171,600	4,500	463,700
TOTAL	\$384,700	\$212,000	\$6,000	\$602,700

SECTION 2. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Endowment Fund Investment Board is authorized no more than four (4) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. The Endowment Fund Investment Board is hereby granted continuous appropriation authority for consulting fees, bank custodial fees, and portfolio-related external costs for the period July 1, 2011, through June 30, 2012.

SECTION 4. LEGISLATIVE INTENT. It is the intent of the Legislature that for fiscal year 2012, the Endowment Fund Investment Board transfer \$46,041,000 as follows: \$31,292,400 from the Public School Earnings Reserve Fund to the Public School Income Fund; \$850,800 from the Agricultural College Earnings Reserve Fund to the Agricultural College Income Fund; \$2,964,000 from the Charitable Institutions Earnings Reserve Fund to the Charitable Institutions Income Fund; \$2,661,600 from the Normal School Earnings Reserve Fund to the Normal School Income Fund; \$1,040,400 from the Penitentiary Earnings Reserve Fund to the Penitentiary Income Fund; \$2,984,400 from the Scientific School Earnings Reserve Fund to the Scientific School Income Fund; \$1,917,600 from the Mental Hospital Earnings Reserve Fund to the Mental Hospital Income Fund; and \$2,329,200 from the University Earnings Reserve Fund to the University Income Fund.

Approved March 29, 2011.

CHAPTER 147  
(S.B. No. 1153)

AN ACT

APPROPRIATING MONEYS TO THE LAVA HOT SPRINGS FOUNDATION FOR FISCAL YEAR 2012; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Lava Hot Springs Foundation the following amounts to be expended for the designated expense classes, from the listed fund for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM: Lava Hot Springs Foundation				
Fund	\$807,000	\$1,192,900	\$114,600	\$2,114,500

SECTION 2. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Lava Hot Springs Foundation is authorized no more than thirteen and eight-tenths (13.8) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 29, 2011.

CHAPTER 148  
(S.B. No. 1022)

AN ACT

RELATING TO ARCHAIC STATUTORY LANGUAGE; AMENDING SECTION 39-5606, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-5606, Idaho Code, be, and the same is hereby amended to read as follows:

39-5606. PAYMENT TO BE MADE TO PROVIDER. Within the appropriations provided by law, and as authorized by rule, the department shall reimburse the provider for personal assistance services received by the participant. To qualify for reimbursement, personal assistance services must be delivered in accordance with the participant's individual service plan and all federal requirements.

The department will establish annually uniform reimbursement rates for personal assistance agencies. This rate will be based on the prevailing hourly rate paid for comparable positions in the state for nursing home and intermediate care facility for ~~the mentally retarded people with intellectual disabilities~~ (ICF/MRID) industry employees. ~~Personal assistance agencies and fiscal intermediary agencies~~ For state fiscal year 2011, this rate will only be adjusted if the prevailing hourly rate for comparable positions is less than the rate paid during state fiscal year 2010. The department will establish annually uniform reimbursement rates for the PCS family alternate care providers according to methodology described in agency rule.

The director shall promulgate and adopt such necessary rules to implement the requirements of this section.

Approved March 30, 2011.

CHAPTER 149  
(S.B. No. 1043)

AN ACT

RELATING TO DOMESTIC RELATIONS; REPEALING SECTION 32-1002, IDAHO CODE, RELATING TO RECIPROCAL DUTIES OF SUPPORT; AND REPEALING SECTION 32-1008A, IDAHO CODE, RELATING TO THE RESPONSIBILITY OF RELATIVES TO PARTICIPATE IN THE COST OF NURSING HOME CARE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Sections 32-1002 and 32-1008A, Idaho Code, be, and the same are hereby repealed.

Approved March 31, 2011.

CHAPTER 150  
(S.B. No. 1152)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE SOIL AND WATER CONSERVATION COMMISSION FOR FISCAL YEAR 2011; APPROPRIATING MONEYS TO THE SOIL AND WATER CONSERVATION COMMISSION FOR FISCAL YEAR 2012; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 3, Chapter 195, Laws of 2010, and any other appropriation provided for by law, there is hereby appropriated \$24,000 from the Administrative and Accounting Services Fund to the Soil and Water Conservation Commission, to be expended for operating expenditures, for the period July 1, 2010, through June 30, 2011.

SECTION 2. There is hereby appropriated to the Soil and Water Conservation Commission, the following amounts to be expended for the designated expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:				
General				
Fund	\$968,600	\$178,000	\$1,103,200	\$2,249,800
Administration and Accounting Services				
Fund		40,000		40,000
Resource Conservation and Rangeland Development				
Fund	83,600	101,600		185,200
Clean Water Revolving Loan (SCC)				
Fund	<u>0</u>	<u>30,000</u>	<u>0</u>	<u>30,000</u>
TOTAL	\$1,052,200	\$349,600	\$1,103,200	\$2,505,000

SECTION 3. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Soil and Water Conservation Commission is authorized no more than sixteen (16) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval.

Approved March 31, 2011.

CHAPTER 151  
(S.B. No. 1042)

AN ACT

RELATING TO CODIFIER'S CORRECTIONS IN STATUTES; AMENDING SECTION 6-543, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 6-544, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 6-701, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING THE HEADING FOR CHAPTER 28, TITLE 6, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 239, LAWS OF 2010, TO REDESIGNATE THE CHAPTER; AMENDING SECTIONS 6-2801 AND 6-2802, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 239, LAWS OF 2010, TO REDESIGNATE THE SECTIONS RELATING TO LIVESTOCK ACTIVITIES; AMENDING SECTION 9-340C, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-4705, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 19-5803, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 21-115, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 22-5204, IDAHO CODE, RELATING TO CARBON SEQUESTRATION COMMITTEE REPORTS; AMENDING SECTION 31-855, IDAHO CODE, TO DELETE REFERENCE TO AN ARCHAIC CODE SECTION, TO PROVIDE A PENALTY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-131, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 181, LAWS OF 2010, TO REDESIGNATE THE SECTION RELATING TO LOCAL SCHOOL BOARDS INTERNET USE POLICY REQUIREMENTS; AMENDING SECTION 33-312, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-402, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-510, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 33-511, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 33-1510, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 33-1620, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 294, LAWS OF 2010, TO REDESIGNATE THE SECTION RELATING TO YOUTH ATHLETES AND CONCUSSION GUIDELINES; AMENDING SECTION 39-5606, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 40-701, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 333, LAWS OF 2009, TO MAKE A TECHNICAL CORRECTION; AMENDING THE HEADING FOR CHAPTER 16, TITLE 41, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 41-3345, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 49-402, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 51-123, IDAHO CODE, RELATING TO THE IDAHO NOTARY PUBLIC ACT; AMENDING SECTION 56-113, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING THE HEADING FOR CHAPTER 13, TITLE 59, IDAHO CODE, RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 63-301A, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 67-2601, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 6-543, Idaho Code, be, and the same is hereby amended to read as follows:

6-543. SALE OF SHARE OF INSANE INCAPACITATED OR PROTECTED PERSON -- PAYMENT OF PROCEEDS TO GUARDIAN. The guardian who may be entitled to the custody and management of the estate of an incapacitated or protected person whose interest in real property has been sold, may receive, in behalf of such person, his share of the proceeds of such real property from the referees by a judge of the court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled or to his legal representative.

SECTION 2. That Section 6-544, Idaho Code, be, and the same is hereby amended to read as follows:

6-544. PARTITION WITHOUT ACTION -- CONSENT OF GUARDIAN. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane incapacitated or protected person, or other person adjudged incapable of conducting his own affairs, who is interested in the real estate held in joint tenancy, or in common, or in any other manner so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court.

SECTION 3. That Section 6-701, Idaho Code, be, and the same is hereby amended to read as follows:

6-701. DEFAMATORY STATEMENTS UTTERED ON RADIO AND TELEVISION BROADCASTS IN BEHALF OF CANDIDATES -- LIABILITY. The owner, licensee, or operator of a visual or sound radio broadcasting station, or network of stations, or agents or employees of any such owner, licensee, or operator shall not be liable for any damages for any defamatory statement published or uttered in or as a part of any visual or sound radio broadcast by or on behalf of any candidate for public office; Provided, however, that this exemption from liability shall not apply to any owner, licensee, or operator, or agent or employee of any owner, licensee, or operator of such visual or sound radio broadcasting station, or network of stations, when such owner, licensee, or operator, or agent or employee of the owner, licensee, or operator of such visual or sound radio broadcasting station is a candidate for public office or speaking on behalf of a candidate for public office.

SECTION 4. That the Heading for Chapter 28, Title 6, Idaho Code, as added by Section 1, Chapter 239, Laws of 2010, be, and the same is hereby amended to read as follows:

CHAPTER 289  
LIVESTOCK ACTIVITIES IMMUNITY ACT

SECTION 5. That Section 6-2801, Idaho Code, as added by Section 1, Chapter 239, Laws of 2010, be, and the same is hereby amended to read as follows:

6-28901. DEFINITIONS. For purposes of this section, the following terms have the following meanings:

(1) "Livestock" means cattle, sheep, swine, goats, llamas, alpacas or poultry.

(2) "Livestock activity" means livestock shows, fairs, competitions, performances, races or parades.

(3) "Livestock activity sponsor" means an individual, group or club, partnership or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes or provides the facilities for a livestock activity including, but not limited to, 4-H clubs, school and college sponsored classes and programs and operators, instructors and promoters of livestock facilities including, but not limited to, fairs and arenas at which the activity is held.

(4) "Livestock professional" means a person engaged for compensation in:

- (a) Instructing a participant or renting livestock to a participant; or
- (b) Renting equipment to a participant.

(5) "Participant" means any person, whether amateur or professional, who directly engages in a livestock activity, whether or not a fee is paid to participate in the livestock activity.

SECTION 6. That Section 6-2802, Idaho Code, as added by Section 1, Chapter 239, Laws of 2010, be, and the same is hereby amended to read as follows:

6-28902. LIMITATION OF LIABILITY ON LIVESTOCK ACTIVITIES. (1) Except as provided in subsections (2) and (3) of this section, a livestock activity sponsor or a livestock professional shall not be liable for any injury to or the death of a participant or livestock engaged in a livestock activity and, except as provided in subsections (2) and (3) of this section, no participant nor participant's representative may maintain an action against or recover from a livestock activity sponsor or a livestock professional for an injury to or the death of a participant or livestock engaged in a livestock activity.

(2) The provisions of this chapter do not apply to the horse or mule racing industry as regulated in chapter 25, title 54, Idaho Code, or to equines regulated in chapter 18, title 6, Idaho Code.

(3) Nothing in subsection (1) of this section shall prevent or limit the liability of a livestock activity sponsor or a livestock professional:

(a) If the livestock activity sponsor or the livestock professional:

(i) Provided equipment and the equipment caused the injury;

(ii) Provided the livestock and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the livestock activity, determine the ability of the livestock to behave safely with the participant, and to determine the ability of the participant to safely manage the particular livestock;

(iii) Owns, leases, rents or otherwise is in lawful possession and control of the land or facilities upon which the participant or livestock sustained injuries because of a dangerous latent condition which was known to or should have been known to the livestock activity sponsor or the livestock professional and for which warning signs have not been conspicuously posted;

(iv) Commits an act or omission that is unreasonable or willfully disregards the safety of the participant or livestock and that act or omission caused the injury; or

(v) Intentionally injures the participant or livestock;

(b) Under liability provisions as set forth in the products liability laws; or

(c) Under the liability provisions set forth in chapter 9, title 6, Idaho Code.

SECTION 7. That Section 9-340C, Idaho Code, be, and the same is hereby amended to read as follows:

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 people who are elderly, indigent or have mental or physical disabilities, 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 (2830) 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.

(289) Documents and records related to continuing education and record-keeping 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.

(2830) 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.

SECTION 8. That Section 19-4705, Idaho Code, be, and the same is hereby amended to read as follows:

19-4705. PAYMENT OF FINES AND FORFEITURES -- SATISFACTION OF JUDGMENT -- DISPOSITION -- APPORTIONMENT. (1) Except as otherwise provided in subsection (2) of this section:

(a) All fines and forfeitures collected pursuant to the judgment of any court of the state shall be remitted to the court in which the judgment was rendered. The judgment shall then be satisfied by entry in the docket of the court. The clerk of the court shall daily remit all fines and forfeitures to the county auditor who shall at the end of each month apportion the proceeds according to the provisions of this chapter. Other existing laws regarding the disposition of fines and forfeitures are hereby repealed to the extent such laws are inconsistent with the provisions of this chapter except as provided in section 49-1013(35), Idaho Code.

(b) Fines and forfeitures remitted for violations of fish and game laws shall be apportioned two and one-half percent (2 1/2%) to the state treasurer for deposit in the state general fund, ten percent (10%) to the search and rescue account, twenty-two and one-half percent

(22 1/2%) to the district court fund and sixty-five percent (65%) to the fish and game fund.

(c) Fines and forfeitures remitted for violations of state motor vehicle laws, for violation of state driving privilege laws, and for violation of state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances, shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, forty-five percent (45%) to the state treasurer for deposit in the highway distribution account, twenty-two and one-half percent (22 1/2%) to the district court fund and twenty-two and one-half percent (22 1/2%) to the state treasurer for deposit in the public school income fund; provided, however, that fines and forfeitures remitted for violation of state motor vehicle laws, for violation of state driving privilege laws, and for violation of state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances, where an arrest is made or a citation is issued by a city law enforcement official, or by a law enforcement official of a governmental agency under contract to provide law enforcement services for a city, shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the city whose officer made the arrest or issued the citation.

(d) Fines and forfeitures remitted for violation of any state law not involving fish and game laws, or motor vehicle laws, or state driving privilege laws, or state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances, shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the district court fund of the county in which the violation occurred.

(e) Fines and forfeitures remitted for violation of county ordinances shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the district court fund of the county whose ordinance was violated.

(f) Fines and forfeitures remitted for violation of city ordinances shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the city whose ordinance was violated.

(g) Fines and forfeitures remitted for violations not specified in this chapter shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the district court fund of the county in which the violation occurred except in cases where a duly designated officer of any city police department or city law enforcement official shall have made the arrest for any such violation, in which case ninety

percent (90%) shall be apportioned to the city whose officer made the arrest.

(h) Fines and forfeitures remitted for violations involving registrations of motorcycles or motor-driven cycles used off highways, snowmobiles, or use of winter recreation parking areas shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the general fund of the county or city whose law enforcement official issued the citation.

(i) Fines and forfeitures remitted for violations of overweight laws as provided in section 49-1013(3), Idaho Code, shall be deposited one hundred percent (100%) into the highway distribution account.

(2) Any fine or forfeiture remitted for any misdemeanor violation for which an increase in the maximum fine became effective on or after July 1, 2005, shall be apportioned as follows:

(a) Any funds remitted, up to the maximum amount that could have been imposed before July 1, 2005, as a fine for the misdemeanor violation, shall be apportioned according to the applicable provisions of subsection (1) of this section; and

(b) Any other funds remitted, in excess of the maximum amount that could have been imposed before July 1, 2005, as a fine for the misdemeanor violation, shall be remitted to the state treasurer and shall be deposited in the drug court, mental health court and family court services fund as set forth in section 1-1625, Idaho Code.

(3) As used in this section, the term "city law enforcement official" shall include an official of any governmental agency which is providing law enforcement services to a city in accordance with the terms of a contract or agreement, when such official makes the arrest or issues a citation within the geographical limits of the city and when the contract or agreement provides for payment to the city of fines and forfeitures resulting from such service.

SECTION 9. That Section 19-5803, Idaho Code, be, and the same is hereby amended to read as follows:

19-5803. ADDRESS CONFIDENTIALITY -- ELIGIBILITY. (1) Law enforcement officers desiring that their Idaho residential street address and telephone number, and the Idaho residential street address and telephone number of their residing household member(s) be exempt from disclosure pursuant to this chapter and section 9-340C(2830), Idaho Code, may submit an application and a fee, if any, to the custodian of the public record that contains such information. Upon receipt of an application and fee, the public agency shall comply with the provisions of this chapter for a period of four (4) years. Thereafter, law enforcement officers may renew the exemption by submitting a new application and fee, if any. The public agency may establish a fee schedule not to exceed the actual cost to the agency of complying with the provisions of this chapter.

(2) Law enforcement officers may submit an application to a public agency requesting that the public agency use an alternative Idaho mailing address rather than the Idaho residential street address of any such officer and of any such officer's residing household member(s) on all applications and on all identification cards, licenses, certificates, permits, tags and other similar documents that are issued to the officer or to such officer's residing household member(s) by the public agency. A public agency receiving such application shall comply with the request.

(3) A person shall cease to be eligible for an exemption under this chapter if such person ceases to be a law enforcement officer or a residing

household member(s). Within thirty (30) days of such cessation, the person shall notify, in writing, every public agency to which the person has made an application stating that he or she is no longer eligible for such exemption. If a law enforcement officer changes employment but is still eligible for an exemption under this chapter, such law enforcement officer shall, within thirty (30) days of changing employment, submit a new application to every public agency to which such officer has made an application.

(4) Nothing in this chapter shall prevent a public agency from obtaining the residential street address and telephone number of a law enforcement officer and of any residing household member(s). A law enforcement officer who has submitted an application pursuant to the provisions of this chapter shall provide his or her current Idaho residential street address to his or her employing entity.

SECTION 10. That Section 21-115, Idaho Code, be, and the same is hereby amended to read as follows:

21-115. STATE DESIGNATION OF AIRPORTS. (a) Site Approvals and Designations -- Regulations -- Issuance of Certificates -- Fees -- Standards -- Effective Period -- Revocation -- Existing Airports. Except as provided in subsection (d<sub>c</sub>) of this section, the department is authorized to provide for the approval and designation of airport sites and the issuance of certificates of such approval and designation. No charge shall be made for any such approval and designation, and certificates of such an approval and designation shall be issued without charge to all persons requesting them. Upon the promulgation of a rule or regulation providing for such approval and designation, any municipality or person desiring or planning to construct or establish an airport may, prior to the acquisition of the site or prior to the construction or establishment of the proposed airport, make application to the department for the approval and designation of the site. The department shall with reasonable dispatch grant approval of and designate a site if it is satisfied:

- (1) That such proposed airport will be open to public use;
- (2) That site is adequate for the proposed airport;
- (3) That such proposed airport, if constructed or established, will conform to minimum standards of safety; and
- (4) That safe air traffic patterns could be worked out for such proposed airport and for all existing airports and approved and designated airport sites in its vicinity.

An approval and designation of a site may be granted subject to any reasonable conditions which the department may deem necessary to effectuate the purposes of this section, and shall remain in effect, unless sooner revoked by the department and when such airport site is approved and designated by the department such airport shall be deemed a public use.

The department may, after notice and opportunity for hearing to holders of certificates of an approval and designation, revoke such approval and designation when it shall reasonably determine (1) that there has been an abandonment of the airport site, or (2) that there has been a failure within the time prescribed, or if no time was prescribed, within a reasonable time, to develop the site as an airport or to comply with the conditions of the approval and designation, or (3) that because of a change of physical or legal conditions or circumstances the site is no longer usable for the aeronautical purposes for which the approval and designation was granted, or (4) that such airport has been closed to public use. No approval shall be required for the site of any existing airport. It shall be unlawful for any municipality or person to operate an airport for public use without first obtaining the approval and designation of such airport as required by this section.

(b) Optional Public Hearings. In connection with the grant of approval of a proposed airport site or the issuance of an airport license under sub-

sections (a) and (b) of this section, the department may, on its own motion or upon the request of an affected or interested person, hold a hearing open to the public as provided in section 21-118.

(c) Exemptions. The provisions of this section shall not apply to airports owned or operated by the United States. The department may, from time to time, to the extent necessary, exempt any other class of airports, pursuant to a reasonable classification or grouping, from any rule or regulation, promulgated under this act if it finds that the application of such rule, regulation or requirement would be an undue burden on such class and is not required in the interest of public safety.

SECTION 11. That Section 22-5204, Idaho Code, be, and the same is hereby repealed.

SECTION 12. That Section 31-855, Idaho Code, be, and the same is hereby amended to read as follows:

31-855. **NEGLECT OF DUTY BY COMMISSIONERS.** Any commissioner who neglects or refuses, without just cause therefor, to perform any duty imposed on him, or who ~~wilfully~~ willfully violates any law provided for his government as such officer, or fraudulently or corruptly performs any duty imposed on him, or ~~wilfully~~ willfully, fraudulently or corruptly attempts to perform an act, as commissioner, unauthorized by law, shall be ~~prosecuted as provided in section 18-316, Idaho Code~~ guilty of a misdemeanor.

SECTION 13. That Section 33-131, Idaho Code, as added by Section 1, Chapter 181, Laws of 2010, be, and the same is hereby amended to read as follows:

33-131~~2~~. **LOCAL SCHOOL BOARDS -- INTERNET USE POLICY REQUIRED.** (1) As a condition for receiving moneys from the state general fund, each local school district shall file an acceptable internet use policy with the state superintendent of public instruction no later than August 1, 2011, or within one (1) year after the creation of a new district, whichever is later, and every five (5) years thereafter. Such policy shall be approved by the district's board of trustees and shall contain, but not be limited to, provisions that:

(a) Prohibit and prevent the use of school computers and other school owned technology-related services from sending, receiving, viewing or downloading materials that are deemed to be harmful to minors, as defined by section 18-1514, Idaho Code; and

(b) Provide for the selection of technology for the local district's computers to filter or block internet access to obscene materials, materials harmful to minors and materials that depict the sexual exploitation of a minor, as defined in chapter 15, title 18, Idaho Code; and

(c) Establish appropriate disciplinary measures to be taken against persons violating the policy provided for in this section; and

(d) Include a component of internet safety for students that is integrated into the district's instructional program; and

(e) Inform the public that administrative procedures have been adopted to enforce the policy provided for in this section and to handle complaints about such enforcement, and that such procedures are available for review at the district office.

(2) The policy provided for in subsection (1) of this section may include terms, conditions and requirements deemed appropriate by the district's board of trustees including, but not limited to, requiring written parental authorization for internet use by minors or differentiating acceptable uses among elementary, middle and high school students.

(3) The district's superintendent is hereby authorized to take reasonable measures to implement and enforce the provisions of this section.

SECTION 14. That Section 33-312, Idaho Code, be, and the same is hereby amended to read as follows:

33-312. DIVISION OF SCHOOL DISTRICT. A school district may be divided so as to form not more than two (2) districts each of which must have contiguous boundaries, in the manner hereinafter provided, except that any district which operates and maintains a secondary school or schools shall not be divided unless the two (2) districts created out of the division shall each operate and maintain a secondary school or schools immediately following such division.

A proposal to divide a school district may be initiated by its board of trustees and submitted to the state department of education. Such proposal shall contain all of the information required in a proposal to consolidate school districts as may be relevant to a proposal to divide a school district. It shall also show the manner in which it is proposed to divide or apportion the property and liabilities of the district, the names and numbers of the proposed new districts, and legal description of the proposed trustee zones.

Before submitting any proposal to divide a school district, the board of trustees shall hold a hearing or hearings on the proposal within the district. Notice of such hearing or hearings shall be posted by the clerk of the board of trustees in not less than three (3) public places within the district, one (1) of which places shall be at or near the main door of the administrative offices of the school district, for not less than ten (10) days before the date of such hearing or hearings.

The department of education shall present any such proposal to the state board of education, which may approve or disapprove the proposal, and the department of education shall give notice thereof in the manner of a proposal to consolidate school districts; except, that the state board of education shall not approve any proposal which would result in a district to be created by the division having or assuming a bonded debt in an amount exceeding the limitations imposed by law, or which would leave the area of any city in more than one (1) school district.

If the state board of education shall approve the proposal to divide the district, notice of the election shall be published and the election shall be held subject to the provisions of section 34-106, Idaho Code. The election shall be conducted, and the ballots shall be canvassed, according to the provisions of ~~through~~ title 34, Idaho Code. The division shall be approved only if a majority of all votes cast at said special election by the school district electors residing within the entire existing school district and voting in the election are in favor of the division of such district, and a majority of all votes cast at said special election by the qualified voters within that portion of the proposed new district having a minority of the number of qualified voters, such portion to be determined by the number of votes cast in each area which is a contemplated new district, are in favor of the division of the district, and upon such approval two (2) new school districts shall be thereby created. The organization and division of all school districts which have divided since June 30, 1963, are hereby validated.

If the division is approved, as herein provided, ~~county certify the results to the district and the district shall report the results to~~ two (2) new school districts are thereby created. The board of canvassers shall thereupon promptly notify the state department of education and the affected school districts of such result. The superintendent of public instruction shall make an appropriate order showing the creation of the districts and a legal description of the boundaries, and the legal descriptions of the

affected school districts shall be altered, as prescribed in section 33-307, Idaho Code.

SECTION 15. That Section 33-402, Idaho Code, be, and the same is hereby amended to read as follows:

33-402. NOTICE REQUIREMENTS.

~~(1) (a) (b) (c) (d) (e) (f) (g) (2) a b c d e (3) (4) (5)~~

(6) Notice of annual meeting of elementary school districts as provided for in section 33-510, Idaho Code, and of intent to discontinue a school, as provided for in section 33-511, Idaho Code, and annual budget hearing as provided for in section 33-801, Idaho Code, shall be given by posting ~~(2)~~ for not less than ten (10) days, and publishing once in a newspaper as provided in section 60-106, Idaho Code, published within the district, or, if there be none, then in a newspaper as provided in section 60-106, Idaho Code, published in the county in which such district lies. If more than one (1) newspaper is printed and published in said district or county, then in the newspaper most likely to give best general notice of the election within said district; provided that if no newspaper is published in the said district or county, then in a newspaper as provided in section 60-106, Idaho Code, most likely to give best general notice of the election within the district. If a financial emergency has been declared pursuant to section 33-522, Idaho Code, the notice of annual meeting and the notice of the annual budget hearing shall be posted pursuant to subsection (2) of this section, for not less than five (5) days, and by such further notice as shall provide reasonable notice to the patrons of the school district if publication in a newspaper is not feasible.

(7) Notices calling for bids for the acquisition, use, or disposal of real and personal property as provided for in section 33-601, Idaho Code, and contracting for transportation services as provided for in section 33-1510, Idaho Code, shall be given in a newspaper of general circulation as required by chapter 1, title 60, Idaho Code, except that the notice for contracting for transportation services shall be made not less than four (4) weeks before the date of opening bids.

(8) Proof of posting notice shall be upon the affidavit of the person posting the same; and proof of publication shall be upon the affidavit of the publisher of the newspaper or newspapers respectively. Such affidavits shall be filed with the board by the clerk responsible for the posting and the publishing of said notice.

SECTION 16. That Section 33-510, Idaho Code, be, and the same is hereby amended to read as follows:

33-510. ANNUAL MEETINGS -- REGULAR MEETINGS -- BOARDS OF TRUSTEES. The annual meeting of each school district shall be on the date of its regular July meeting in each year. Notice of the annual meeting of elementary school districts shall be given as provided in section 33-40±2, Idaho Code, but one (1) publication shall suffice.

Regular meetings of each board of school district trustees shall be held monthly, on a uniform day of a uniform week as determined at the annual meeting. Special meetings may be called by the chairman or by any two (2) members of the board and held at any time. If the time and place of special meetings shall not have been determined at a meeting of the board with all members being present, then notice of the time and place shall be given to each member and announced by written notice conspicuously posted at the school district office and at least two (2) or more public buildings within the school district not less than twenty-four (24) hours before such special meeting is to be convened.

A quorum for the transaction of business of the board of trustees shall consist of a majority of the members of the board. Unless otherwise provided by law, all questions shall be determined by a majority of the vote cast. The chairman of the board may vote in all cases.

All meetings shall conform to the provisions of section 67-2340 through section 67-2345, Idaho Code.

SECTION 17. That Section 33-511, Idaho Code, be, and the same is hereby amended to read as follows:

33-511. MAINTENANCE OF SCHOOLS. The board of trustees of each school district shall have the following powers and duties:

1. Each elementary school district shall maintain at least one (1) elementary school, and each other school district shall maintain at least one (1) elementary school and one (1) secondary school;

2. To employ necessary help and labor to maintain and operate the schools of the district;

3. To discontinue any school within the district whenever it shall find such discontinuance to be in the best interests of the district and of the pupils therein. For the purposes of this section, discontinuing a school shall mean no longer maintaining a school of any kind, at the same location, except in the case of secondary units as herein provided.

When any school proposed to be discontinued is one which was operated and maintained by a former district now wholly incorporated within the boundaries of the district operated by said board of trustees, and, immediately following reorganization and the dissolution of said former district such school has been continuously operated and maintained at the same location by the presently organized district, the board of trustees must first give notice of such proposal not later than the first day of July next preceding the date of the proposed discontinuance. Such notice shall be posted, and published once, in the manner provided in section 33-40~~1~~2, Idaho Code, and shall identify the school proposed to be discontinued.

If, not later than the first day of August following the posting and publishing of the notice of discontinuance, five (5) or more qualified school district electors residing within the school district shall petition the board of trustees for an election to be held within the school district on the question of discontinuance of that school, the board of trustees shall forthwith order an election to be held within fourteen (14) days of the date of said order, and shall give notice of the election.

Notice of such election shall be posted at or near the main door of the school proposed to be discontinued and at or near the main door of the administrative offices of the school district, and shall also be published in one (1) issue of a newspaper printed in the county in which is situate the school proposed to be discontinued. The notice shall state the date the election is to be held, the place of voting, and the hours between which the polls shall be open. In addition, the notice of election shall describe the area of the particular attendance unit of the school district and shall identify the school proposed to be discontinued; and it shall state that only qualified school district electors residing within the school district may vote on the question of discontinuing the school.

The election shall be held within the school district and there shall be submitted to the electors a ballot containing the proposal:

For discontinuing the school located at . . . . ,

Against discontinuing the school located at . . . . .

If a majority of the qualified electors, hereinabove defined and voting in the election, shall vote against discontinuing that school, then said school shall not be discontinued; and no proposal to discontinue the same school shall be made by the board of trustees of the district within nine (9) months after the date of the election.

If a secondary unit which the trustees of a district propose to close is more than thirty (30) miles by all-weather road from the attendance unit to which it is proposed to transfer such students, then, notwithstanding other provisions of this section, five (5) electors residing within the attendance area of the unit proposed to be closed may, as provided by this section, petition the board of trustees requesting an election to determine whether or not such attendance unit, or any portion of it, shall be closed. The board shall forthwith call and hold an election as herein provided. However, for the purpose of this section relating to the secondary attendance unit thirty (30) miles or more distant from another secondary attendance unit, only the patrons resident in this attendance area shall be eligible to vote, except for attendance units, or portions of them, created after January 1, 2002, in which case qualified school district electors throughout the school district shall be eligible to vote. The election shall be deemed passed and the unit shall not be closed if a majority of those voting in the election vote in favor of retaining the attendance unit.

SECTION 18. That Section 33-1510, Idaho Code, be, and the same is hereby amended to read as follows:

33-1510. CONTRACTS FOR TRANSPORTATION SERVICE. (1) All contracts entered into by boards of trustees for the transportation of pupils shall be in writing using the current pupil transportation model contract developed by the state department of education. School districts may attach to the model contract addenda to meet local requirements. School districts shall submit to the state superintendent of public instruction a copy of the pupil transportation contract prior to both parties signing it, for a review of legal requirements and appropriate costs and for final approval. The state superintendent of public instruction shall respond to the school district within twenty-one (21) calendar days of the postmarked receipt of the contract by notifying the school district of contract approval or of recommended or required changes. A school district may appeal to the state board of education any changes the state superintendent requires, in which case the state board may, upon review, approve the contract without such changes.

(2) No contract shall be executed covering a period of time exceeding five (5) years. School districts shall advertise, bid and contract for all bus transportation service routes at a single time, and contract with the lowest responsible bidder or bidders meeting the specifications; provided that, one (1) time only, a school district may renew a contract with the current contractor if the board of trustees, after renegotiation with the contractor, determines that the terms are satisfactory to the district. The board of trustees may renew the contract for a term not to exceed five (5) years. Renewal of any contract pursuant to this section shall not be granted unless the provisions of this section were included, in a substantially conforming summary, within the bidding notice, published pursuant to section 33-601, Idaho Code, of the contract.

(3) Before entering into such contracts, the board of trustees shall invite bids by twice giving notice as provided in section 33-402(7~~2~~), Idaho Code, and shall award the contract to the lowest responsible bidder.

SECTION 19. That Section 33-1620, Idaho Code, as added by Section 1, Chapter 294, Laws of 2010, be, and the same is hereby amended to read as follows:

33-1620~~5~~. LEGISLATIVE INTENT -- YOUTH ATHLETES -- CONCUSSION GUIDELINES. The legislature finds that concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities. The centers for disease control and prevention estimates that as many as three million eight hundred thousand (3,800,000)

sports-related and recreation-related concussions occur in the United States each year. A concussion is caused by a blow or motion to the head or body that causes the brain to move rapidly inside the skull. The risk of catastrophic injuries or death is significant when a concussion or head injury is not properly evaluated and managed.

Concussions are a type of brain injury that can range from mild to severe and can disrupt the way the brain normally works. Concussions can occur in any organized or unorganized sport or recreational activity and can result from a fall or from players colliding with each other, the ground, or with obstacles. Concussions occur with or without loss of consciousness, but the vast majority occur without loss of consciousness.

Continuing to play with a concussion or symptoms of head injury leaves the young athlete especially vulnerable to greater injury and even death. The legislature recognizes that, despite having generally recognized return to play standards for concussion and head injury, some affected youth athletes are prematurely returned to play resulting in actual or potential physical injury or death to youth athletes in the state of Idaho.

(1) The state board of education shall collaborate with the Idaho high school activities association to develop guidelines and other pertinent information and forms to inform and educate coaches, both paid and volunteer, youth athletes, and their parents and/or guardians of the nature and risk of concussion and head injury including risks associated with continuing to play after concussion or head injury.

(2) The guidelines, information and forms described in subsection (1) of this section shall be developed for and may be used by all organized youth sport organizations or associations that sponsor, promote or otherwise administer youth sport organizations or activities in this state. The state board of education shall make available on its internet website the guidelines, information and forms provided for in this section.

SECTION 20. That Section 39-5606, Idaho Code, be, and the same is hereby amended to read as follows:

39-5606. PAYMENT TO BE MADE TO PROVIDER. Within the appropriations provided by law, and as authorized by rule, the department shall reimburse the provider for personal assistance services received by the participant. To qualify for reimbursement, personal assistance services must be delivered in accordance with the participant's individual service plan and all federal requirements.

The department will establish annually uniform reimbursement rates for personal assistance agencies. This rate will be based on the prevailing hourly rate paid for comparable positions in the state for nursing home and intermediate care facility for the mentally retarded (ICF/MR) industry employees. ~~Personal assistance agencies and fiscal intermediary agencies~~ For state fiscal year 2011, this rate will only be adjusted if the prevailing hourly rate for comparable positions is less than the rate paid during state fiscal year 2010. The department will establish annually uniform reimbursement rates for the PCS family alternate care providers according to methodology described in agency rule.

The director shall promulgate and adopt such necessary rules to implement the requirements of this section.

SECTION 21. That Section 40-701, Idaho Code, as added by Section 1, Chapter 333, Laws of 2009, be, and the same is hereby amended to read as follows:

40-701. HIGHWAY DISTRIBUTION ACCOUNT -- APPORTIONMENT. (1) There is established in the state treasury an account known as the "Highway Distribution Account," to which shall be credited:

(a) Moneys as provided by sections 63-2412(1)(f) and 63-2418(4), Idaho Code;

(b) All moneys collected by the department, their agents and vendors, and county assessors and sheriffs, under the provisions of title 49, Idaho Code, except as otherwise specifically provided for; and

(c) All other moneys as may be provided by law.

(2) The highway distribution account shall be apportioned as follows:

(a) Thirty-eight percent (38%) to local units of government as provided in section 40-709, Idaho Code;

(b) Sixty-two percent (62%) to the state highway account established in section 40-702, Idaho Code. The state controller shall cause the remittance of the moneys apportioned to local units of government not later than January 25, April 25, July 25 and October 25 of each year, and to the state highway account as the moneys become available to the highway distribution account.

(3) Interest earned on the investment of idle moneys in the highway distribution account shall be paid to the highway distribution account.

(4) All idle moneys in the dedicated highway trust or asset accounts or subaccounts established from highway user revenues, reimbursements, fees or permits shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with respect to other surplus or idle moneys in the state treasury. Interest earned on the investments shall be returned to the various highway trust or asset accounts and subaccounts.

SECTION 22. That the Heading for Chapter 16, Title 41, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 16  
WORKMEN'S ~~WORKER'S~~ COMPENSATION RATES

SECTION 23. That Section 41-3345, Idaho Code, be, and the same is hereby amended to read as follows:

41-3345. UNCLAIMED AND WITHHELD FUNDS. (1) All unclaimed funds subject to distribution remaining in the liquidator's hands when he is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the state treasurer, and shall be paid without interest except in accordance with section 41-3342, Idaho Code, to the person entitled thereto or his legal representative upon proof satisfactory to the state treasurer of his right thereto. Any amount on deposit not claimed within six (6) years from discharge of the liquidator shall be deemed to have been abandoned and shall be escheated without formal escheat proceedings and be deposited with the ~~tax collector~~ state treasurer pursuant to chapter 5, title 14, Idaho Code.

(2) All funds withheld under section 41-3337, Idaho Code, and not distributed shall upon discharge of the liquidator be deposited with the state treasurer and paid by him in accordance with section 41-3342, Idaho Code. Any sums remaining which under section 41-3342, Idaho Code, would revert to the undistributed assets of the insurer shall be transferred to the state treasurer and become the property of the state under subsection (1) hereof, unless the director in his discretion petitions the court to reopen the liquidation under section 41-3347, Idaho Code.

SECTION 24. That Section 49-402, Idaho Code, be, and the same is hereby amended to read as follows:

49-402. ANNUAL REGISTRATION. (1) The annual fee for operating each pickup truck, each neighborhood electric vehicle and each other motor vehicle having a maximum gross weight not in excess of eight thousand (8,000)

pounds and that complies with the federal motor vehicle safety standards as defined in section 49-107, Idaho Code, shall be:

Vehicles one (1) and two (2) years old .....	\$48.00
Vehicles three (3) and four (4) years old .....	\$36.00
Vehicles five (5) and six (6) years old .....	\$36.00
Vehicles seven (7) and eight (8) years old .....	\$24.00
Vehicles over eight (8) years old .....	\$24.00

There shall be twelve (12) registration periods, starting in January for holders of validation registration stickers numbered 1, and proceeding consecutively through December for holders of validation registration stickers numbered 12, each of which shall start on the first day of a calendar month and end on the last day of the twelfth month from the first day of the beginning month. Registration periods shall expire midnight on the last day of the registration period in the year designated by the validation registration sticker. The numeral digit on the validation registration stickers shall, as does the registration card, fix the registration period under the staggered plate system of Idaho for the purpose of reregistration and notice of expiration.

A vehicle that has once been registered for any of the above designated periods shall, upon reregistration, be registered for the period bearing the same number, and the registration card shall show and be the exclusive proof of the expiration date of registration and licensing. Vehicles may be initially registered for less than a twelve (12) month period, or for more than a twelve (12) month period, and the fee prorated on a monthly basis if the fractional registration tends to fulfill the purpose of the monthly series registration system.

(2) For all school buses operated either by a nonprofit, nonpublic school or operated pursuant to a service contract with a school district for transporting children to or from school or in connection with school approved activities, the annual fee shall be twenty-four dollars (\$24.00).

(3) For all motorcycles and motor-driven cycles which comply with the federal motor vehicle safety standards, operated upon the public highways the annual fee shall be nine dollars (\$9.00).

(4) For operation of an all-terrain vehicle, utility type vehicle or motorbike, excluding a motorbike with an engine displacement of fifty (50) cubic centimeters or less, on city, county or highway district roads or highways open to such use, a restricted vehicle license plate fee pursuant to section 49-450, Idaho Code, shall be paid. In addition, the registration fee specified in section 67-7122, Idaho Code, shall be paid as provided in section 67-7122, Idaho Code. The registration and restricted vehicle license plate exemption provided in section 49-426(2), Idaho Code, applies to all-terrain vehicles, utility type vehicles, motorbikes and motorcycles used for the purposes described in subsection (2) of section 49-426, Idaho Code. Nonresidents shall be allowed to purchase a restricted vehicle license plate and sticker for an all-terrain vehicle, utility type vehicle or motorbike.

(5) For all motor homes the fee shall be as specified in subsection (1) of this section and shall be in addition to the fees provided for in section 49-445, Idaho Code.

(6) Registration fees shall not be subject to refund.

(7) A financial institution or repossession service contracted to a financial institution repossessing vehicles under the terms of a security agreement shall move the vehicle from the place of repossession to the financial institution's place of business on a repossession plate. The repossession plate shall also be used for demonstrating the vehicle to a prospective purchaser for a period not to exceed ninety-six (96) hours. The registration fees for repossession plates shall be as required in subsection (1) of this section for a vehicle one (1) and two (2) years old. All other fees required under chapter 4, title 49, Idaho Code, shall be in addition to

the registration fee. The repossession plate shall be issued on an annual basis by the department.

(8) A wrecker or towing business engaged in the process of towing motorized vehicles, which have been wrecked, abandoned, salvaged or may be disabled, may apply for a wrecker plate to be displayed on those vehicles being towed, provided the power unit is properly registered under this chapter. The registration fees for wrecker plates shall be as required in subsection (1) of this section for a vehicle one (1) and two (2) years old. All other fees required under chapter 4, title 49, Idaho Code, shall be in addition to the registration fee. The wrecker plate shall be issued on an annual basis by the department.

(9) In addition to the annual registration fee in this section, there shall be an initial program fee of twenty-five dollars (\$25.00) and an annual program fee of fifteen dollars (\$15.00) for all special license plate programs for those license plates issued pursuant to sections 49-404A, 49-407, 49-408, 49-409, 49-414, 49-416, 49-418 and 49-418D, Idaho Code. For special plates issued pursuant to sections 49-406 and 49-406A, Idaho Code, there shall be an initial program fee of twenty-five dollars (\$25.00) but there shall be no annual renewal fee. For special plates issued pursuant to sections 49-415C, 49-415D, 49-415E, 49-416A, 49-416B, 49-416C, 49-416D, 49-416E, 49-417, 49-417A, 49-417B, 49-417C, 49-417D, 49-417E, 49-418A, 49-418B, 49-418C, 49-418E, 49-419, 49-419A, 49-419B, 49-419C, 49-419D, 49-419E, 49-420, 49-420A, 49-420B, 49-420C, 49-420D, 49-420E, 49-420G, 49-420H, and 49-420I and 49-420J, Idaho Code, there shall be an initial program fee of thirty-five dollars (\$35.00) and an annual program fee of twenty-five dollars (\$25.00). The fees contained in this subsection shall be applicable to all new special plate programs. The initial program fee and the annual program fee shall be deposited in the state highway account and shall be used to fund the cost of administration of special license plate programs, unless otherwise specified by law.

(10) Any vehicle that does not meet federal motor vehicle safety standards shall not be registered and shall not be permitted to operate on public highways of the state, as defined in section 40-117, Idaho Code, unless otherwise specifically authorized.

SECTION 25. That Section 51-123, Idaho Code, be, and the same is hereby repealed.

SECTION 26. That Section 56-113, Idaho Code, be, and the same is hereby amended to read as follows:

56-113. INTERMEDIATE CARE FACILITIES FOR PEOPLE WITH INTELLECTUAL DISABILITIES. (1) Services provided by intermediate care facilities for people with intellectual disabilities, with the exception of state operated facilities, shall be paid in accordance with the provisions of this section, and not as provided in any other section of this chapter, unless otherwise provided in this section. State operated facilities shall be reimbursed costs based on medicare reasonable cost provisions.

(2) ~~people with intellectual disabilities~~ Intermediate care facilities for people with intellectual disabilities shall be reimbursed based on a prospective rate system effective July 1, 2010, using audited cost reports for the calendar year ending 2008 without cost or cost limit adjustments for inflation. In no event, shall payments to this class of facility exceed, in the aggregate, the amount which would be reimbursed using medicare cost reimbursement methods as defined in the medicare provider reimbursement manual (HCFA - pub. 15).

(3) The prospective rate shall consist of the following components:

(a) A component for reasonable property costs which shall be computed using the property rental rate methodology set forth in section 56-108,

Idaho Code, with the exceptions that the base rate shall exclude major ~~moveable~~ movable equipment and grandfathered rates will not apply. The initial base rate shall be eight dollars and ninety-four cents (\$8.94) for facilities that accommodate residents in wheelchairs and five dollars and eighty-one cents (\$5.81) for facilities that cannot accommodate residents in wheelchairs. The rates shall be adjusted annually as provided in section 56-108, Idaho Code; and

(b) A component for forecasted reasonable day treatment costs which shall be subject to a per patient day limit as provided in rule; and

(c) A component for all other allowable costs as determined in accordance with department rules which shall be subject to a limitation based on a percentage of the forecasted median for such costs of intermediate care facilities for people with intellectual disabilities, excluding state operated facilities.

(4) The director may require retrospective settlement as provided by rule in limited circumstances including, but not limited to:

(a) The facility fails to meet quality of care standards; or

(b) The facility is new or operated by a new provider, until such time as a prospective rate is set; or

(c) The prospective rate resulted from fraud, abuse or error.

(5) The director shall have authority to provide by rule, exceptions to the limitations described in subsection (3) of this section.

(6) The director shall promulgate the rules necessary to carry out the provisions of this section.

SECTION 27. That the Heading for Chapter 13, Title 59, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 13  
PUBLIC EMPLOYEES RETIREMENT SYSTEM

SECTION 28. That Section 63-301A, Idaho Code, be, and the same is hereby amended to read as follows:

63-301A. NEW CONSTRUCTION ROLL. (1) The county assessor shall prepare a new construction roll, which shall be in addition to the property roll, which new construction roll shall show:

(a) The name of the taxpayer;

(b) The description of the new construction, suitably detailed to meet the requirements of the individual county;

(c) A description of the land and its change in use, suitably detailed to meet the needs of the individual county;

(d) The amount of taxable market value added to the property on the current year's property roll that is directly the result of new construction or a change in use of the land or both;

(e) The amount of taxable market value added as provided in subsection (3) (g) of this section as a result of dissolution of any revenue allocation area;

(f) The amount of taxable market value to be deducted to reflect the adjustments required in paragraphs (f) (i), (f) (ii) and (f) (iii) of this subsection:

(i) Any board of tax appeals or court ordered value change, if property has a taxable value lower than that shown on any previous new construction roll;

(ii) Any reduction in value resulting from correction of value improperly included on any previous new construction roll as a result of double or otherwise erroneous assessment;

(iii) Any reduction in value resulting from a change of land use classification.

(2) As soon as possible, but in any event by no later than the first Monday in June, the new construction roll shall be certified to the county auditor and a listing showing the amount of value on the new construction roll in each taxing district or unit be forwarded to the state tax commission on or before the fourth Monday in July. Provided however, the value shown in subsection (3) (f) of this section shall be reported to the appropriate county auditor by the state tax commission by the third Monday in July and the value sent by the county auditor to each taxing district. The value established pursuant to subsection (3) (f) of this section is subject to correction by the state tax commission until the first Monday in September and any such corrections shall be sent to the appropriate county auditor, who shall notify any affected taxing districts.

(3) The value shown on the new construction roll shall include the taxable market value increase from:

- (a) Construction of any new structure that previously did not exist; or
- (b) Additions or alterations to existing nonresidential structures; or
- (c) Installation of new or used manufactured housing that did not previously exist within the county; or
- (d) Change of land use classification; or
- (e) Property newly taxable as a result of loss of the exemption provided by section 63-602W, Idaho Code; or
- (f) The construction of any improvement or installation of any equipment used for or in conjunction with the generation of electricity and the addition of any improvement or equipment intended to be so used, except property that has a value allocated or apportioned pursuant to section 63-405, Idaho Code, or that is owned by a cooperative or municipality, as those terms are defined in section 61-332A, Idaho Code, or that is owned by a public utility, as that term is defined in section 61-332A, Idaho Code, owning any other property that is allocated or apportioned. No replacement equipment or improvements may be included; or
- (g) Increases in value over the base value of property on the base assessment roll within an urban renewal revenue allocation area that has been terminated pursuant to section 50-2909(4), Idaho Code, to the extent that this increment exceeds the incremental value as of December 31, 2006, or, for revenue allocation areas formed after December 31, 2006, the entire increment value. Notwithstanding other provisions of this section, the new construction roll shall not include new construction located within an urban renewal district's revenue allocation area, except as provided in this subsection (3) (g); or
- (h) New construction previously allowable but never included on a new construction roll, provided however, that, for such property, the value on the new construction roll shall reflect the taxable value that would have been included on the new construction roll for the first year in which the property should have been included.
- (hi) Formerly exempt improvements on state college or state university owned land for student dining, housing, or other education related purposes approved by the state board of education and board of regents of the university of Idaho as proper for the operation of such state college or university provided however, such improvements were never included on any previous new construction roll.

(4) The amount of taxable market value of new construction shall be the change in net taxable market value that is attributable directly to new construction or a change in use of the land or loss of the exemption provided by section 63-602W(3), Idaho Code. It shall not include any change in value of existing property that is due to external market forces such as general or localized inflation, except as provided in subsection (3) (g) of this section.

SECTION 29. That Section 67-2601, Idaho Code, be, and the same is hereby amended to read as follows:

67-2601. DEPARTMENT CREATED -- ORGANIZATION -- DIRECTOR -- BUREAU OF OCCUPATIONAL LICENSES CREATED. (1) There is hereby created the department of self-governing agencies. The department shall, for the purposes of section 20, article IV of the constitution of the state of Idaho, be an executive department of the state government.

(2) The department shall consist of the following:

(a) Agricultural commodity commissions: Idaho apple commission, as provided by chapter 36, title 22, Idaho Code; Idaho bean commission, as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as provided by chapter 29, title 25, Idaho Code; Idaho cherry commission, as provided by chapter 37, title 22, Idaho Code; Idaho dairy products commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea and lentil commission, as provided by chapter 35, title 22, Idaho Code; Idaho potato commission, as provided by chapter 12, title 22, Idaho Code; the Idaho wheat commission, as provided by chapter 33, title 22, Idaho Code; and the Idaho aquaculture commission, as provided by chapter 44, title 22, Idaho Code.

(b) Professional and occupational licensing boards: Idaho state board of certified public accountancy, as provided by chapter 2, title 54, Idaho Code; board of acupuncture, as provided by chapter 47, title 54, Idaho Code; board of architectural examiners, as provided by chapter 3, title 54, Idaho Code; office of the state athletic director, as provided by chapter 4, title 54, Idaho Code; board of barber examiners, as provided by chapter 5, title 54, Idaho Code; board of commissioners of the Idaho state bar, as provided by chapter 4, title 3, Idaho Code; board of chiropractic physicians, as provided by chapter 7, title 54, Idaho Code; Idaho board of cosmetology, as provided by chapter 8, title 54, Idaho Code; Idaho counselor licensing board, as provided by chapter 34, title 54, Idaho Code; state board of dentistry, as provided by chapter 9, title 54, Idaho Code; state board of dentistry, as provided by chapter 33, title 54, Idaho Code; ~~state board of engineering examiners~~ Idaho board of licensure of professional engineers and professional land surveyors, as provided by chapter 12, title 54, Idaho Code; state board for registration of professional geologists, as provided by chapter 28, title 54, Idaho Code; speech and hearing services licensure board, as provided by chapter 29, title 54, Idaho Code; Idaho physical therapy licensure board, as provided by chapter 22, title 54, Idaho Code; Idaho state board of landscape architects, as provided by chapter 30, title 54, Idaho Code; liquefied petroleum gas safety board, as provided by chapter 53, title 54, Idaho Code; state board of medicine, as provided by chapter 18, title 54, Idaho Code; state board of morticians, as provided by chapter 11, title 54, Idaho Code; board of naturopathic medical examiners, as provided by chapter 51, title 54, Idaho Code; board of nurses, as provided by chapter 14, title 54, Idaho Code; board of examiners of nursing home administrators, as provided by chapter 16, title 54, Idaho Code; state board of optometry, as provided by chapter 15, title 54, Idaho Code; Idaho outfitters and guides board, as provided by chapter 21, title 36, Idaho Code; board of pharmacy, as provided by chapter 17, title 54, Idaho Code; state board of podiatry, as provided by chapter 6, title 54, Idaho Code; Idaho state board of psychologist examiners, as provided by chapter 23, title 54, Idaho Code; Idaho real estate commission, as provided by chapter 20, title 54, Idaho Code; real estate appraiser board, as provided by chapter 41, title 54, Idaho Code; board of social work examiners, as provided by chapter 32, title 54, Idaho Code; the board of veterinary medicine, as provided by chapter 21, title 54, Idaho Code; the board of examiners of residential care

facility administrators, as provided by chapter 42, title 54, Idaho Code; the certified shorthand reporters board, as provided by chapter 31, title 54, Idaho Code; the driving businesses licensure board, as provided by chapter 54, title 54, Idaho Code; the board of drinking water and wastewater professionals, as provided by chapter 24, title 54, Idaho Code; and the board of midwifery, as provided by chapter 55, title 54, Idaho Code.

(c) The board of examiners, pursuant to section 67-2001, Idaho Code.

(d) The division of building safety: building code board, chapter 41, title 39, Idaho Code; manufactured housing board, chapter 21, title 44, Idaho Code; electrical board, chapter 10, title 54, Idaho Code; public works contractors license board, chapter 19, title 54, Idaho Code; plumbing board, chapter 26, title 54, Idaho Code; public works construction management, chapter 45, title 54, Idaho Code; the heating, ventilation and air conditioning board, chapter 50, title 54, Idaho Code; and modular building advisory board, chapter 43, title 39, Idaho Code.

(e) The division of veterans services to be headed by a division administrator who shall be a nonclassified employee exempt from the provisions of chapter 53, title 67, Idaho Code. The administrator of the division shall administer the provisions of chapter 2, title 65, Idaho Code, and chapter 9, title 66, Idaho Code, with the advice of the veterans affairs commission established under chapter 2, title 65, Idaho Code, and shall perform such additional duties as are imposed upon him by law.

(f) The board of library commissioners, pursuant to section 33-2502, Idaho Code.

(g) The Idaho state historical society, pursuant to section 67-4123, Idaho Code.

(3) The bureau of occupational licenses is hereby created within the department of self-governing agencies.

Approved April 1, 2011.

CHAPTER 152  
(S.B. No. 1115)

AN ACT

RELATING TO ABORTION AND THE INSURANCE CONTRACT; AMENDING CHAPTER 18, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1848, IDAHO CODE, TO PROVIDE FOR LEGISLATIVE FINDINGS AND PURPOSE, TO PROHIBIT ABORTION COVERAGE BY A QUALIFIED HEALTH PLAN OFFERED THROUGH AN EXCHANGE CREATED PURSUANT TO THE PATIENT PROTECTION AND AFFORDABLE CARE ACT WITHIN THE STATE OF IDAHO AND TO PROVIDE EXCEPTIONS; AMENDING SECTION 56-209c, IDAHO CODE, TO REVISE A REQUIREMENT RELATING TO A DETERMINATION THAT AN ABORTION IS NECESSARY IN A CERTAIN CIRCUMSTANCE AND TO PROVIDE A CODE REFERENCE; AND PROVIDING SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 18, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-1848, Idaho Code, and to read as follows:

41-1848. LEGISLATIVE FINDINGS AND PURPOSE -- COVERAGE FOR ABORTIONS IN STATE EXCHANGE PROHIBITED. (1) The legislature finds that:

(a) Pursuant to section 1303 of the patient protection and affordable care act, P.L. 111-148, states are explicitly permitted to pass laws

prohibiting qualified health plans offered through an exchange in their state from offering abortion coverage;

(b) It is the longstanding policy of this state to prefer live child-birth over abortion and to prohibit the use of taxpayer moneys to fund abortions unless the mother's life is at risk or the pregnancy is a result of rape or incest;

(c) Idaho law prohibits certain insurance plans, policies and contracts issued in this state from offering coverage for elective abortions; and

(d) It is the purpose of this section to affirmatively prohibit qualified health plans that cover abortions from participating in exchanges within this state.

(2) Notwithstanding any other provision of law, no abortion coverage may be provided by a qualified health plan offered through an exchange created pursuant to the patient protection and affordable care act, P.L. 111-148, within the state of Idaho.

(3) The provisions of subsection (2) of this section shall not apply to an abortion performed if it is the recommendation of one (1) consulting physician that an abortion is necessary to save the life of the mother, or if the pregnancy is a result of rape, as defined in section 18-6101, Idaho Code, or incest as determined by the courts.

SECTION 2. That Section 56-209c, Idaho Code, be, and the same is hereby amended to read as follows:

56-209c. DENIAL OF PAYMENT FOR ABORTIONS UNDER CERTAIN CONDITIONS. No funds available to the department of health and welfare, by appropriation or otherwise, shall be used to pay for abortions, unless it is the recommendation of ~~two~~ one (21) consulting physicians that an abortion is necessary to save the life of the mother, or unless the pregnancy is a result of rape, as defined in section 18-6101, Idaho Code, or incest as determined by the courts.

SECTION 3. 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 the remaining portions of this act.

Approved April 1, 2011.

CHAPTER 153  
(S.B. No. 1151)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DIVISION OF HUMAN RESOURCES FOR FISCAL YEAR 2011; PROVIDING AN APPROPRIATION AND A TRANSFER OF FUNDS TO THE GENERAL FUND; APPROPRIATING MONEYS TO THE DIVISION OF HUMAN RESOURCES FOR FISCAL YEAR 2012; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; DIRECTING THE PAYMENT FOR STATEWIDE MANAGEMENT AND HUMAN RESOURCES TRAINING TO THE DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 1, Chapter 189, Laws of 2010, and any other appropriation provided for by law, there is

hereby appropriated \$189,000 from the Division of Human Resources Fund to the Division of Human Resources, to be expended for operating expenditures, for the period July 1, 2010, through June 30, 2011.

SECTION 2. There is hereby appropriated and upon passage and approval of this act, the State Controller shall transfer \$756,000 from the Division of Human Resources Fund to the General Fund.

SECTION 3. There is hereby appropriated to the Division of Human Resources from the Division of Human Resources Fund, the following amounts to be expended for the designated expense classes, for the period July 1, 2011, through June 30, 2012:

FOR:

Personnel Costs	\$969,700
Operating Expenditures	<u>611,600</u>
TOTAL	\$1,581,300

SECTION 4. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Division of Human Resources is authorized no more than thirteen (13) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 5. LEGISLATIVE INTENT. Of the amount appropriated in Section 3 of this act, the Division of Human Resources shall pay from operating expenditures, through the state interagency billing process, to the Division of Professional-Technical Education for the cost of providing statewide management and human resources training. The payment amount shall be equal to the Miscellaneous Revenue Fund appropriation within the Related Services Program of the Division of Professional-Technical Education.

SECTION 6. An emergency existing therefor, which emergency is hereby declared to exist, Sections 1 and 2 of this act shall be in full force and effect on and after passage and approval.

Approved April 1, 2011.

CHAPTER 154  
(S.B. No. 1157)

AN ACT

APPROPRIATING MONEYS TO THE STATE CONTROLLER FOR FISCAL YEAR 2012; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; PROVIDING FOR THE RECOVERY OF STATE CONTROLLER SERVICE COSTS TO THE GENERAL FUND; PROVIDING NON-GENERAL FUND REAPPROPRIATION; PROVIDING GENERAL FUND REAPPROPRIATION; AND EXEMPTING APPROPRIATION OBJECT AND PROGRAM TRANSFER LIMITATIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the State Controller, the following amounts to be expended according to the designated programs and expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
<b>I. ADMINISTRATION:</b>				
FROM:				
General				
Fund	\$382,100	\$59,200		\$441,300
<b>II. STATEWIDE ACCOUNTING:</b>				
FROM:				
General				
Fund	\$1,501,100	\$1,313,600		\$2,814,700
Miscellaneous Revenue				
Fund	<u>0</u>	<u>20,000</u>		<u>20,000</u>
TOTAL	\$1,501,100	\$1,333,600		\$2,834,700
<b>III. STATEWIDE PAYROLL:</b>				
FROM:				
General				
Fund	\$1,252,100	\$1,371,100		\$2,623,200
Miscellaneous Revenue				
Fund	<u>0</u>	<u>20,000</u>		<u>20,000</u>
TOTAL	\$1,252,100	\$1,391,100		\$2,643,200
<b>IV. COMPUTER CENTER:</b>				
FROM:				
Data Processing Services				
Fund	\$3,959,000	\$4,004,100	\$20,900	\$7,984,000
GRAND TOTAL	\$7,094,300	\$6,788,000	\$20,900	\$13,903,200

**SECTION 2. FTP AUTHORIZATION.** In accordance with Section 67-3519, Idaho Code, the State Controller is authorized no more than ninety-six (96) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

**SECTION 3.** The moneys assessed by the Division of Financial Management in accordance with Section 67-3531, Idaho Code, for State Controller services shall be placed in the Indirect Cost Recovery Fund. On June 30, 2012, the State Controller shall transfer the amount assessed in the statewide cost allocation plan from the Indirect Cost Recovery Fund to the state General Fund.

**SECTION 4. NON-GENERAL FUND REAPPROPRIATION AUTHORITY.** There is hereby reappropriated to the State Controller any unexpended and unencumbered balances of moneys categorized as dedicated funds as appropriated for fiscal year 2011, to be used for nonrecurring expenditures, for the period July 1, 2011, through June 30, 2012.

SECTION 5. GENERAL FUND REAPPROPRIATION AUTHORITY. There is hereby reapportioned to the State Controller, for the Statewide Payroll Division, the unexpended and unencumbered balance of General Fund moneys as appropriated for the 218 Referendum for fiscal year 2011, to be used for nonrecurring expenditures, for the period July 1, 2011, through June 30, 2012. The reapportionment for the General Fund granted in this section shall be subject to the following provisions: (1) If the unexpended and unencumbered balance in the General Fund on June 30, 2011, is zero, the reapportionment for the General Fund in this section is hereby declared to be null and void; (2) If the unexpended and unencumbered balance in the General Fund on June 30, 2011, is greater than zero, but less than the total General Fund reapportionment authority granted to all state agencies, the amount reapportioned in this section shall be in the proportion that the reapportionment of this agency bears to the total General Fund reapportionment authority granted to all state agencies.

SECTION 6. EXEMPTIONS FROM OBJECT AND PROGRAM TRANSFER LIMITATIONS. For fiscal year 2012, the State Controller is hereby exempted from the provisions of Section 67-3511(1), (2) and (3), Idaho Code, allowing unlimited transfers between object codes and between programs, for all moneys appropriated to it for the period July 1, 2011, through June 30, 2012. Legislative appropriations shall not be transferred from one fund to another fund unless expressly approved by the Legislature.

Approved April 1, 2011.

CHAPTER 155  
(H.B. No. 244)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE OFFICE OF ENERGY RESOURCES FOR FISCAL YEAR 2011; TRANSFERRING MONEYS TO THE GENERAL FUND; APPROPRIATING MONEYS TO THE OFFICE OF ENERGY RESOURCES FOR FISCAL YEAR 2012; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; PROVIDING NON-GENERAL FUND REAPPROPRIATION FOR FISCAL YEAR 2012; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 1, Chapter 73, Laws of 2010, and any other appropriation provided for by law, there is hereby appropriated from the listed fund to the Office of Energy Resources, the following amounts to be expended for the designated expense classes, for the period July 1, 2010, through June 30, 2011:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
American Reinvestment Fund	\$60,000	\$290,000	\$350,000

SECTION 2. There is hereby appropriated and the State Controller shall transfer, as soon as practicable, the remaining unencumbered and unexpended balance from the Idaho Economic Development Biofuel Infrastructure Matching Fund to the General Fund, for the period July 1, 2010, through June 30, 2011.

The balance of the Matching Fund including accrued interest is estimated at \$99,500.

SECTION 3. There is hereby appropriated to the Office of Energy Resources, the following amounts to be expended for the designated expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
Indirect Cost Recovery			
Fund	\$271,800	\$207,000	\$478,800
Renewable Energy Resources			
Fund	283,700	75,700	359,400
Miscellaneous Revenue			
Fund	83,900	581,700	665,600
Petroleum Price Violation			
Fund	116,800	34,700	151,500
Federal Grant			
Fund	<u>466,300</u>	<u>721,500</u>	<u>1,187,800</u>
TOTAL	\$1,222,500	\$1,620,600	\$2,843,100

SECTION 4. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Office of Energy Resources is authorized no more than eighteen (18) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 5. NON-GENERAL FUND REAPPROPRIATION AUTHORITY. There is hereby reappropriated to the Office of Energy Resources the unexpended and unencumbered balance of any American Reinvestment Fund moneys and any stimulus-related Indirect Cost Recovery Fund moneys reappropriated for fiscal year 2011, to be used for nonrecurring expenditures only, for the period July 1, 2011, through June 30, 2012. Furthermore, pursuant to Section 67-3511(2), Idaho Code, the Office of Energy Resources is expressly authorized to transfer up to \$331,100 in spending authority from personnel costs reappropriated from stimulus-related Indirect Cost Recovery Fund moneys to the American Reinvestment Fund to properly account for direct personnel costs.

SECTION 6. An emergency existing therefor, which emergency is hereby declared to exist, Sections 1 and 2 of this act shall be in full force and effect on and after passage and approval.

Approved April 1, 2011.

CHAPTER 156  
(H.B. No. 245)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF SPECIES CONSERVATION FOR FISCAL YEAR 2012; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Office of Species Conservation, the following amounts to be expended for the designated expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:				
General				
Fund	\$391,400	\$59,600		\$451,000
Miscellaneous Revenue				
Fund		15,000		15,000
Federal Grant				
Fund	<u>690,700</u>	<u>229,300</u>	<u>\$21,534,600</u>	<u>22,454,600</u>
TOTAL	\$1,082,100	\$303,900	\$21,534,600	\$22,920,600

SECTION 2. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Office of Species Conservation is authorized no more than twelve (12) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved April 1, 2011.

CHAPTER 157  
(H.B. No. 249)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF FINANCE FOR FISCAL YEAR 2012; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Department of Finance, the following amounts to be expended for the designated expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
State Regulatory				
Fund	\$4,350,300	\$1,554,800	\$147,700	\$6,052,800
Securities Investor Training				
Fund	<u>50,000</u>	<u>0</u>	<u>0</u>	<u>50,000</u>
TOTAL	\$4,400,300	\$1,554,800	\$147,700	\$6,102,800

SECTION 2. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Department of Finance is authorized no more than sixty-one (61) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved April 1, 2011.

CHAPTER 158  
(H.B. No. 145, As Amended)

AN ACT

RELATING TO RECREATIONAL ACTIVITIES; AMENDING SECTION 49-102, IDAHO CODE, TO REVISE A DEFINITION; AMENDING SECTION 49-122, IDAHO CODE, TO REVISE A DEFINITION; AND AMENDING SECTION 67-7101, IDAHO CODE, TO REVISE DEFINITIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-102, Idaho Code, be, and the same is hereby amended to read as follows:

49-102. DEFINITIONS -- A. (1) "Abandon" means to leave a vehicle on private property without the permission of the person having rights to the possession of the property, or on a highway or other property open to the public for the purposes of vehicular traffic or parking, or upon or within the right-of-way of any highway, for twenty-four (24) hours or longer.

(2) "Abandoned vehicle" means any vehicle observed by an authorized officer or reported by a member of the public to have been left within the limits of any highway or upon the property of another without the consent of the property owner for a period of twenty-four (24) hours or longer, except that a vehicle shall not be considered abandoned if its owner-operator is unable to remove it from the place where it is located and has notified a law enforcement agency and requested assistance.

(3) "Accident" means any event that results in an unintended injury or property damage attributable directly or indirectly to the motion of a motor vehicle or its load, a snowmobile or special mobile equipment.

(4) "Actual physical control" means being in the driver's position of a motor vehicle with the motor running or the vehicle moving.

(5) "Administrator" means the federal highway administrator, the chief executive of the federal highway administration, an agency within the U.S. department of transportation.

(6) "Age of a motor vehicle" means the age determined by subtracting the manufacturer's year designation of the vehicle from the year in which the

designated registration fee is paid. If the vehicle has the same manufacturer's year designation as the year in which the fee is paid, or if a vehicle has a manufacturer's year designation later than the year in which the fee is paid, the vehicle shall be deemed to be one (1) year old.

(7) "Air-conditioning equipment" means mechanical vapor compression refrigeration equipment which is used to cool the driver's or passenger compartment of any motor vehicle.

(8) "Alcohol or alcoholic beverage" means:

(a) Beer as defined in 26 U.S.C. section 5052(a), of the Internal Revenue Code;

(b) Wine of not less than one-half of one percent (.005%) of alcohol by volume; or

(c) Distilled spirits as defined in section 5002(a)(8), of the Internal Revenue Code.

(9) "Alley" means a public way of limited use intended only to provide access to the rear or side of lots or buildings in urban districts.

(10) "All-terrain vehicle" or "ATV" means ~~any recreation vehicle with three (3) or more tires, weighing under nine hundred (900) pounds, fifty (50) inches or less in width, having a wheelbase of sixty-one (61) inches or less, has handlebar steering and a seat designed to be straddled by the operator~~ an all-terrain vehicle or ATV as defined in section 67-7101, Idaho Code.

(11) "Amateur radio operator." (See "Radio operator, amateur," section 49-119, Idaho Code)

(12) "Ambulance" means a motor vehicle designed and used primarily for the transportation of injured, sick, or deceased persons, on stretchers, cots, beds, or other devices for carrying persons in a prone position.

(13) "Applicant" means an individual who applies to obtain, transfer, upgrade, or renew a driver's license.

(14) "Approved driver training course" means a training course from a school licensed under the provisions of chapter 21 of this title or a driver training course approved by another United States jurisdiction provided the course was taken while an individual was a resident of that United States jurisdiction.

(15) "Approved testing agency" means a person, firm, association, partnership or corporation approved by the director of the Idaho state police which is:

(a) In the business of testing equipment and systems;

(b) Recognized by the director as being qualified and equipped to do experimental testing; and

(c) Not under the jurisdiction or control of any single manufacturer or supplier for an affected industry.

(16) "Armed forces" means the army, navy, marine corps, coast guard and the air force of the United States.

(17) "Authorized emergency vehicle." (See "Vehicle," section 49-123, Idaho Code)

(18) "Authorized officer" means any member of the Idaho state police, or any regularly employed and salaried deputy sheriff, or other county employee designated to perform the function of removing abandoned vehicles or junk vehicles by the board of county commissioners of the county in which a vehicle is located, or any regularly employed and salaried city peace officer or other city employee designated to perform the function of removing abandoned vehicles or junk vehicles by the city council, or a qualified person deputized or appointed by the proper authority as reserve deputy sheriff or city policeman, authorized within the jurisdiction in which the abandoned vehicle or junk vehicle is located.

(19) "Authorized transportation department employee" means any employee appointed by the board to perform duties relating to enforcement of vehicle laws as have been specifically defined and approved by order of the board (see section 40-510, Idaho Code).

(20) "Auto transporter" means a vehicle combination constructed for the purpose of transporting vehicles.

SECTION 2. That Section 49-122, Idaho Code, be, and the same is hereby amended to read as follows:

49-122. DEFINITIONS -- U. (1) "Unauthorized vehicle" means any vehicle parked or otherwise left on private property without the consent of the person owning or controlling that property.

(2) "United States" means the fifty (50) states and the District of Columbia.

(3) "Unladen weight." (See "Light weight," section 49-113, Idaho Code)

(4) "Unregistered vehicle" means a vehicle without current registration on file with the department or with the appropriate agency of another state, unless exempt from registration.

(5) "Unusual noise." (See "Excessive," section 49-106, Idaho Code)

(6) "Urban district." (See "District," section 49-105, Idaho Code)

(7) "Utility trailer" means a trailer or semitrailer designed primarily to be drawn behind a passenger car or pickup truck for domestic and utility purposes. Utility or domestic use shall include a farm trailer while being used to haul agricultural products or livestock from farm to storage, market or processing plant, or returning therefrom.

(8) ~~"Utility type vehicle" or {"UTV"} means any recreational motor vehicle other than an ATV, motorbike or snowmobile as defined in section 67-7101, Idaho Code, designed for and capable of travel over designated roads, traveling on four (4) or more tires, maximum width less than seventy-four (74) inches, maximum weight less than two thousand (2,000) pounds, and having a wheelbase of one hundred ten (110) inches or less. A utility type vehicle must have a minimum width of fifty (50) inches, a minimum weight of at least nine hundred (900) pounds or a wheelbase of over sixty-one (61) inches. Utility type vehicle does not include golf carts, vehicles specially designed to carry a disabled person, implements of husbandry as defined in section 49-110(2), Idaho Code, or vehicles otherwise registered under title 49~~ a utility type vehicle or UTV as defined in section 67-7101, Idaho Code.

SECTION 3. That Section 67-7101, Idaho Code, be, and the same is hereby amended to read as follows:

67-7101. DEFINITIONS. In this chapter:

(1) ~~"All-terrain vehicle" or {"ATV"} means any recreation vehicle with three (3) or more tires, under nine hundred (900) pounds and fifty (50) inches or less in width, having a wheelbase of sixty-one (61) inches or less, has handlebar steering and a seat designed to be straddled by the operator.~~

(2) "Board" means the park and recreation board created under authority of section 67-4221, Idaho Code.

(3) "Bona fide snowmobile program" means services or facilities as approved by the department that will benefit snowmobilers such as snowmobile trail grooming, plowing and maintaining snowmobile parking areas and facilities, and trail signing.

(4) "Dealer" means any person who engages in the retail sales of or rental of snowmobiles, motorbikes, utility type vehicles or all-terrain vehicles.

(5) "Department" means the Idaho department of parks and recreation.

(6) "Designated parking area" means an area located, constructed, maintained, and signed with the approval of the land manager or owner.

(7) "Director" means the director of the department of parks and recreation.

(8) "Highway." (See section 40-109, Idaho Code, but excepting public roadway as defined in this section)

(9) "Motorbike" means any self-propelled two (2) wheeled motorcycle or motor-driven cycle, excluding tractor, designed for or capable of traveling off developed roadways and highways and also referred to as trailbikes, enduro bikes, trials bikes, motocross bikes or dual purpose motorcycles.

(10) "Off-highway vehicle" means an all-terrain vehicle, motorbike, specialty off-highway vehicle or utility type vehicle as defined in this section.

(11) "Operator" means any person who is in physical control of a motorbike, all-terrain vehicle, utility type vehicle, specialty off-highway vehicle or snowmobile.

(12) "Owner" means every person holding record title to a motorbike, all-terrain vehicle, utility type vehicle, specialty off-highway vehicle or snowmobile and entitled to the use or possession thereof, other than a lienholder or other person having a security interest only.

(13) "Person" means an individual, partnership, association, corporation, or any other body or group of persons, whether incorporated or not, and regardless of the degree of formal organization.

(14) "Public roadway" means all portions of any highway which are controlled by an authority other than the Idaho transportation department.

(15) "Snowmobile" means any self-propelled vehicle under one thousand (1,000) pounds unladen gross weight, designed primarily for travel on snow or ice or over natural terrain, which may be steered by tracks, skis, or runners.

(16) "Specialty off-highway vehicle" means any vehicle manufactured, designed or constructed exclusively for off-highway operation that does not fit the definition of an all-terrain vehicle, utility type vehicle or motorbike as defined in this section. The vehicle classification provided for in this subsection shall become effective on January 1, 2010.

(17) "Utility type vehicle" or "~~UTV~~" means any recreational motor vehicle other than an ATV, motorbike or snowmobile as defined in this section, designed for and capable of travel over designated roads, traveling on four (4) or more tires, maximum width less than seventy-four (74) inches, maximum weight less than two thousand (2,000) pounds, and having a wheelbase of one hundred ten (110) inches or less. A utility type vehicle must have a minimum width of fifty (50) inches, a minimum weight of at least nine hundred (900) pounds or a wheelbase of over sixty-one (61) inches. Utility type vehicle does not include golf carts, vehicles specially designed to carry a disabled person, implements of husbandry as defined in section 49-110 (2), Idaho Code, or vehicles otherwise registered under title 49, Idaho Code. A "utility type vehicle" or "UTV" also means a recreational off-highway vehicle or ROV.

(18) "Vendor" means any entity authorized by the department to sell recreational registrations.

(19) "Winter recreational parking locations" means designated parking areas established and maintained with funds acquired from the cross-country skiing account.

Approved April 5, 2011.

CHAPTER 159  
(H.B. No. 204)

AN ACT

RELATING TO EDUCATION; AMENDING SECTION 33-2401, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 33-2402, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS; AMENDING SECTION 33-2403, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE REGISTRATION OF PROPRIETARY SCHOOLS AND TO REVISE PROVISIONS RELATING TO EXEMPTIONS; AMENDING SECTION 33-2404, IDAHO CODE, TO PROVIDE THAT NO AGENT SHALL MAKE CERTAIN STATEMENTS OR ENGAGE IN CERTAIN PRACTICES, TO PROVIDE THAT A STUDENT MAY BRING AN ACTION AND TO DELETE PROVISIONS RELATING TO A PENALTY; AMENDING SECTION 33-2406, IDAHO CODE, TO PROVIDE THAT THE BOARD MAY PERMIT THE DIRECTOR TO ACCEPT FROM CERTAIN PROPRIETARY SCHOOLS CERTAIN BONDS AND TO PROVIDE THAT THE DIRECTOR MAY SUBMIT A DEMAND UPON THE SURETY ON THE BOND ON BEHALF OF A STUDENT OR STUDENTS IN CERTAIN SITUATIONS; AMENDING CHAPTER 24, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2407, IDAHO CODE, TO PROVIDE FOR POWERS AND DUTIES OF THE DIRECTOR; AMENDING CHAPTER 24, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2408, IDAHO CODE, TO PROVIDE FOR REMEDIES, TO PROVIDE FOR A HEARING, TO PROVIDE FOR CIVIL PENALTIES AND TO PROVIDE THAT A COURT MAY ENTER AN ORDER TO RECOVER COSTS; AND AMENDING SECTION 33-2409, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO CRIMINAL PENALTIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-2401, Idaho Code, be, and the same is hereby amended to read as follows:

33-2401. DEFINITIONS. For the purposes of chapter 24, title 33, Idaho Code, the following words have the following meanings:

(1) "Accredited" means that a postsecondary educational institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the board.

(2) "Agent" means any individual within the state of Idaho who solicits students for or on behalf of a proprietary school.

(3) "Agent's certificate of identification" means a nontransferable written document issued to an agent by the proprietary school that the agent represents.

(4) "Board" means the state board of education.

(5) "Course" means instruction imparted in a series of lessons or class meetings to meet an educational objective.

(6) "Course or courses of study" means either a single course or a set of related courses for which a student enrolls, either for academic credit or otherwise.

(7) "Degree" means any written or any academic title which contains, in any language, the word "associate," "bachelor," "baccalaureate," "master" or "doctor," or any abbreviation thereof, and which indicates or represents, or which is intended to indicate or represent, that the person named thereon, in the case of any writing, or the person it is awarded thereto, in the case of any academic title, is learned in or has satisfactorily completed a prescribed course of study in a particular field or that the person has demonstrated proficiency in any field of endeavor as a result of formal preparation or training.

(8) "Director" means the executive officer of the state board of education or his designee.

(9) "Person" means an individual, sole proprietorship, partnership, corporation or other association of individuals, however organized.

(10) "Postsecondary educational institution" means an individual person, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within, or which operates or purports to operate, from a location within the state of Idaho, and which provides a course or courses of study that lead to a degree, or which provides, offers or sells degrees.

(911) "Proprietary school" means an individual person, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within, or which operates or purports to operate, from a location within the state of Idaho and which conducts, provides, offers or sells a course or courses of study, but which does not provide, offer or sell degrees.

SECTION 2. That Section 33-2402, Idaho Code, be, and the same is hereby amended to read as follows:

33-2402. REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS. (1) Unless exempted as provided herein, each postsecondary educational institution which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually with and hold a valid certificate of registration issued by the board director. A public postsecondary educational institution or agency supported primarily by taxation from either the state of Idaho or a local source in Idaho shall not be required to register under this section. The board director may exempt a nonprofit postsecondary educational institution from the registration requirement in accordance with standards and criteria established in rule by the board. The board director may permit a postsecondary educational institution required to register under this section to instead register as a proprietary school under section 33-2403, Idaho Code, in accordance with standards and criteria established in rule by the board.

(2) The board shall prescribe by rule the procedure for registration, which shall include, but is not limited to, a description of each degree, course or courses of study, for academic credit or otherwise, that a postsecondary educational institution intends to conduct, provide, offer or sell. Such rule shall also prescribe the standards and criteria to be utilized by the board director for recognition of accreditation organizations.

(3) The board director may deny the registration of a postsecondary educational institution that does not meet accreditation requirements or other standards and criteria established in rule by the board. The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any denial of registration under this section.

(4) The board director shall assess an annual registration fee on each postsecondary educational institution required to be registered under this section as established in rule by the board. Such annual registration fee shall not exceed five thousand dollars (\$5,000) and shall be collected by the board director and shall be dedicated for use by the board director in connection with its his responsibilities under this chapter.

SECTION 3. That Section 33-2403, Idaho Code, be, and the same is hereby amended to read as follows:

33-2403. REGISTRATION OF PROPRIETARY SCHOOLS. (1) Unless exempted as provided in subsection (4) of this section, each proprietary school which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually

with and hold a valid certificate of registration issued by the ~~board or its designee~~ director.

(2) The board shall prescribe by rule the procedure for registration, which shall include, but is not limited to, a description of each course or courses of study, for academic credit or otherwise, that a proprietary school intends to conduct, provide, offer or sell.

(3) The ~~board~~ director may deny the registration of a proprietary school that does not meet the standards or criteria established in rule by the board. The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any denial of registration under this section.

(4) The following individuals or entities are specifically exempt from the registration provisions required by this section:

(a) An individual or entity that offers instruction or training solely avocational or recreational in nature, as determined by the board.

(b) An individual or entity that offers courses recognized by the board which comply in whole or in part with the compulsory education law.

(c) An individual or entity that offers a course or courses of study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student.

(d) An individual or entity ~~which is that conducts or engages in activities that would otherwise regulated, licensed or registered with another state agency~~ require registration under chapter 24, title 33, Idaho Code, if another state agency, commission or board regulates such activities pursuant to title 54, Idaho Code.

(e) An individual or entity that offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations or medical college admissions tests, or similar instruction for test preparation.

(f) An individual or entity offering only workshops or seminars lasting no longer than three (3) calendar days and offered no more than four (4) times per year.

(g) A parochial or denominational institution providing instruction or training relating solely to religion and for which degrees are not granted.

(h) An individual or entity that offers postsecondary credit through a consortium of public and private colleges and universities under the auspices of the western governors.

(i) An individual that offers flight instruction and that accepts payment for services for such training on a per-flight basis after the training occurs, or that accepts advance payment or a deposit for such training in a de minimus amount, as established by the board in rule.

(5) The ~~board~~ director shall assess an annual registration fee on each proprietary school required to be registered under this section as established in rule by the board. Such annual registration fee shall not exceed five thousand dollars (\$5,000) and shall be collected by the ~~board or its designee~~ director, and shall be dedicated for use by the ~~board~~ director in connection with ~~its~~ his responsibilities under this chapter.

SECTION 4. That Section 33-2404, Idaho Code, be, and the same is hereby amended to read as follows:

33-2404. AGENT'S PERMIT. (1) No individual may act as an agent of a proprietary school required to be registered under the provisions of this chapter unless that individual holds a valid agent's certificate of identification issued by the proprietary school that the agent represents.

(2) Each agent's certificate of identification shall be reissued annually by the proprietary school that the agent represents on the first day of

July. If courses are solicited or sold by more than one (1) agent, a separate certificate of identification is required for each agent.

(3) The agent's certificate of identification shall consist of a pocket card and shall bear:

(a) The name and address of the agent;

(b) The name and address of the proprietary school that the agent represents;

(c) A statement that the bearer is an authorized agent of the proprietary school and may solicit students for the proprietary school.

(4) The agent shall surrender the agent's certificate of identification to the proprietary school upon termination of employment or agency relationship.

(5) An agent representing more than one (1) proprietary school shall obtain a separate agent's certificate of identification for each proprietary school represented.

(6) For every agent who will have unsupervised contact with minors, prior to issuing the agent a certificate of identification the proprietary school shall complete a criminal history check on the agent for particular criminal offenses, and in accordance with other guidelines, established in rule by the board. No agent shall be issued an agent's certificate of identification if he or she is found to have been convicted of any of the offenses identified in board rule, or if he or she has been previously found in any judicial or administrative proceeding to have violated this chapter.

(7) An agent's certificate of identification shall be valid for the state's fiscal year in which it is issued, unless sooner revoked or suspended.

(8) The agent shall carry the agent's certificate of identification with him or her for identification purposes when engaged in the solicitation of students away from the premises of the proprietary school and shall produce the agent's certificate of identification for inspection upon request.

(9) The issuance of an agent's certificate of identification pursuant to this section shall not be interpreted as, and it shall be unlawful for any individual holding any agent's certificate of identification to expressly or impliedly represent by any means whatsoever, that the board has made any evaluation, recognition, accreditation or endorsement of any proprietary school or of any course of study being offered by the agent of any such proprietary school. Any oral or written statement, advertisement or solicitation by any proprietary school or agent which refers to the board shall state:

"(Name of school) is registered with the State Board of Education in accordance with Section 33-2403, Idaho Code."

(10) It shall be unlawful for any agent holding an agent's certificate of identification under the provisions of this section to expressly or impliedly represent, by any means whatsoever, that the issuance of the agent's certificate of identification constitutes an assurance by the board that any course of study being offered by the agent or proprietary school will provide and require of the student a course of education or training necessary to reach a professional, educational, or vocational objective, or will result in employment or personal earning for the student, or that the board has made any evaluation, recognition, accreditation, or endorsement of any course of study being offered by the agent or proprietary school.

(11) No agent shall make any ~~untrue or misleading statements~~ or engage in sales, collection, credit, or other practices of any type that are illegal, false, deceptive, misleading or unfair any practices that are false, deceptive or misleading.

(12) The proprietary school shall maintain records for five (5) years of each application for an agent's certificate of identification, and each issuance, denial, termination, suspension and revocation of an agent's certificate of identification.

(13) The proprietary school shall provide as part of the annual registration process the names and results of the criminal history check for each agent to whom it has issued a certificate of identification. The criminal history check will be valid for five (5) years.

(14) ~~The board or a~~ student may bring an action pursuant to the Idaho rules of civil procedure for an agent's violation of the provisions of this chapter or any rule promulgated pursuant to this chapter, or any fraud or misrepresentation. The court shall determine which party is the "prevailing party" and the prevailing party shall be entitled to the recovery of damages, reasonable attorney's fees and costs both at trial and on appeal.

~~(15) Any agent who violates the provisions of this section is also guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding five thousand dollars (\$5,000), or both.~~

SECTION 5. That Section 33-2406, Idaho Code, be, and the same is hereby amended to read as follows:

33-2406. SURETY BOND. As a condition of registration, a proprietary school shall obtain a surety bond issued by an insurer duly authorized to do business in this state in favor of the state of Idaho for the indemnification of any student for any loss suffered as a result of a failure by such proprietary school to satisfy its obligations pursuant to the terms and conditions of any contract for tuition or other instructional fees entered into between the proprietary school and a student, or as a result of any violation of this chapter or the rules promulgated pursuant to this chapter. The term of the bond shall extend over the period of registration, and shall be in such amount as is established in rule by the board. The board may permit the director to accept from a newly registered proprietary school, for a period not to exceed five (5) years, a bond in a lesser amount that is supplemented by other financial instruments deemed acceptable by the director.

~~The board or its designee~~ director may submit a demand upon the surety on the bond on behalf of a student or students when it is reasonably believed that a loss has occurred due to a failure by such proprietary school to satisfy its obligations pursuant to the terms and conditions of any contract for tuition or other instructional fees entered into between the proprietary school and a student, or as a result of any violation of the provisions of this chapter or the rules promulgated pursuant to this chapter.

Neither the principal nor surety on the bond may terminate the coverage of the bond, except upon giving one hundred twenty (120) days' prior written notice to the board director.

SECTION 6. That Chapter 24, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2407, Idaho Code, and to read as follows:

33-2407. POWERS AND DUTIES OF DIRECTOR. (1) In addition to the other duties imposed upon the director by law, the director, either personally or by designee, shall be permitted to:

(a) Administer and enforce the provisions and requirements of this chapter or rules promulgated under authority of this chapter.

(b) Conduct investigations and issue subpoenas as necessary to determine whether any person or any agent has violated or is violating any provision of this chapter or rules promulgated under authority of this chapter.

(c) Upon reasonable notice, conduct examinations of the books and records of postsecondary educational institutions and proprietary schools, and investigations of any person or any agent, wherever located, and as may be necessary and proper for the enforcement of

the provisions of this chapter and the rules promulgated under the authority of this chapter.

For these purposes, the director or his designated representative shall have free access to the offices and places of business or operations, books, accounts, papers, documents, other information, records, files, safes and vaults of all such persons or agents.

(2) The director may issue orders and the board may promulgate rules that, in the opinion of the director and board respectively, are necessary to execute, enforce and effectuate the purposes of this chapter.

SECTION 7. That Chapter 24, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2408, Idaho Code, and to read as follows:

33-2408. REMEDIES -- CIVIL PENALTIES. (1) Whenever there is sufficient evidence that causes the director to conclude that any person or any agent has engaged in or is about to engage in any act or practice constituting a violation of any provisions of this chapter or any rule or order thereunder, the director may:

(a) Issue a cease and desist order ordering such person or agent to cease and desist violating or continuing to violate any provision of this chapter or any rule or order issued in accordance with this chapter; or

(b) Apply to the district court for an order enjoining such person or agent from violating or continuing to violate any provision of this chapter or any rule or order and for injunctive or such other relief as the nature of the case may require.

(2) Within thirty (30) days after an order is issued under subsection (1) (a) of this section, the person or agent to whom the order is directed may file with the director a request for a hearing on the order. The provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to such hearing and to judicial review of such order.

(3) Upon showing in any court of competent jurisdiction that a person or agent has violated the provisions of this chapter or rule adopted pursuant to the provisions of this chapter, in addition to any other remedies, such court may order the person or agent to pay civil penalties in an amount established by the court for each violation. Such court may also enter an order entitling the director to recover costs, which in the discretion of the court may include an amount representing reasonable attorney's fees and reimbursement for investigative efforts.

SECTION 8. That Section 33-2409, Idaho Code, be, and the same is hereby amended to read as follows:

33-2409. ~~ENFORCEMENT~~ CRIMINAL PENALTIES. (1) ~~Any violation of the provisions of this chapter shall be referred to the attorney general by the board for appropriate action including, but not limited to, injunctive relief person who intentionally violates the provisions of this chapter is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding five thousand dollars (\$5,000), or both.~~

(2) Any person who intentionally fails to register according to the provisions of this chapter is guilty of a felony punishable by imprisonment in the county jail not exceeding twelve (12) months, or by a fine not exceeding ten thousand dollars (\$10,000), or both.

Approved April 5, 2011.

CHAPTER 160  
(H.B. No. 248)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 2011; DIRECTING THE TRANSFER OF FUNDS FROM THE RURAL ECONOMIC DEVELOPMENT INTEGRATED FREIGHT AND TRANSPORTATION FUND TO THE INVASIVE SPECIES FUND; APPROPRIATING MONEYS TO THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 2012; APPROPRIATING MONEYS TO THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 2012 FOR THE PLANT INDUSTRIES PROGRAM; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 3, Chapter 230, Laws of 2010, and any other appropriation provided for by law, there is hereby appropriated \$1,400,000 from the Federal Grant Fund to the Department of Agriculture, to be expended for trustee and benefit payments, for the period July 1, 2010, through June 30, 2011.

SECTION 2. There is hereby appropriated and the State Controller shall transfer \$900,000 from the Rural Economic Development Integrated Freight and Transportation Revolving Loan Account to the Invasive Species Fund on July 1, 2011, or as soon thereafter as is practicable.

SECTION 3. There is hereby appropriated to the Department of Agriculture, the following amounts to be expended according to the designated programs and expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION:					
FROM:					
General					
Fund	\$572,400	\$419,200			\$991,600
Administration and Accounting Services					
Fund	836,300	192,400	\$60,400		1,089,100
Facilities Maintenance					
Fund	<u>123,500</u>	<u>185,500</u>	<u>0</u>		<u>309,000</u>
TOTAL	\$1,532,200	\$797,100	\$60,400		\$2,389,700

II. ANIMAL INDUSTRIES:

FROM:

General

Fund \$1,276,400 \$210,100 \$1,486,500

Agricultural Inspection

Fund 38,000 9,700 47,700

Agricultural Fees - Livestock Disease Control

Fund 492,400 264,800 \$123,900 881,100

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
<b>Agricultural Fees - Dairy Inspection</b>					
Fund	1,011,100	327,600	85,100		1,423,800
<b>Agricultural Fees - Egg Inspection</b>					
Fund	163,600	16,000			179,600
<b>Agricultural Fees - Commercial Fisheries</b>					
Fund	5,700	4,200			9,900
<b>Seminars and Publications</b>					
Fund		98,400			98,400
<b>Federal Grant</b>					
Fund	<u>525,200</u>	<u>334,900</u>	<u>0</u>	<u>\$183,200</u>	<u>1,043,300</u>
TOTAL	\$3,512,400	\$1,265,700	\$209,000	\$183,200	\$5,170,300

## III. AGRICULTURAL RESOURCES:

## FROM:

## General

Fund	\$169,600	\$130,700			\$300,300
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## Agricultural Fees - Pesticides

Fund	1,562,600	629,200	\$177,600		2,369,400
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## Federal Grant

Fund	<u>435,900</u>	<u>173,700</u>	<u>0</u>		<u>609,600</u>
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TOTAL	\$2,168,100	\$933,600	\$177,600		\$3,279,300
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## IV. PLANT INDUSTRIES:

## FROM:

## General

Fund	\$823,100	\$259,000		\$1,018,000	\$2,100,100
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## Agricultural Inspection

Fund	994,100	280,200	\$4,000	111,100	1,389,400
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## Agricultural Fees - Commercial Feed and Fertilizer

Fund	942,700	298,400	493,500		1,734,600
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## Agricultural Fees - Honey Advertising

Fund	400	16,300			16,700
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## Quality Assurance Laboratory Services

Fund	355,700	70,800			426,500
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## Federal Grant

Fund	<u>735,300</u>	<u>1,707,900</u>	<u>21,500</u>	<u>2,536,700</u>	<u>5,001,400</u>
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TOTAL	\$3,851,300	\$2,632,600	\$519,000	\$3,665,800	\$10,668,700
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## V. AGRICULTURAL INSPECTIONS:

## FROM:

## General

Fund	\$577,200	\$153,600			\$730,800
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	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
<b>Agricultural Inspection</b>					
Fund	43,400	12,000		\$3,700	59,100
<b>Weights and Measures Inspection</b>					
Fund	223,900	51,300	\$39,900		315,100
<b>Agricultural Fees - Organic Food Products</b>					
Fund	190,000	70,900	27,000		287,900
<b>Agricultural Fees - Fresh Fruit and Vegetable Inspection</b>					
Fund	7,322,500	723,100	149,000	371,100	8,565,700
<b>Federal Grant</b>					
Fund	<u>0</u>	<u>2,500</u>	<u>0</u>	<u>25,000</u>	<u>27,500</u>
TOTAL	\$8,357,000	\$1,013,400	\$215,900	\$399,800	\$9,986,100

## VI. MARKETING AND DEVELOPMENT:

## FROM:

## General

Fund	\$350,900	\$333,700			\$684,600
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## Agricultural Inspection

Fund	23,500	70,300			93,800
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## Miscellaneous Revenue

Fund	75,000	50,000			125,000
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## Seminars and Publications

Fund		245,700	\$2,200		247,900
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## USDA Publications

Fund		64,900			64,900
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## Rural Economic Development Integrated Freight Trans.

Fund	9,300	20,000		\$100,000	129,300
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## Revolving Loans

Fund	12,300	15,300		5,200	32,800
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## Federal Grant

Fund	<u>107,000</u>	<u>175,500</u>	<u>0</u>	<u>492,500</u>	<u>775,000</u>
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TOTAL	\$578,000	\$975,400	\$2,200	\$597,700	\$2,153,300
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## VII. ANIMAL DAMAGE CONTROL:

## FROM:

## General

Fund				\$138,800	\$138,800
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## Animal Damage Control

Fund				215,700	215,700
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## Agricultural Fees - Sheep Industry Regulation

Fund		\$200		167,200	167,400
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## Federal Grant

Fund	<u>0</u>	<u>0</u>	<u>0</u>	<u>150,000</u>	<u>150,000</u>
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TOTAL		\$200		\$671,700	\$671,900
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	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
VIII. SHEEP COMMISSION:					
FROM:					
General					
Fund	\$51,300				\$51,300
Agricultural Fees - Sheep Industry Regulation					
Fund	<u>62,200</u>	<u>\$39,800</u>			<u>102,000</u>
TOTAL	\$113,500	\$39,800			\$153,300
GRAND TOTAL	\$20,112,500	\$7,657,800	\$1,184,100	\$5,518,200	\$34,472,600

SECTION 4. There is hereby appropriated to the Department of Agriculture for the Plant Industries Program \$2,415,000 from the Invasive Species Fund to be expended for the period July 1, 2011, through June 30, 2012.

SECTION 5. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Department of Agriculture is authorized no more than one hundred ninety-four and sixty-eight hundredths (194.68) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 6. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval.

Approved April 5, 2011.

CHAPTER 161  
(H.B. No. 251)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF FISH AND GAME FOR FISCAL YEAR 2011; APPROPRIATING MONEYS TO THE DEPARTMENT OF FISH AND GAME FOR FISCAL YEAR 2012; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 2, Chapter 150, Laws of 2010, and any other appropriation provided for by law, there is hereby appropriated to the Department of Fish and Game, the following amounts to be expended for the designated programs and expense classes, from the listed funds for the period July 1, 2010, through June 30, 2011:

	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. FISHERIES:			
FROM:			
Fish and Game (Other)			
Fund	\$789,800		\$789,800
II. WILDLIFE:			
FROM:			
Fish and Game (Federal)			
Fund	\$379,300	\$708,000	\$1,087,300
III. COMMUNICATIONS:			
FROM:			
Fish and Game (Federal)			
Fund		\$357,400	\$357,400
GRAND TOTAL	\$1,169,100	\$1,065,400	\$2,234,500

SECTION 2. There is hereby appropriated to the Department of Fish and Game, the following amounts to be expended according to the designated programs and expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION:					
FROM:					
Fish and Game (Licenses)					
Fund	\$3,383,200	\$1,524,000	\$2,470,500		\$7,377,700
Fish and Game (Other)					
Fund	446,100	106,200			552,300
Fish and Game Set-Aside (Licenses)					
Fund	200	34,400			34,600
Fish and Game Set-Aside (Other)					
Fund	16,600	20,800			37,400
Expendable Big Game Depredation					
Fund		2,900			2,900
Fish and Game Expendable Trust					
Fund		7,500			7,500
Fish and Game Nonexpendable Trust					
Fund		3,600			3,600
Fish and Game (Federal)					
Fund	<u>3,594,000</u>	<u>2,774,700</u>	<u>18,400</u>		<u>6,387,100</u>
TOTAL	\$7,440,100	\$4,474,100	\$2,488,900		\$14,403,100

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
II. ENFORCEMENT:					
FROM:					
Fish and Game (Licenses)					
Fund	\$7,153,200	\$1,999,700	\$154,900		\$9,307,800
Fish and Game (Other)					
Fund	128,300	24,000			152,300
Fish and Game Set-Aside (Other)					
Fund		20,600			20,600
Fish and Game Expendable Trust					
Fund	<u>0</u>	<u>26,400</u>	<u>0</u>		<u>26,400</u>
TOTAL	\$7,281,500	\$2,070,700	\$154,900		\$9,507,100
III. FISHERIES:					
FROM:					
Fish and Game (Licenses)					
Fund	\$3,255,700	\$2,523,600	\$263,600		\$6,042,900
Fish and Game (Other)					
Fund	1,438,900	1,215,800			2,654,700
Fish and Game Set-Aside (Licenses)					
Fund	208,400	254,000			462,400
Fish and Game Set-Aside (Other)					
Fund	79,700	30,700			110,400
Fish and Game Expendable Trust					
Fund	47,400	34,200			81,600
Fish and Game Nonexpendable Trust					
Fund		33,400			33,400
Fish and Game (Federal)					
Fund	<u>10,745,600</u>	<u>6,651,400</u>	<u>867,500</u>		<u>18,264,500</u>
TOTAL	\$15,775,700	\$10,743,100	\$1,131,100		\$27,649,900
IV. WILDLIFE:					
FROM:					
Fish and Game (Licenses)					
Fund	\$3,624,800	\$3,862,700	\$85,100	\$174,800	\$7,747,400
Fish and Game (Other)					
Fund	333,600	832,000			1,165,600
Fish and Game Set-Aside (Other)					
Fund	542,100	339,500			881,600
Fish and Game Expendable Trust					
Fund	339,100	280,200	6,400		625,700
Fish and Game Nonexpendable Trust					
Fund	10,600	2,300			12,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Fish and Game (Federal)					
Fund	<u>3,852,500</u>	<u>2,794,700</u>	<u>30,000</u>	<u>0</u>	<u>6,677,200</u>
TOTAL	\$8,702,700	\$8,111,400	\$121,500	\$174,800	\$17,110,400
V. COMMUNICATIONS:					
FROM:					
Fish and Game (Licenses)					
Fund	\$1,466,100	\$432,100	\$36,300		\$1,934,500
Fish and Game (Other)					
Fund	83,800	131,300	120,000		335,100
Fish and Game Set-Aside (Other)					
Fund	113,700	37,200			150,900
Fish and Game Expendable Trust					
Fund	28,000	6,100			34,100
Fish and Game (Federal)					
Fund	<u>712,300</u>	<u>247,400</u>	<u>0</u>		<u>959,700</u>
TOTAL	\$2,403,900	\$854,100	\$156,300		\$3,414,300
VI. ENGINEERING:					
FROM:					
Fish and Game (Licenses)					
Fund	\$824,300	\$72,800	\$6,600		\$903,700
VII. WINTER FEEDING AND HABITAT IMPROVEMENT:					
FROM:					
Fish and Game (Licenses)					
Fund	\$591,600	\$516,200	\$11,700		\$1,119,500
Fish and Game (Other)					
Fund	133,200	15,300			148,500
Fish and Game Set-Aside (Licenses)					
Fund	40,500	1,329,800			1,370,300
Fish and Game Set-Aside (Other)					
Fund	63,300	4,300			67,600
Expendable Big Game Depredation					
Fund				\$600,000	600,000
Fish and Game (Federal)					
Fund	<u>723,500</u>	<u>192,600</u>	<u>0</u>	<u>0</u>	<u>916,100</u>
TOTAL	\$1,552,100	\$2,058,200	\$11,700	\$600,000	\$4,222,000
GRAND TOTAL	\$43,980,300	\$28,384,400	\$4,071,000	\$774,800	\$77,210,500

SECTION 3. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Department of Fish and Game is authorized no more than five hundred sixty-seven (567) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically

authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval.

Approved April 5, 2011.

CHAPTER 162  
(H.B. No. 252)

AN ACT

REDUCING THE APPROPRIATION TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR FISCAL YEAR 2011; APPROPRIATING MONEYS TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR FISCAL YEAR 2012; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. Notwithstanding any other provision of law to the contrary, the appropriation made to the Department of Juvenile Corrections for the Institutions in Section 2, Chapter 271, Laws of 2010, from the General Fund, is hereby reduced by \$701,300 for operating expenditures, for the period July 1, 2010, through June 30, 2011.

SECTION 2. There is hereby appropriated to the Department of Juvenile Corrections, the following amounts to be expended according to the designated programs and expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION:					
FROM:					
General					
Fund	\$1,916,600	\$761,400		\$20,000	\$2,698,000
Miscellaneous Revenue					
Fund	66,400	22,300			88,700
State Juvenile Corrections Center Endowment Income					
Fund	<u>0</u>	<u>0</u>	<u>\$48,000</u>	<u>0</u>	<u>48,000</u>
TOTAL	\$1,983,000	\$783,700	\$48,000	\$20,000	\$2,834,700

II. COMMUNITY, OPERATIONS AND PROGRAM SERVICES:

FROM:

General

Fund	\$1,132,700	\$189,800		\$4,243,900	\$5,566,400
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Juvenile Corrections

Fund	93,400	84,700			178,100
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	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Juvenile Corrections - Cigarette/Tobacco Tax					
Fund				5,125,000	5,125,000
Miscellaneous Revenue					
Fund		117,300		327,000	444,300
Federal Grant					
Fund	<u>136,800</u>	<u>174,600</u>		<u>1,600,000</u>	<u>1,911,400</u>
TOTAL	\$1,362,900	\$566,400		\$11,295,900	\$13,225,200

## III. INSTITUTIONS:

## FROM:

## General

Fund	\$17,032,900	\$1,782,700		\$4,651,500	\$23,467,100
Miscellaneous Revenue					
Fund		328,000	\$27,500	460,000	815,500
State Juvenile Corrections Center Endowment Income					
Fund		790,600	27,400		818,000
Federal Grant					
Fund	<u>170,100</u>	<u>570,100</u>	<u>0</u>	<u>1,180,400</u>	<u>1,920,600</u>
TOTAL	\$17,203,000	\$3,471,400	\$54,900	\$6,291,900	\$27,021,200
GRAND TOTAL	\$20,548,900	\$4,821,500	\$102,900	\$17,607,800	\$43,081,100

SECTION 3. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Department of Juvenile Corrections is authorized no more than three hundred ninety-one and five-tenths (391.5) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval.

Approved April 5, 2011.

CHAPTER 163  
(H.B. No. 254)

## AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE COMMISSION FOR PARDONS AND PAROLE FOR FISCAL YEAR 2011; APPROPRIATING MONEYS TO THE COMMISSION FOR PARDONS AND PAROLE FOR FISCAL YEAR 2012; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 2, Chapter 242, Laws of 2010, and any other appropriation provided for by law, there is hereby appropriated to the Commission for Pardons and Parole \$50,000 from the Miscellaneous Revenue Fund to be expended for the period July 1, 2010, through June 30, 2011.

SECTION 2. There is hereby appropriated to the Commission for Pardons and Parole, the following amounts to be expended for the designated expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General			
Fund	\$1,684,000	\$393,600	\$2,077,600
Miscellaneous Revenue			
Fund	<u>0</u>	<u>70,700</u>	<u>70,700</u>
TOTAL	\$1,684,000	\$464,300	\$2,148,300

SECTION 3. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Commission for Pardons and Parole is authorized no more than thirty-two (32) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval.

Approved April 5, 2011.

CHAPTER 164  
(H.B. No. 260)

AN ACT

RELATING TO MEDICAID; REPEALING SECTION 39-5606, IDAHO CODE, RELATING TO PAYMENT TO BE MADE TO A PROVIDER; REPEALING SECTION 56-102, IDAHO CODE, RELATING TO PRINCIPLES OF PROSPECTIVE RATES AND PAYMENT; AMENDING SECTION 56-108, IDAHO CODE, TO REVISE A CODE REFERENCE; REPEALING SECTION 56-113, IDAHO CODE, RELATING TO INTERMEDIATE CARE FACILITIES FOR PEOPLE WITH INTELLECTUAL DISABILITIES; AMENDING SECTION 56-117, IDAHO CODE, TO REVISE CODE REFERENCES; AMENDING SECTION 56-118, IDAHO CODE, TO REMOVE CERTAIN SERVICES FROM REIMBURSEMENT RATE REVIEW AND DETERMINATION, TO REMOVE AN ANNUAL REVIEW REQUIREMENT, TO PROVIDE FOR IMPLEMENTATION OF A CERTAIN METHODOLOGY BY RULE, TO REMOVE CERTAIN MINIMUM METHODOLOGY REQUIREMENTS, TO REMOVE CERTAIN REPORTING REQUIREMENTS AND TO REMOVE REFERENCE TO SUBSEQUENT RULES; REPEALING SECTION 56-136, IDAHO CODE, RELATING TO PHYSICIAN AND DENTIST REIMBURSEMENT; AMENDING SECTION 56-209g, IDAHO CODE, TO REMOVE AN OBSOLETE EFFECTIVE DATE, TO PROVIDE PAYMENT FOR DRUGS PURSUANT TO CERTAIN CRITERIA, TO PROVIDE FOR METHODOLOGY, TO ESTABLISH THE AVERAGE ACQUISITION COST OF A DRUG AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 56-255, IDAHO

CODE, TO PROVIDE FOR SERVICE REIMBURSEMENT WITHIN THE APPROPRIATIONS PROVIDED BY LAW, TO PROVIDE FOR MENTAL HEALTH SERVICES TO BE DELIVERED BY PROVIDERS THAT MEET CERTAIN STANDARDS, TO REVISE SPECIFIC HEALTH BENEFITS FOR PERSONS WITH DISABILITIES OR SPECIAL HEALTH NEEDS, TO REVISE BENEFITS FOR ALL MEDICAID PARTICIPANTS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 56-257, IDAHO CODE, TO PROVIDE FOR COPAYMENTS WITHIN THE LIMITS OF FEDERAL MEDICAID LAW AND REGULATION AND TO REVISE WHAT MAY BE INCLUDED IN COPAYMENTS ESTABLISHED BY THE DEPARTMENT OF HEALTH AND WELFARE; AMENDING CHAPTER 2, TITLE 56, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 56-260 THROUGH 56-266, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE FOR LEGISLATIVE FINDINGS AND INTENT, TO PROVIDE FOR DEFINITIONS, TO PROVIDE FOR A MEDICAID MANAGED CARE PLAN, TO PROVIDE FOR RULEMAKING AUTHORITY REGARDING SPECIFIED SERVICES, TO PROVIDE FOR PROVIDER PAYMENT AND TO PROVIDE AUTHORIZATION TO OBTAIN FEDERAL APPROVAL; AMENDING SECTION 56-1408, IDAHO CODE, TO REVISE EXEMPTIONS TO THE HOSPITAL ASSESSMENT; AMENDING SECTION 56-1504, IDAHO CODE, TO REVISE A DATE ON WHICH CERTAIN RATES ARE EFFECTIVE, TO PROVIDE A RESTRICTION ON THE USE OF THE NURSING FACILITY ASSESSMENT FUND, TO PROVIDE FOR USE OF THE FUND FOR CERTAIN MATCHING PURPOSES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 56-1505, IDAHO CODE, TO REMOVE AN EXCEPTION, TO REVISE THE AGGREGATE AMOUNT OF ASSESSMENTS, THE FREQUENCY OF ASSESSMENTS AND WHEN ASSESSMENTS ARE DUE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 56-1511, IDAHO CODE, TO REMOVE AN EXCEPTION, TO REVISE THE FREQUENCY OF ASSESSMENTS, TO REVISE A DEFINITION, TO REVISE THE YEAR IN WHICH CERTAIN COST REPORTS SHALL BE APPLIED, TO PROVIDE WHAT INFORMATION IS TO BE USED UNDER CERTAIN CIRCUMSTANCES, TO REVISE THE TIME PERIOD IN WHICH AN ASSESSMENT PAYMENT IS DUE AND TO PROVIDE FOR CONSEQUENCES IF AN ASSESSMENT IS NOT TIMELY PAID; REPEALING SECTIONS 56-1504, 56-1505 AND 56-1511, IDAHO CODE, RELATING TO THE NURSING FACILITY ASSESSMENT FUND, NURSING FACILITY ASSESSMENTS AND ANNUAL NURSING FACILITY ASSESSMENT PAYMENTS; AMENDING CHAPTER 15, TITLE 56, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 56-1504, 56-1505 AND 56-1511, IDAHO CODE, TO PROVIDE FOR THE NURSING FACILITY ASSESSMENT FUND, NURSING FACILITY ASSESSMENTS AND ANNUAL NURSING FACILITY ASSESSMENT PAYMENTS; AMENDING TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 16, TITLE 56, IDAHO CODE, TO PROVIDE FOR A SHORT TITLE AND FOR LEGISLATIVE INTENT, TO DEFINE TERMS, TO PROVIDE FOR THE INTERMEDIATE CARE FACILITY ASSESSMENT FUND, TO PROVIDE FOR INTERMEDIATE CARE FACILITY ASSESSMENTS, TO REQUIRE THE DEPARTMENT OF HEALTH AND WELFARE TO SEEK NECESSARY FEDERAL APPROVAL, TO PROVIDE FOR SEPARATE INTERMEDIATE CARE FACILITY ASSESSMENTS FOR MULTIFACILITY LOCATIONS, TO PROVIDE FOR THE TERMINATION OF INTERMEDIATE CARE FACILITY ASSESSMENTS, TO PROVIDE FOR PENALTIES FOR FAILURE TO PAY THE INTERMEDIATE CARE FACILITY ASSESSMENT, TO PROVIDE FOR ANNUAL INTERMEDIATE CARE FACILITY ADJUSTMENT PAYMENTS AND TO PROVIDE FOR RULEMAKING AUTHORITY; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE AND PROVIDING A SUNSET DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-5606, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Section 56-102, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Section 56-108, Idaho Code, be, and the same is hereby amended to read as follows:

56-108. PROPERTY REIMBURSEMENT -- FACILITIES WILL BE PAID A PROPERTY RENTAL RATE, PROPERTY TAXES AND REASONABLE PROPERTY INSURANCE. The provi-

sions of this section shall not apply to hospital-based facilities which are subject to the provisions of section 56-120, Idaho Code, or to intermediate care facilities for people with intellectual disabilities which are subject to the provisions of section 56-113265, Idaho Code. The provisions of this section are applicable to all other facilities. The property rental rate includes compensation for major movable equipment but not for minor movable equipment. The property rental rate is paid in lieu of payment for amortization, depreciation, and interest for financing the cost of land and depreciable assets. Prior to final audit, the director shall determine an interim rate that approximates the property rental rate. The property rental rate shall be determined as follows:

(1) Except as determined pursuant to this section:

Property rental rate = ("Property base") x ("Change in building costs") x  $\frac{40 - \text{"Age of facility"}}{40}$

40

where:

(a) "Property base" = \$9.24 for all facilities.

(b) "Change in building costs" = 1.0 from April 1, 1985, through December 31, 1985. Thereafter "Change in building costs" will be adjusted for each calendar year to reflect the reported annual change in the building cost index for a class D building in the western region, as of September of the prior year, published by the Marshall Swift Valuation Service. However, for freestanding skilled care facilities "change in building costs" = 1.145 from July 1, 1991, through December 31, 1991. Thereafter, change in building costs for freestanding skilled care facilities will be adjusted each calendar year to reflect the reported annual change in the building cost index for a class D building in the western region, as of September of the prior year as published by the Marshall Swift Valuation Service or the consumer price index for renter's costs available in September of the prior year, whichever is greater.

(c) "Age of facility" = the director shall determine the effective age, in years, of the facility by subtracting the year in which the facility, or portion thereof, was constructed from the year in which the rate is to be applied. No facility or portion thereof shall be assigned an age of more than thirty (30) years. However, beginning July 1, 1991, for freestanding skilled care facilities, "age of facility" will be a revised age which is the lesser of the age established under other provisions of this section or the age which most closely yields the rate allowable to existing facilities as of June 30, 1991, under subsection (1) of this section. This revised age shall not increase over time.

(i) If adequate information is not submitted by the facility to document that the facility, or portion thereof, is newer than thirty (30) years, the director shall set the effective age at thirty (30) years. Adequate documentation shall include, but not be limited to, such documents as copies of building permits, tax assessors' records, receipts, invoices, building contracts, and original notes of indebtedness. The director shall compute an appropriate age for facilities when documentation is provided to reflect expenditures for building expansion or remodeling prior to the effective date of this section. The computation shall decrease the age of a facility by an amount consistent with the expenditure and the square footage impacted and shall be calculated as follows:

1. Determine, according to indexes published by the Marshall Swift Valuation Service, the construction cost per square foot of an average class D convalescent hospital in the western region for the year in which the expansion or renovation was completed.

2. Multiply the total square footage of the building following the expansion or renovation by the cost per square foot to establish the estimated replacement cost of the building at that time.

3. The age of the building at the time of construction shall be multiplied by the quotient of total actual renovation or remodeling costs divided by replacement cost. If this number is equal to or greater than 2.0, the age of the building in years will be reduced by this number, rounded to the nearest whole number. In no case will the age be less than zero (0).

(ii) The director shall adjust the effective age of a facility when major repairs, replacement, remodeling or renovation initiated after April 1, 1985, would result in a change in age of at least one (1) year. Such changes shall not increase the allowable property rental rate by more than three-fourths (3/4) of the difference between the adjusted property base determined in subsections (1) (a) and (1) (b) of this section and the rental rate paid to the facility at the time of completion of such changes but before the change component has been added to said rate. The adjusted effective age of the facility will be used in future age determinations, unless modified by provisions of this chapter.

(iii) The director shall allow for future adjustments to the effective age of a facility or its rate to reimburse an appropriate amount for property expenditures resulting from new requirements imposed by state or federal agencies. The director shall, within twelve (12) months of verification of expenditure, reimburse the medicaid share of the entire cost of such new requirements as a one-time payment if the incurred cost for a facility is less than one hundred dollars (\$100) per bed.

(d) At no time shall the property rental rate, established under subsection (1) of this section, be less than that allowed in subsection (1) (c) (ii), with the rate in effect December 31, 1988, being the base. However, subsequent to the application of this paragraph, before any rate increase may be paid, it must first be offset by any rate decrease that would have been realized if the provisions of this paragraph had not been in effect.

(2) A "grandfathered rate" for existing facilities will be determined by dividing the audited allowable annual property costs, exclusive of taxes and insurance, for assets on hand as of January 1, 1985, by the total patient days in the period July 1, 1984, through June 30, 1985. The property rental rate will be the greater of the amount determined pursuant to subsection (1) of this section, or the grandfathered rate. The director shall adjust the grandfathered rate of a facility to compensate the owner for the cost of major repairs, replacement, expansion, remodeling and renovation initiated prior to April 1, 1985, and completed after January 1, 1985, but completed no later than December 31, 1985. For facilities receiving a grandfathered rate making major repairs, replacement, expansion, remodeling or renovation, initiated after January 1, 1986, the director shall compare the grandfathered rate of the facility to the actual depreciation, amortization, and interest for the current audit period plus the per diem of the recognized cost of major repairs, replacement, expansion, remodeling or renovation, amortized over the American hospital association guideline component useful life. The greater of the two (2) numbers will be allowed as the grandfathered rate. Such changes shall not increase the allowable grandfathered rate by more than three-fourths (3/4) of the difference between the current grandfathered rate and the adjusted property base determined in subsections (1) (a) and (1) (b) of this section.

(3) The property rental rate per day of care paid to facilities with leases signed prior to March 30, 1981, will be the sum of the annualized allowed lease costs and the other annualized property costs for assets on hand as of January 1, 1985, exclusive of taxes and insurance when paid separately, divided by total patient days in the period June 30, 1983, through July 1, 1984. Effective July 1, 1989, the director shall adjust the property rental rate of a leased skilled facility under this paragraph to compensate for the cost of major repairs, replacement, expansion, remodeling and renovation initiated after January 1, 1985, by adding the per diem of the recognized cost of such expenditures amortized over the American hospital association guideline component useful life. Such addition shall not increase the allowable property rental rate by more than three-fourths (3/4) of the difference between the current property rental rate and the adjusted property base as determined in paragraphs (a) and (b) of subsection (1) of this section. Where such leases contain provisions that bind the lessee to accept an increased rate, reimbursement shall be at a rate per day of care which reflects the increase in the lease rate. Where such leases bind the lessee to the lease and allow the rate to be renegotiated, reimbursement shall be at a rate per day of care which reflects an annual increase in the lease rate not to exceed the increase in the consumer price index for renters costs. After the effective date of this subsection, if such a lease is terminated or if the lease allows the lessee the option to terminate other than by purchase of the facility, the property rental rate shall become the amount determined by the formula in subsection (1) of this section as of the date on which the lease is or could be terminated.

(4) (a) In the event of a sale, the buyer shall receive the property rental rate as provided in subsection (1) of this section, except under the conditions of paragraph (b) of this subsection or except in the event of the first sale for a freestanding skilled care facility receiving a grandfathered rate after June 30, 1991, whereupon the new owner shall receive the same rate that the seller would have received at any given point in time.

(b) In the event of a forced sale of a facility where the seller has been receiving a grandfathered rate, the buyer will receive a rate based upon his incurred property costs, exclusive of taxes and insurance, for the twelve (12) months following the sale, divided by the facility's total patient days for that period, or the property rental rate, whichever is higher, but not exceeding the rate that would be due the seller.

SECTION 4. That Section 56-113, Idaho Code, be, and the same is hereby repealed.

SECTION 5. That Section 56-117, Idaho Code, be, and the same is hereby amended to read as follows:

56-117. PAYMENT OF SPECIAL RATES. The director shall have authority to pay facilities at special rates for care given to patients who have long-term care needs not adequately reflected in the rates calculated pursuant to the principles set forth in section 56-~~102265~~, Idaho Code. The payment for such specialized care will be in addition to any payments made in accordance with other provisions of this chapter. The incremental cost to a facility that exceeds the rate for services provided pursuant to the provisions of section 56-~~102265~~, Idaho Code, will be excluded from the computation of payments or rates under other provisions of this chapter. Until the facility applies for a special rate, patients with such needs will be included in the computation of the facility's rates following the principles described in section 56-~~102265~~, Idaho Code.

SECTION 6. That Section 56-118, Idaho Code, be, and the same is hereby amended to read as follows:

56-118. REIMBURSEMENT RATES. (1) The department shall implement a methodology for reviewing and determining reimbursement rates to private businesses providing developmental disability agency services, mental health services, service coordination and case management services, and residential habilitation agency services and affiliated residential habilitation specialized family home services annually by rule.

(2) In addition to any policy or federal statutory requirements, such methodology shall incorporate, at a minimum, the following:

(a) The actual cost of providing quality services, including personnel and total operating expenses, directly related to providing such services which shall be provided by the private business entities;

(b) Changes in the expectations placed on private business providers in delivering services;

(c) Inflationary effects on the private business providers' ability to deliver the service since the last adjustment to the rate;

(d) Comparison of rates paid in neighboring states for comparable services;

(e) Comparison of any rates paid for comparable services in other public or private capacities.

(3) A report of the results of this analysis and review shall be sent to the director, to the joint finance appropriations committee and the health and welfare committees of the senate and the house of representatives by November 30 of each year. The department shall include in the report cost saving suggestions that private businesses shall provide. Any changes in reimbursement rates shall include estimated costs of implementation based on the current caseload forecasts and shall be submitted as part of the department's budget request required in section 67-3502, Idaho Code. Reimbursement rates included in appropriation bills enacted by the legislature shall become effective not later than July 1 of each year.

(4) The results of this annual review and analysis and subsequent rules do not guarantee a change in reimbursement rates, but shall be a fair and equitable process for establishing and reviewing such rates.

SECTION 7. That Section 56-136, Idaho Code, be, and the same is hereby repealed.

SECTION 8. That Section 56-209g, Idaho Code, be, and the same is hereby amended to read as follows:

56-209g. PHARMACY REIMBURSEMENT. (1) Medicaid pharmacy reimbursement levels are a combination of the cost of the drug and a dispensing fee which includes such pharmaceutical care services as counseling, obtaining a patient history, documentation, and dispensing. Effective July 1, 1998, pharmacy reimbursement levels may be adjusted in accordance with rules promulgated by the director through negotiated rulemaking with interested parties including representatives of the pharmacy profession.

(2) The department will pay the lesser of the provider's lowest charge to the general public for a drug or the estimated acquisition cost (EAC) plus a dispensing fee.

(a) The EAC is defined by the department as the average acquisition cost (AAC) of the drug, or when no AAC is available, reimbursement will be wholesale acquisition cost (WAC). WAC shall mean the price, paid by a wholesaler for the drugs purchased from the wholesaler's supplier, typically the manufacturer of the drug as published by a recognized compendia of drug pricing on the last day of the calendar quarter that corresponds to the calendar quarter.

(b) The department shall establish pharmacy dispensing fee payments based on the results of surveys of pharmacies and dispensing rates paid to other payers. The dispensing fee structure will be tiered, with the tiers based on the annual medicaid claims volume of the enrolled Idaho retail pharmacy. All other pharmacy dispensing fees will be the lowest dispensing fee for the tiered structure.

(3) The AAC will be established by the department will utilize periodic by state cost or national surveys to obtain the most accurate pharmacy drug acquisition costs in establishing a the pharmacy reimbursement fee schedule for the product. When surveys are requested by the department to pPharmacies participating in the Idaho medicaid program, they are required to participate in these periodic state cost surveys by disclosing the costs of all drugs net of any special discounts or allowances. Participating pharmacies that refuse to respond to the periodic state surveys will be disenrolled as a medicaid provider.

SECTION 9. That Section 56-255, Idaho Code, be, and the same is hereby amended to read as follows:

56-255. MEDICAL ASSISTANCE PROGRAM -- SERVICES TO BE PROVIDED. (1) The department may make payments for the following services furnished by providers to participants who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be reimbursed only when medically necessary within the appropriations provided by law and in accordance with federal law and regulation, Idaho law and department rule. Notwithstanding any other provision of this chapter, medical assistance includes the following benefits specific to the eligibility categories established in section 56-254(1), (2) and (3), Idaho Code, as well as a list of benefits to which all Idaho medicaid participants are entitled, defined in subsection (5) of this section.

(2) Specific health benefits and limitations for low-income children and working-age adults with no special health needs include:

(a) All services described in subsection (5) of this section;

(b) Early and periodic screening, diagnosis and treatment services for individuals under age twenty-one (21) years, and treatment of conditions found; and

(c) Cost-sharing required of participants. Participants in the low-income children and working-age adult group are subject to the following premium payments, as stated in department rules:

(i) Participants with family incomes equal to or less than one hundred thirty-three percent (133%) of the federal poverty guideline are not required to pay premiums; and

(ii) Participants with family incomes above one hundred thirty-three percent (133%) of the federal poverty guideline will be required to pay premiums in accordance with department rule.

(3) Specific health benefits for persons with disabilities or special health needs include:

(a) All services described in subsection (5) of this section;

(b) Early and periodic screening, diagnosis and treatment services for individuals under age twenty-one (21) years, and treatment of conditions found;

(c) Case management services as defined in accordance with section 1905(a) (19) or section 1915(g) of the social security act; and

(d) Mental health services delivered by providers that meet national accreditation standards, including:

(i) Inpatient psychiatric facility services whether in a hospital, or for persons under age twenty-two (22) years in a freestanding psychiatric facility, as permitted by federal law, in excess

of those limits in department rules on inpatient psychiatric facility services provided under subsection (5) of this section;

(ii) Outpatient mental health services in excess of those limits in department rules on outpatient mental health services provided under subsection (5) of this section; and

(iii) Psychosocial rehabilitation for reduction of mental disability for children under the age of eighteen (18) years with a serious emotional disturbance (SED) ~~and for severely and persistently mentally ill adults,~~ Individuals aged eighteen (18) years or older, to age twenty-one (21) years with severe and persistent mental illness shall have access to benefits up to a weekly cap of five (5) hours while adults over the age of twenty-one (21) years with severe and persistent mental illness shall have access to benefits up to a weekly cap of four (4) hours;

(e) Long-term care services, including:

(i) Nursing facility services, other than services in an institution for mental diseases, subject to participant cost-sharing;

(ii) Home-based and community-based services, subject to federal approval, provided to individuals who require nursing facility level of care who, without home-based and community-based services, would require institutionalization. These services will include community supports, including an options for self-determination or family-directed, which will enable individuals to have greater freedom to manage their own care within the determined budget as defined by department rule; and

(iii) Personal care services in a participant's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse;

(f) Services for persons with developmental disabilities, including:

(i) Intermediate care facility services, other than such services in an institution for mental diseases, for persons determined in accordance with section 1902(a) (31) of the social security act to be in need of such care, including such services in a public institution, or distinct part thereof, for persons with intellectual disabilities or persons with related conditions;

(ii) Home-based and community-based services, subject to federal approval, provided to individuals who require an intermediate care facility for people with intellectual disabilities (ICF/ID) level of care who, without home-based and community-based services, would require institutionalization. These services will include community supports, including an options for self-determination or family-directed, which will enable individuals to have greater freedom to manage their own care within the determined budget as defined by department rule. The department shall respond to requests for budget modifications only when health and safety issues are identified and meet the criteria as defined in department rule; and

(iii) ~~Developmental disability services. The department shall pay for rehabilitative services, including medical or remedial services provided by a facility that has entered into a provider agreement with the department and is certified as a developmental disabilities agency by the~~ for children and adults shall be available based on need through state plan services or waiver services as described in department rule. The department shall develop a blended rate covering both individual and group developmental therapy services; and

(g) Home health services, including:

- (i) Intermittent or part-time nursing services provided by a home health agency or by a registered nurse when no home health agency exists in the area;
- (ii) Home health aide services provided by a home health agency; and
- (iii) Physical therapy, occupational therapy or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility;
- (h) Hospice care in accordance with section 1905(o) of the social security act;
- (i) Specialized medical equipment and supplies;
- (j) Medicare cost-sharing, including:
  - (i) Medicare cost-sharing for qualified medicare beneficiaries described in section 1905(p) of the social security act;
  - (ii) Medicare part A premiums for qualified disabled and working individuals described in section 1902(a)(10)(E)(ii) of the social security act;
  - (iii) Medicare part B premiums for specified low-income medicare beneficiaries described in section 1902(a)(10)(E)(iii) of the social security act; and
  - (iv) Medicare part B premiums for qualifying individuals described in section 1902(a)(10)(E)(iv) and subject to section 1933 of the social security act; and
- (k) Nonemergency medical transportation.
- (4) Specific health benefits for persons over twenty-one (21) years of age who have medicare and medicaid coverage include:
  - (a) All services described in subsection (5) of this section, other than if provided under the federal medicare program;
  - (b) All services described in subsection (3) of this section, other than if provided under the federal medicare program;
  - (c) Other services that supplement medicare coverage; and
  - (d) Nonemergency medical transportation.
- (5) Benefits for all medicaid participants, unless specifically limited in subsection (2), (3) or (4) of this section, include the following:
  - (a) Health care coverage including, but not limited to, basic inpatient and outpatient medical services, and including:
    - (i) Physicians' services, whether furnished in the office, the patient's home, a hospital, a nursing facility or elsewhere;
    - (ii) Services provided by a physician or other licensed practitioner to prevent disease, disability and other health conditions or their progressions, to prolong life, or to promote physical or mental health; and
    - (iii) Hospital care, including:
      1. Inpatient hospital services other than those services provided in an institution for mental diseases;
      2. Outpatient hospital services; and
      3. Emergency hospital services;
    - (iv) Laboratory and x-ray services;
    - (v) Prescribed drugs;
    - (vi) Family planning services and supplies for individuals of child-bearing age;
    - (vii) Certified pediatric or family nurse practitioners' services;
    - (viii) Emergency medical transportation;
    - (ix) Mental health services, including:
      1. Outpatient mental health services that are appropriate, within limits stated in department rules; and
      2. Inpatient psychiatric facility services within limits stated in department rules;

- (x) Medical supplies, equipment, and appliances suitable for use in the home; and
- (xi) Physical therapy and related services speech therapies combined to align with the annual medicare caps; and
- (xii) Occupational therapy to align with the annual medicare cap;
- (b) ~~Primary care case management medical homes;~~
- (c) ~~Dental services, and medical and surgical services furnished by a dentist in accordance with section 1905(a)(5)(B) of the social security act. Children shall have access to prevention, diagnosis and treatment services as defined in federal law. Adult coverage shall be limited to medically necessary oral surgery and palliative services and associated diagnostic services. Select covered benefits include: exams, radiographs, periodontal, oral and maxillofacial surgery and adjunctive general services as defined in department rule. Pregnant women shall have access to dental services that reflect evidence-based practice;~~
- (d) Medical care and any other type of remedial care recognized under Idaho law, furnished by licensed practitioners within the scope of their practice as defined by Idaho law, including:
  - (i) Podiatrists' services based on chronic care criteria as defined in department rule;
  - (ii) Optometrists' services based on chronic care criteria as defined in department rule;
  - (iii) Chiropractors' services shall be limited to six (6) visits per year; and
  - (iv) Other practitioners' services, in accordance with department rules;
- (e) ~~Services for individuals with speech, hearing and language disorders, provided by or under the supervision of a speech pathologist or audiologist as defined in department rule;~~
- (f) ~~Eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;~~
- (g) Services provided by essential providers, including:
  - (i) Rural health clinic services and other ambulatory services furnished by a rural health clinic in accordance with section 1905(1)(1) of the social security act;
  - (ii) Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with section 1905(1)(2) of the social security act;
  - (iii) Indian health services;
  - (iv) District health departments; and
  - (v) The family medicine residency of Idaho and the Idaho state university family medicine residency; and
- (h) ~~Any other medical care and any other type of remedial care recognized under state law, specified by the secretary of the federal department of health and human services; and~~
- ~~(i) Physician, hospital or other services deemed experimental are excluded from coverage. The director may allow coverage of procedures or services deemed investigational if the procedures or services are as cost-effective as traditional, standard treatments.~~

SECTION 10. That Section 56-257, Idaho Code, be, and the same is hereby amended to read as follows:

56-257. COPAYMENTS. (1) Within the limits of federal medicaid law and regulations, tThe department of health and welfare shall establish enforceable cost sharing in order to increase the awareness and responsibility of medicaid participants for the cost of their health care and to encourage use

of cost-effective care in the most appropriate setting. Copayments established by department rule may include, but not be limited to, the following:

(a) ~~Inappropriate emergency room utilization. "Inappropriate emergency room utilization" means the use of the emergency room for services that are nonemergency and that can be delivered in a regular clinic setting. If a hospital provider determines that it is reasonable that any prudent layperson would have sought emergency treatment in the same circumstances, a copayment will not be applied to such an individual even if the care rendered is nonemergency Medicaid services including, but not limited to, chiropractic visits, podiatrist visits, optometrist visits, physical therapy visits, occupational therapy visits, speech therapy visits, outpatient hospital visits and physician office visits;~~

(b) ~~Inappropriate use of emergency medicaid funded medical transportation. "Inappropriate use of emergency medical transportation" means the use of reimbursed services, including hospital emergency room and emergency medical transportation for conditions that do not meet the criteria for emergency conditions specified in department rule; and~~

(c) ~~Missed appointments with health care providers. The department may limit the types of providers for which copayments for missed appointments are applicable. No such provider will be required by the department to collect copayments as required in this section; and~~

~~(d) Nonpreferred prescription drugs. A nonpreferred drug is a drug for which an alternative therapeutically interchangeable drug in the same pharmacological class is available whose use provides advantages to the medicaid program based on relative safety, effectiveness, clinical outcomes and cost. Pharmacy providers may be required to collect copayments at the point of service. Pharmacy providers shall not be required to dispense any prescribed medication unless a medicaid participant provides for any applicable copayment under this paragraph. Copayments shall not constitute a reduction of overall reimbursement to pharmacists for the dispensing of prescribed medicine~~ Missed appointments with health care providers when it is the practice of the health care provider to charge such copayments to all of their patients regardless of payer.

(2) The director may exempt, subject to federal approval, any group of medicaid participants from the cost-sharing provisions in this section.

SECTION 11. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-260, Idaho Code, and to read as follows:

56-260. SHORT TITLE. Sections 56-260 through 56-266, Idaho Code, shall be known and may be cited as the "Medicaid Cost Containment and Health Care Improvement Act."

SECTION 12. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-261, Idaho Code, and to read as follows:

56-261. LEGISLATIVE FINDINGS AND INTENT. (1) The legislature finds that the current health care delivery system of payment to medicaid health care providers on a fee for service basis does not provide the appropriate incentives and can be improved by incorporating managed care tools, including capitation and selective contracting, with the objective of moving toward an accountable care system that results in improved health outcomes.

(2) The legislature intends that the provisions of sections 56-260 through 56-266, Idaho Code, result in the improved health of public assistance recipients while, at the same time, increasing the choices and

responsibilities of those recipients. The legislature further intends that these sections result in improved business practices of providers.

(3) The legislature directs the department to pursue opportunities in the medicaid program that result in safe and appropriate discharge from public and private institutions including nursing homes, intermediate care facilities and psychiatric facilities into community settings and that such results should be financially sustainable.

(4) Price increases should be implemented only through specific appropriation authority unless the adjustments are specified in federal law.

SECTION 13. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-262, Idaho Code, and to read as follows:

56-262. DEFINITIONS. The definitions contained in section 56-252, Idaho Code, shall apply to sections 56-260 through 56-266, Idaho Code.

SECTION 14. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-263, Idaho Code, and to read as follows:

56-263. MEDICAID MANAGED CARE PLAN. (1) The department shall present to the legislature on the first day of the second session of the sixty-first Idaho legislature a plan for medicaid managed care with focus on high-cost populations including, but not limited to:

- (a) Dual eligibles; and
- (b) High-risk pregnancies.

(2) The medicaid managed care plan shall include, but not be limited to, the following elements:

- (a) Improved coordination of care through primary care medical homes.
- (b) Approaches that improve coordination and provide case management for high-risk, high-cost disabled adults and children that reduce costs and improve health outcomes, including mandatory enrollment in special needs plans, and that consider other managed care approaches.
- (c) Managed care contracts to pay for behavioral health benefits as described in executive order number 2011-01 and in any implementing legislation. At a minimum, the system should include independent, standardized, statewide assessment and evidence-based benefits provided by businesses that meet national accreditation standards.
- (d) The elimination of duplicative practices that result in unnecessary utilization and costs.
- (e) Contracts based on gain sharing, risk-sharing or a capitated basis.
- (f) Medical home development with focus on populations with chronic disease using a tiered case management fee.

SECTION 15. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-264, Idaho Code, and to read as follows:

56-264. RULEMAKING AUTHORITY. In addition to the rulemaking authority granted to the department in this chapter and elsewhere in Idaho Code regarding the medicaid program and notwithstanding any other Idaho law to the contrary, the department shall have the authority to promulgate rules regarding:

- (1) Medical services to:

- (a) Change the primary case management paid to providers to a tiered payment based on the health needs of the populations that are managed. A lower payment is to be made for healthier populations and a higher payment is to be made for individuals with special needs, disabilities or

are otherwise at risk. An incentive payment is to be provided to practices that provide extended hours beyond the normal business hours that help reduce unnecessary higher-cost emergency care;

(b) Provide that a healthy connections referral is no longer required for urgent care as an alternative to higher cost but unnecessary emergency services; and

(c) Eliminate payment for collateral contact;

(2) Mental health services to:

(a) Eliminate administrative requirements for a functional and intake assessment and add a comprehensive diagnostic assessment addendum;

(b) Restrict duplicative skill training from being provided by a mental health provider when the individual has chosen to receive skill training from a developmental disability provider. The individual may choose to receive skill training from a mental health provider but can not receive skill building simultaneously from two (2) providers;

(c) Increase the criteria for accessing the partial care benefit and restrict to those individuals who have a diagnosis of serious and persistent mental illness;

(d) Eliminate the requirement for new annual plans; and

(e) Direct the department to develop an effective management tool for psychosocial rehabilitation services;

(3) In-home care services to:

(a) Eliminate personal care service coordination; and

(b) Restrict duplicative nursing services from a home health agency when nursing services are being provided through the aged and disabled waiver;

(4) Vision services to:

(a) Align coverage requirements for contact lenses with commercial insurers and other state medicaid programs; and

(b) Limit coverage for adults based on chronic care criteria;

(5) Audiology services to eliminate audiology benefits for adults;

(6) Developmental disability services to:

(a) Eliminate payment for collateral contact;

(b) Eliminate supportive counseling benefit;

(c) Reduce annual assessment hours from twelve (12) to four (4) hours and exclude psychological and neuropsychological testing services within these limits;

(d) Reduce plan development payment from twelve (12) to six (6) hours and reduce requirements related to adult developmental disabilities plan development;

(e) Restrict duplicative skill training from being provided by a developmental disabilities provider when an individual has chosen to receive skill training from his mental health provider;

(f) Implement changes to certified family homes pursuant to chapter 31, title 39, Idaho Code, to:

(i) Create approval criteria and process for approving new certified family homes;

(ii) Recertify current certified family homes; and

(iii) Develop applicant and licensing fees to cover certifying and recertifying costs;

(g) Move individualized adult budgets to a tiered approach as currently used by the department for children's developmental therapy; and

(7) Institutional care services to discharge individuals from institutional settings where such services are no longer necessary.

SECTION 16. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-265, Idaho Code, and to read as follows:

56-265. PROVIDER PAYMENT. (1) Where there is an equivalent, the payment to medicaid providers:

(a) May be up to but shall not exceed one hundred percent (100%) of the current medicare rate for primary care procedure codes as defined by the centers for medicare and medicaid services; and

(b) Shall be ninety percent (90%) of the current medicare rate for all other procedure codes.

(2) Where there is no medicare equivalent, the payment rate to medicaid providers shall be prescribed by rule.

(3) The department shall, through the annual budget process, include a line item request for adjustments to provider rates. All changes to provider payment rates shall be subject to approval of the legislature by appropriation.

SECTION 17. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-266, Idaho Code, and to read as follows:

56-266. AUTHORIZATION TO OBTAIN FEDERAL APPROVAL. The department is authorized to obtain federal approval for the requirements set forth in sections 56-260 through 56-266, Idaho Code.

SECTION 18. That Section 56-1408, Idaho Code, be, and the same is hereby amended to read as follows:

56-1408. EXEMPTIONS. (1) ~~A State hospital that is a governmental entity, including a state agency, is south in Blackfoot, Idaho, and state hospital north in Orofino, Idaho, and the department of veterans affairs medical center in Boise, Idaho, are exempt from the assessment required by section 56-1404, Idaho Code, unless the exemption is adjudged to be unconstitutional or otherwise invalid, in which case the hospital shall pay such assessment.~~

(2) A private hospital that does not provide emergency services through an emergency department and is not categorized as "rehabilitation" or "psychiatric" as provided in section II.C. of the "application for hospital licenses and annual report -- 2007" by the bureau of facility standards of the department of health and welfare, is exempt from the assessment required by section 56-1404, Idaho Code.

SECTION 19. That Section 56-1504, Idaho Code, be, and the same is hereby amended to read as follows:

56-1504. NURSING FACILITY ASSESSMENT FUND. (1) There is hereby created in the office of the state treasurer a dedicated fund to be known as the nursing facility assessment fund, hereinafter the "fund," to be administered by the department. The state treasurer shall invest idle moneys in the fund and any interest received on those investments shall be returned to the fund.

(2) Moneys in the fund shall consist of:

(a) All moneys collected or received by the department from nursing facility assessments required by this chapter;

(b) All federal matching funds received by the department as a result of expenditures made by the department that are attributable to moneys deposited in the fund;

(c) Any interest or penalties levied in conjunction with the administration of this chapter; and

(d) Any appropriations, federal funds, donations, gifts or moneys from any other sources.

(3) The fund is created for the purpose of receiving moneys in accordance with this section and section 56-1511, Idaho Code. Collected assessment funds shall be used to secure federal matching funds available through the state medicaid plan, which funds shall be used to make medicaid payments for nursing facility services ~~which that~~ equal or exceed the amount of nursing facility medicaid rates, in the aggregate, as calculated in accordance with the approved state medicaid plan in effect on ~~June 30~~ November 15, 2010. The fund shall not be used to replace any moneys appropriated to the Idaho medical assistance program by the legislature. Moneys in tThe fund shall be used exclusively for the following purposes:

(a) To pay administrative expenses incurred by the department or its agent in performing the activities authorized by this chapter, provided that such expenses shall not exceed a total of one percent (1%) of the aggregate assessment funds collected for the prior fiscal year.

(b) To reimburse the medicaid share of the assessment as a pass-through.

(c) To, at a minimum, make nursing facility adjustment payments that restore any rate reductions, in the aggregate, for the state fiscal years 2010 and 2011.

(d) To increase nursing facility payments to fund covered services to medicaid beneficiaries within medicare upper payment limits, as negotiated with the department.

(e) To repay the federal government any excess payments made to nursing facilities if the state plan, once approved by CMS, is subsequently disapproved for any reason, and after the state has appealed the findings. Nursing facilities shall refund the excess payments in question to the assessment fund. The state, in turn, shall return funds to both the federal government and nursing facility providers in the same proportion as the original financing. Individual nursing facilities shall be reimbursed based on the proportion of the individual nursing facility's assessment to the total assessment paid by nursing facilities. If a nursing facility is unable to refund payments, the state shall develop a payment plan and deduct moneys from future medicaid payments. The state will refund the federal government for the federal share of these overpayments.

(f) To make refunds to nursing facilities pursuant to section 56-1507, Idaho Code.

(g) To provide state matching funds for the department medicaid trustee and benefit expenditures to the extent that a general fund shortfall exists, or as limited by the maximum assessment as set forth in section 56-1505(2), Idaho Code, whichever is less.

SECTION 20. That Section 56-1505, Idaho Code, be, and the same is hereby amended to read as follows:

56-1505. NURSING FACILITY ASSESSMENTS. (1) Nursing facilities shall pay the nursing facility assessment to the fund in accordance with the provisions of this chapter, with the exception of state and county-owned facilities, which are not required to contribute.

(2) The aggregated amount of assessments for all nursing facilities, during a fiscal year, shall be an amount not exceeding ~~two percent (2%)~~ the maximum percentage allowed under federal law of the total aggregate net patient service revenue of assessed facilities from each provider's prior fiscal year. The department shall determine the assessment rate prospectively for the applicable fiscal year on a per-resident-day basis, exclusive of medicare part A resident days. The per-resident-day assessment rate shall be uniform. The department shall notify nursing facilities of the assessment rate applicable to the fiscal year by August 30 of that fiscal year.

(3) The department shall collect, and each nursing facility shall pay, the nursing facility assessment on a ~~quarterly~~ annual basis subject to the terms of this subsection. The nursing facility assessment shall be due ~~quarterly with the initial payment due within sixty (60) days after the state plan has been approved by CMS. Subsequent quarterly payments are due no later than thirty (30) days after the end of the calendar quarter~~ receipt of the department invoice.

(4) Nursing facilities may increase their charges to other payers to incorporate the assessment but shall not create a separate line item charge on the bill reflecting the assessment.

SECTION 21. That Section 56-1511, Idaho Code, be, and the same is hereby amended to read as follows:

56-1511. QUARTERLY ANNUAL NURSING FACILITY ADJUSTMENT PAYMENTS. (1) All nursing facilities, with the exception of the state and county-owned facilities, shall be eligible for quarterly annual nursing facility adjustments.

(2) For the purpose of this section, "nursing facility medicaid days" are days of nursing facility services paid for by the Idaho medical assistance program for the applicable state fiscal year.

(a) For state fiscal year 2010<sup>1</sup>, medicaid days for each provider's cost report ending in calendar year 2008, shall be utilized to determine the nursing facility adjustment payment. When there is not a change in ownership, adjustment payments for a new provider without a full year 2008 cost report shall be determined using more current medicaid patient day information obtained from the provider.

(b) For state fiscal year 2011<sup>2</sup>, medicaid days for each provider's cost report ending in calendar year 2009, shall be utilized to determine the nursing facility adjustment payment. When there is not a change in ownership, adjustment payments for a new provider without a full year 2009 cost report shall be determined using more current medicaid patient day information obtained from the provider.

(3) Adjustment payments shall be paid on a ~~quarterly~~ annual basis to reimburse covered medicaid expenditures in the aggregate within the upper payment limit.

(4) ~~Each quarterly payment shall be made no later than~~ If a provider does not pay its annual assessment within thirty (30) days after the receipt of the last quarterly deposit of the nursing facility assessments required in section 56-1504, Idaho Code department invoice, no further rate adjustment payments shall be made to the provider until the receipt of all assessments in arrears. If a provider pays its annual assessment more than sixty (60) days after receiving the department invoice, the subsequent adjustment payment shall be reduced twenty percent (20%).

(5) The provisions of this section shall be null, void and of no force and effect on July 1, 2011<sup>2</sup>.

SECTION 22. That Sections 56-1504, 56-1505 and 56-1511, Idaho Code, be, and the same are hereby repealed.

SECTION 23. That Chapter 15, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 56-1504, 56-1505 and 56-1511, Idaho Code, and to read as follows:

56-1504. NURSING FACILITY ASSESSMENT FUND. (1) There is hereby created in the office of the state treasurer a dedicated fund to be known as the nursing facility assessment fund, hereinafter the "fund," to be administered by the department. The state treasurer shall invest idle moneys in

the fund and any interest received on those investments shall be returned to the fund.

(2) Moneys in the fund shall consist of:

- (a) All moneys collected or received by the department from nursing facility assessments required pursuant to this chapter;
- (b) All federal matching funds received by the department as a result of expenditures made by the department that are attributable to moneys deposited in the fund;
- (c) Any interest or penalties levied in conjunction with the administration of this chapter; and
- (d) Any appropriations, federal funds, donations, gifts or moneys from any other sources.

(3) The fund is created for the purpose of receiving moneys in accordance with this section and section 56-1511, Idaho Code. Collected assessment funds shall be used to secure federal matching funds available through the state medicaid plan, which funds shall be used to make medicaid payments for nursing facility services that equal or exceed the amount of nursing facility medicaid rates, in the aggregate, as calculated in accordance with the approved state medicaid plan in effect on June 30, 2009. The fund shall be used exclusively for the following purposes:

- (a) To pay administrative expenses incurred by the department or its agent in performing the activities authorized pursuant to this chapter, provided that such expenses shall not exceed a total of one percent (1%) of the aggregate assessment funds collected for the prior fiscal year.
- (b) To reimburse the medicaid share of the assessment as a pass-through.
- (c) To, at a minimum, make nursing facility adjustment payments that restore any rate reductions, in the aggregate, for the state fiscal years 2010 and 2011.
- (d) To increase nursing facility payments to fund covered services to medicaid beneficiaries within medicare upper payment limits, as negotiated with the department.
- (e) To repay the federal government any excess payments made to nursing facilities if the state plan, once approved by CMS, is subsequently disapproved for any reason, and after the state has appealed the findings. Nursing facilities shall refund the excess payments in question to the assessment fund. The state, in turn, shall return funds to both the federal government and nursing facility providers in the same proportion as the original financing. Individual nursing facilities shall be reimbursed based on the proportion of the individual nursing facility's assessment to the total assessment paid by nursing facilities. If a nursing facility is unable to refund payments, the state shall develop a payment plan and deduct moneys from future medicaid payments. The state will refund the federal government for the federal share of these overpayments.
- (f) To make refunds to nursing facilities pursuant to section 56-1507, Idaho Code.

56-1505. NURSING FACILITY ASSESSMENTS. (1) Nursing facilities shall pay the nursing facility assessment to the fund in accordance with the provisions of this chapter, with the exception of state and county-owned facilities, which are not required to contribute.

(2) The aggregated amount of assessments for all nursing facilities, during a fiscal year, shall be an amount not exceeding the maximum percentage allowed under federal law of the total aggregate net patient service revenue of assessed facilities from each provider's prior fiscal year. The department shall determine the assessment rate prospectively for the applicable fiscal year on a per-resident-day basis, exclusive of medicare part A resident days. The per-resident-day assessment rate shall be uniform. The de-

partment shall notify nursing facilities of the assessment rate applicable to the fiscal year by August 30 of that fiscal year.

(3) The department shall collect, and each nursing facility shall pay, the nursing facility assessment on an annual basis subject to the terms of this subsection. The nursing facility assessment shall be due annually with the initial payment due within sixty (60) days after the state plan has been approved by CMS. Subsequent annual payments are due no later than thirty (30) days after receipt of the department invoice.

(4) Nursing facilities may increase their charges to other payers to incorporate the assessment but shall not create a separate line item charge on the bill reflecting the assessment.

56-1511. ANNUAL NURSING FACILITY ADJUSTMENT PAYMENTS. (1) All nursing facilities, with the exception of the state and county-owned facilities, shall be eligible for annual nursing facility adjustments.

(2) For the purpose of this section, "nursing facility days" are days of nursing facility services paid for by the Idaho medical assistance program for the applicable state fiscal year.

(a) For state fiscal year 2010, medicaid days for each provider's cost report ending in calendar year 2008 shall be utilized to determine the nursing facility adjustment payment.

(b) For state fiscal year 2011, medicaid days for each provider's cost report ending in calendar year 2009 shall be utilized to determine the nursing facility adjustment payment.

(3) Adjustment payments shall be paid on an annual basis to reimburse covered medicaid expenditures in the aggregate within the upper payment limit.

(4) Each annual payment shall be made no later than thirty (30) days after the receipt of the last annual deposit of the nursing facility assessments required in section 56-1504, Idaho Code.

SECTION 24. That Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 16, Title 56, Idaho Code, and to read as follows:

#### CHAPTER 16

#### IDAHO INTERMEDIATE CARE FACILITY ASSESSMENT ACT

56-1601. SHORT TITLE -- LEGISLATIVE INTENT. (1) This chapter shall be known and may be cited as the "Idaho Intermediate Care Facility Assessment Act."

(2) It is the intent of the legislature to encourage the maximization of financial resources eligible and available for medicaid services by establishing a fund within the Idaho department of health and welfare to receive ICF assessments to be used in securing federal matching funds under federally prescribed programs available through the state medicaid plan.

56-1602. DEFINITIONS. As used in this chapter:

(1) "CMS" means the centers for medicare and medicaid services.

(2) "Department" means the Idaho department of health and welfare.

(3) "Fiscal year" means the time period from July 1 to June 30.

(4) "Fund" means the ICF assessment fund established pursuant to section 56-1603, Idaho Code.

(5) "ICF" means an intermediate care facility for people with intellectual disabilities as defined in section 39-1301, Idaho Code, and licensed pursuant to chapter 13, title 39, Idaho Code.

(6) "Net patient service revenue" means gross revenues from services provided to ICF patients, less reductions from gross revenue resulting from an inability to collect payment of charges. Patient service revenue

excludes nonpatient care revenues such as beauty and barber, vending income, interest and contributions, revenues from sale of meals and all outpatient revenues. Reductions from gross revenue includes: bad debts; contractual adjustments; uncompensated care; administrative, courtesy and policy discounts and adjustments; and other such revenue deductions.

(7) "Resident day" means a calendar day of care provided to an ICF resident, including the day of admission and excluding the day of discharge, provided that one (1) resident day shall be deemed to exist when admission and discharge occur on the same day.

(8) "Upper payment limit" means the limitation established in 42 CFR section 447.272, that disallows federal matching funds when state medicaid agencies pay certain classes of facilities an aggregate amount for services that exceed the amount that is paid for the same services furnished by that class of facilities under medicare payment principles.

56-1603. INTERMEDIATE CARE FACILITY ASSESSMENT FUND. (1) There is hereby created in the office of the state treasurer a dedicated fund to be known as the ICF assessment fund to be administered by the department. The state treasurer shall invest idle moneys in the fund, and any interest received on those investments shall be returned to the fund.

(2) Moneys in the fund shall consist of:

(a) All moneys collected or received by the department from ICF assessments required pursuant to this chapter;

(b) All federal matching funds received by the department as a result of expenditures made by the department that are attributable to moneys deposited in the fund;

(c) Any interest or penalties levied in conjunction with the administration of this chapter; and

(d) Any appropriation or federal funds.

(3) The fund is created for the purpose of receiving moneys in accordance with the provisions of this section and section 56-1604, Idaho Code. The fund shall not be used to replace any moneys appropriated to the Idaho medical assistance program by the legislature. Moneys in the fund, which are deemed to be perpetually appropriated, shall be used exclusively for the following purposes:

(a) To pay administrative expenses incurred by the department or its agent in performing the activities authorized pursuant to this chapter, provided that such expenses shall not exceed a total of one percent (1%) of the aggregate assessment funds collected for the prior fiscal year.

(b) To reimburse the medicaid share of the assessment as a pass-through.

(c) To secure federal matching funds available through the state medicaid plan, which funds shall be used to make medicaid payments for ICF services that equal or exceed the amount of ICF medicaid rates, in the aggregate, as calculated in accordance with the approved state medicaid plan in effect on July 1, 2011.

(d) To increase ICF payments to fund covered services to medicaid beneficiaries within medicare upper payment limits.

(e) To, at a minimum, make ICF adjustment payments that restore any rate reductions, in the aggregate, for the state fiscal years 2011 and 2012, within medicare upper payment limits.

(f) To make refunds to ICFs pursuant to section 56-1607, Idaho Code. If an ICF is unable to refund payments, the state shall develop a payment plan and deduct moneys from future medicaid payments. The state will refund the federal government for the federal share of these overpayments.

(g) To make transfers to any other fund in the state treasury, provided such transfers shall not exceed the amount transferred previously from that other fund into the ICF assessment fund.

(h) To provide state matching funds for department medicaid trustee and benefit expenditures to the extent that a general fund shortfall exists, or as limited by the maximum assessment as set forth in section 56-1604(2), Idaho Code, whichever is less.

56-1604. INTERMEDIATE CARE FACILITY ASSESSMENTS. (1) The ICF shall pay the ICF assessment to the fund in accordance with the provisions of this chapter.

(2) The aggregated amount of assessments for all ICFs during a fiscal year shall be an amount not exceeding the maximum percentage allowed under federal law of the total aggregate net patient service revenue of assessed ICFs from each provider's prior fiscal year. The department shall determine the assessment rate prospectively for the applicable fiscal year on a per-resident-day basis. The per-resident-day assessment rate shall be uniform for all ICFs.

(3) The department shall collect, and each ICF shall pay, the ICF assessment on an annual basis subject to the terms of this subsection. The ICF assessment shall be due no later than thirty (30) days after the receipt of the department invoice.

56-1605. APPROVAL OF STATE PLAN. The department shall seek necessary federal approval in the form of the state plan amendments in order to implement the provisions of this chapter.

56-1606. MULTIFACILITY LOCATIONS. If an entity conducts, operates or maintains more than one (1) ICF licensed by the department, the entity shall pay the assessment for each ICF separately.

56-1607. TERMINATION OF ICF ASSESSMENTS. (1) The ICF assessment shall terminate and the department shall discontinue the imposition, assessment and collection of the ICF assessment if the plan amendment incorporating the payment in section 56-1604, Idaho Code, is not approved by CMS. In the event that CMS subsequently determines that the operation of this assessment program fails to abide by federal statute, regulation and/or CMS policy, the state shall return funds back to the providers on a pro rata basis of the assessments collected. The payment calculations in sections 56-1604 and 56-1609, Idaho Code, may be modified if necessary to obtain CMS approval of the plan amendment.

(2) Upon termination of the assessment, all collected assessment revenues, less any amounts expended by the department, shall be returned on a pro rata basis to ICFs that paid the ICF assessment.

56-1608. PENALTIES FOR FAILURE TO PAY INTERMEDIATE CARE FACILITY ASSESSMENT. (1) If an ICF fails to pay the full amount of an ICF assessment when due, there shall be added to the assessment, unless waived by the department for reasonable cause, a penalty equal to five percent (5%) of the amount of the assessment that was not paid when due. Any subsequent payments shall be credited first to unpaid assessment amounts rather than to penalty or interest amounts, beginning with the most delinquent installment.

(2) In addition to the penalty identified in subsection (1) of this section, the department may seek any of the following remedies for failure of any ICF to pay its assessment when due:

- (a) Withhold any medical assistance reimbursement payments until such time as the assessment amount is paid in full;
- (b) Suspend or revoke the ICF license; or
- (c) Develop a plan that requires the ICF to pay any delinquent assessment in installments.

56-1609. ANNUAL INTERMEDIATE CARE FACILITY ADJUSTMENT PAYMENTS. (1) All ICFs shall be eligible for annual ICF adjustments.

(2) For the purpose of this section, "medicaid days" are days of ICF services paid for by the Idaho medical assistance program for the applicable state fiscal year.

(a) For state fiscal year 2011, medicaid days for each provider's cost report ending in calendar year 2009 shall be utilized to determine the ICF adjustment payment.

(b) For state fiscal year 2012, medicaid days for each provider's cost report ending in calendar year 2010 shall be utilized to determine the ICF adjustment payment.

(c) Adjustment payments for a new provider, not new ownership, without a full year cost report shall be determined using medicaid patient day information from the full calendar quarter of business prior to the rate adjustment quarter.

(3) Adjustment payments shall be paid on an annual basis to reimburse covered medicaid expenditures in the aggregate within the upper payment limit.

(4) If a provider does not pay its annual assessment within thirty (30) days after receipt of the department invoice, no further rate adjustment payments shall be made to the provider until receipt of all assessments in arrears. If a provider pays its annual assessment more than sixty (60) days after receiving the department invoice, the subsequent adjustment payment shall be reduced twenty percent (20%).

56-1610. RULEMAKING AUTHORITY. The department shall adopt rules to implement the provisions of this chapter.

SECTION 25. 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 the remaining portions of this act.

SECTION 26. Sections 22 and 23 of this act shall be in full force and effect on and after July 1, 2012. The provisions of Section 24 of this act shall be null, void and of no force and effect on and after July 1, 2012.

Approved April 5, 2011.

CHAPTER 165  
(H.B. No. 285)

AN ACT

RELATING TO HIGHWAY TRANSPORTATION PROJECTS; APPROVING BONDING AUTHORITY TO FINANCE CERTAIN HIGHWAY TRANSPORTATION PROJECTS; REFERENCING PROJECTS TO BE FINANCED WITH BOND PROCEEDS; LIMITING THE SCOPE OF TRANSPORTATION PROJECTS; PROVIDING A REQUIREMENT REGARDING A GARVEE PROGRAM MANAGEMENT SERVICES AGREEMENT; PROVIDING FOR ISSUANCE OF GARVEE BONDS; PROVIDING LEGISLATIVE INTENT AS TO THE IDAHO TRANSPORTATION BOARD'S PRIORITY USE OF BOND REVENUE; PROVIDING LEGISLATIVE INTENT REGARDING WORK PERFORMED BY THE IDAHO TRANSPORTATION DEPARTMENT; AUTHORIZING A TRANSFER OF FUNDS FOR DEBT SERVICE; PROVIDING A DATE FOR SUBMISSION OF A REPORT TO THE LEGISLATURE; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. The Idaho Legislature hereby approves bonding authority for the issuance of highway transportation (GARVEE) bonds by the Idaho Housing and Finance Association in a principal amount sufficient to finance the highway transportation projects listed in Section 40-315, Idaho Code, in an amount up to \$162,000,000. Such bonds are expected to be paid from continuing appropriations of federal funds from the State Highway Account as provided in Section 40-707, Idaho Code.

SECTION 2. The Legislature finds that the bonding authority provided in Section 1 of this act shall be used in a manner that does not obligate future legislatures or governors for additional bonding authority. The Idaho Transportation Board shall allocate revenue generated from bonds authorized in Section 1 of this act to finance projects listed in Section 40-315, Idaho Code.

SECTION 3. The Idaho Transportation Board and the Idaho Transportation Department shall not increase the scope, nor add specific projects, nor in any manner extend or enlarge the transportation projects listed in Section 40-315, Idaho Code.

SECTION 4. To the extent the Idaho Transportation Board and the Idaho Transportation Department determine that GARVEE program management services are necessary, any agreement governing such services shall, to the extent possible, be fully transparent to the public and Legislature and shall endeavor to negotiate those services at the best possible rates.

SECTION 5. The bonds issued under the authority provided by Section 1 of this act shall be issued upon an approved resolution by the Idaho Transportation Board requesting Idaho Housing and Finance Association to issue bonds in amounts necessary to ensure that: the funds are necessary to meet program obligation requirements; the funds will be used and disbursed in accordance with United States Treasury regulations to ensure tax exempt status is retained; and the bonds are issued at prevailing market rates of interest. Further, it is the intent of the Legislature that the bonds authorized by the authority provided in Section 1 of this act be issued on an "as needed" basis as determined by the Idaho Transportation Board. The purpose of this intent is to delay debt service on additional bonding until funds must be obligated to pay for right-of-way acquisition, construction, and/or other project-related costs and avoid violation of arbitrage rules that may result from issuance of bonds too far in advance of the need to obligate funds for expenditure. The issuance of additional bonds shall be dependent upon advantageous market rates and costs of bonding transactions as determined by the Idaho Transportation Board.

SECTION 6. It is legislative intent that the Idaho Transportation Board direct the use of the revenue raised from the bonding authority provided in Section 1 of this act in such a manner that revenue shall be expended in a priority fashion and that the first priority of expenditures shall be for contract construction, followed in order of priority by expenditures for right-of-way acquisition, followed in priority by other necessary project-related costs. Further, any savings realized from lower than expected cost estimates or other efficiencies shall be applied to complete remaining projects as soon as practicable, with any final remainder of savings applied to scheduled debt service.

SECTION 7. Relating to the projects referenced in Section 2 of this act, it is legislative intent, that to the extent feasible and practical, the Idaho Transportation Department perform project-related work within the Department itself. The goal of this directive is to preserve the expenditure of GARVEE funds for the priorities described in Section 6 of this act.

SECTION 8. The Idaho Transportation Board is hereby authorized to transfer up to \$4,000,000 from within the State Highway Account to the GARVEE Debt Service Fund to pay the state match as required for federal funds committed to pay the annual scheduled debt service on GARVEE bonds for fiscal year 2012.

SECTION 9. Notwithstanding any other provisions of law, it is legislative intent that by September 30 of each year, the board shall submit a report to the Legislature concerning projects currently under construction using the bond financing as authorized by the provisions of this act, and shall include a list of planned highway transportation projects to be financed with such bond financing during the next succeeding fiscal year.

SECTION 10. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 5, 2011.

CHAPTER 166  
(S.B. No. 1160)

AN ACT

APPROPRIATING MONEYS TO THE IDAHO COMMISSION FOR LIBRARIES FOR FISCAL YEAR 2012; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Idaho Commission for Libraries, the following amounts to be expended for the designated expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:					
General					
Fund	\$1,638,400	\$1,359,300			\$2,997,700
American Reinvestment					
Fund		400,000	\$400,000		800,000
Miscellaneous Revenue					
Fund		24,300	25,000	\$26,000	75,300
Federal Grant					
Fund	<u>477,500</u>	<u>693,400</u>	<u>25,000</u>	<u>284,400</u>	<u>1,480,300</u>
TOTAL	\$2,115,900	\$2,477,000	\$450,000	\$310,400	\$5,353,300

SECTION 2. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Idaho Commission for Libraries is authorized no more than forty-one and five-tenths (41.5) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations

Committee will be notified promptly of any increased positions so authorized.

Approved April 5, 2011.

CHAPTER 167  
(S.B. No. 1161)

AN ACT

TRANSFERRING MONEYS FROM THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED FOR FISCAL YEAR 2011; APPROPRIATING MONEYS TO THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED FOR FISCAL YEAR 2012; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated and upon passage and approval of this act, the State Controller shall transfer \$650,000 from the Commission for the Blind and Visually Impaired Federal Grant Fund to the General Fund.

SECTION 2. There is hereby appropriated to the Commission for the Blind and Visually Impaired, the following amounts to be expended for the designated expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:				
General Fund	\$601,400	\$48,500	\$599,200	\$1,249,100
Randolph Sheppard Fund		27,300	100,100	127,400
Rehabilitation Revenue and Refunds Fund		34,300	13,000	47,300
American Reinvestment Fund		36,200		36,200
Miscellaneous Revenue Fund		117,400	116,300	233,700
Adaptive Aids and Appliances Fund	14,400	47,600		62,000
Federal Grant Fund	<u>1,676,800</u>	<u>596,500</u>	<u>441,500</u>	<u>2,714,800</u>
TOTAL	\$2,292,600	\$907,800	\$1,270,100	\$4,470,500

SECTION 3. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Commission for the Blind and Visually Impaired is authorized no more than thirty-nine (39) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval.

Approved April 5, 2011.

CHAPTER 168  
(S.B. No. 1162)

AN ACT

APPROPRIATING MONEYS TO THE IDAHO STATE HISTORICAL SOCIETY FOR FISCAL YEAR 2012; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND PROVIDING LEGISLATIVE INTENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Idaho State Historical Society, the following amounts to be expended for the designated expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:				
General				
Fund	\$1,352,200	\$734,000	\$31,600	\$2,117,800
Miscellaneous Revenue				
Fund	494,600	628,200		1,122,800
Capitol Endowment Income				
Fund	56,200	48,500		104,700
Federal Grant				
Fund	<u>944,900</u>	<u>326,500</u>	<u>130,000</u>	<u>1,401,400</u>
TOTAL	\$2,847,900	\$1,737,200	\$161,600	\$4,746,700

SECTION 2. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Idaho State Historical Society is authorized no more than forty-seven and two-hundredths (47.02) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the Legislature that the State Historical Society continue its efforts to reconcile the balance of its federal fund to determine if and how much of that balance is actually nonfederal money. Should the Historical Society find, upon conclusion of this reconciliation, that an amount of the federal fund balance is nonfederal money, it shall give priority to expending those nonfederal moneys prior to expending any general funds. The Legislature further intends to incur savings to the Historical Society's general fund appropriation in the amount of any nonfederal moneys that currently contribute to the cash accumulation in the Historical Society's federal fund, less an amount necessary

to cash flow the Historical Society's federal grant programs. Those general fund savings from the Historical Society's general fund appropriation for fiscal year 2012 shall transfer back to the state general fund as soon as is practicable.

Approved April 5, 2011.

CHAPTER 169  
(S.B. No. 1163)

AN ACT

APPROPRIATING MONEYS TO THE DIVISION OF BUILDING SAFETY; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND PROVIDING LEGISLATIVE INTENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Division of Building Safety, the following amounts to be expended for the designated expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
State Regulatory				
Fund	\$7,754,500	\$1,892,500	\$235,800	\$9,882,800
Miscellaneous Revenue/Industrial Safety				
Fund	586,400	92,700	21,200	700,300
Miscellaneous Revenue/Logging				
Fund	312,300	71,000	1,100	384,400
Federal Grant				
Fund	<u>34,300</u>	<u>6,300</u>	<u>0</u>	<u>40,600</u>
TOTAL	\$8,687,500	\$2,062,500	\$258,100	\$11,008,100

SECTION 2. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Division of Building Safety is authorized no more than one hundred forty-one (141) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the Legislature, consistent with Executive Order No. 2007-21, Establishing a Policy to Reduce Fossil Fuel Use and Greenhouse Gas Emissions from State Vehicles, that the Division of Building Safety shall consider fuel efficiency in identifying new vehicles for replacement of the outgoing fleet.

Approved April 5, 2011.

CHAPTER 170  
(H.B. No. 24)

AN ACT

RELATING TO WATER; AMENDING SECTION 42-203A, IDAHO CODE, TO DELETE THE REQUIREMENT THAT COPIES OF NOTICES BE SENT BY ORDINARY MAIL TO CERTAIN PERSONS, TO PROVIDE FOR NOTICES THAT ARE ACCESSIBLE FROM THE INTERNET HOMEPAGE OF THE DEPARTMENT OF WATER RESOURCES, TO CLARIFY THAT PUBLISHED NOTICES ARE THE OFFICIAL NOTICES AND TO PROVIDE THAT ANY ERRORS OR OMISSIONS IN NOTICES ACCESSIBLE FROM THE INTERNET HOMEPAGE SHALL NOT INVALIDATE THE PUBLISHED NOTICES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-203A, Idaho Code, be, and the same is hereby amended to read as follows:

42-203A. NOTICE UPON RECEIPT OF APPLICATION -- PROTEST -- HEARING AND FINDINGS -- APPEALS. (1) Upon receipt of an application to appropriate the waters of this state, the department of water resources shall prepare a notice in such form as the department may prescribe, specifying: (a) the number of the application; (b) the date of filing thereof; (c) the name and post-office address of the applicant; (d) the source of the water supply; (e) the amount of water to be appropriated; (f) in general the nature of the proposed use; (g) the approximate location of the point of diversion; and (h) the point of use. The department shall also state in said notice that any protest against the approval of such application, in form prescribed by the department, shall be filed with the department within ten (10) days from the last date of publication of such notice.

(2) The director of the department of water resources shall cause the notice to be published in a newspaper printed within the county wherein the point of diversion lies or, in the event no newspaper is printed in said county, then in a newspaper of general circulation therein. When the application proposes a diversion in excess of ten (10) c.f.s. or one thousand (1,000) acre feet, the director shall cause the notice to be published in a newspaper or newspapers sufficient to achieve statewide circulation. Any notice shall be published at least once each week for two (2) successive weeks.

(3) The director of the department shall also cause a copy of the notice of the application to be sent by ordinary mail to any person who requests in writing to receive any class of notices of application and who pays an annual mailing fee as established by departmental regulation accessible from the department's internet homepage beginning on or before the date the application is first published in the newspaper as described in subsection (2) of this section, and ending no sooner than the deadline for protesting the application, consistent with subsection (1) of this section. Notice accessible from the internet homepage may be represented by an abstract, summary, or other such representation that includes all the information required by subsection (1) of this section for notice of an application. The notice published in the newspaper pursuant to subsection (2) of this section shall be the official notice. Errors or omissions in the notices accessible from the internet homepage shall not invalidate the published notice.

(4) Any person, firm, association or corporation concerned in any such application may, within the time allowed in the notice of application, file with said director of the department of water resources a written protest, together with the statutory filing fee as provided in section 42-221, Idaho Code, against the approval of such application, which protest shall state the name and address of protestant and shall be signed by him or by his agent

or attorney and shall clearly set forth his objections to the approval of such application. Hearing upon the protest so filed shall be held within sixty (60) days from the date such protest is received. Notice of this hearing shall be given by mailing notice not less than ten (10) days before the date of hearing and shall be forwarded to both the applicant and the protestant, or protestants, by certified mail. Such notice shall state the names of the applicant and protestant, or protestants, the time and place fixed for the hearing and such other information as the director of the department of water resources may deem advisable. In the event that no protest is filed, then the director of the department of water resources may forthwith approve the application, providing the same in all respects conforms with the requirements of this chapter, and with the regulations of the department of water resources.

(5) Such hearing shall be conducted in accordance with the provisions of section 42-1701A(1) and (2), Idaho Code. The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such: (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions. Provided however, that minimum stream flow water rights may not be established under the local public interest criterion, and may only be established pursuant to chapter 15, title 42, Idaho Code. The provisions of this section shall apply to any boundary stream between this and any other state in all cases where the water sought to be appropriated has its source largely within the state, irrespective of the location of any proposed power generating plant.

(6) Any person or corporation who has formally appeared at the hearing, aggrieved by the judgment of the director of the department of water resources, may seek judicial review thereof in accordance with section 42-1701A(4), Idaho Code.

Approved April 5, 2011.

CHAPTER 171  
(H.B. No. 25)

AN ACT

RELATING TO PERMITS TO APPROPRIATE WATER; AMENDING SECTION 42-218a, IDAHO CODE, TO PROVIDE THAT NOTICE OF LAPSED PERMITS SHALL BE SENT TO PERMIT HOLDERS, TO REVISE PROVISIONS RELATING TO THE REINSTATEMENT OF PERMITS WITHIN SIXTY DAYS AFTER NOTICE OF LAPSING, TO REVISE PROVISIONS AND RE-

REQUIREMENTS RELATING TO SUBMISSION OF PROOF OF BENEFICIAL USE STATEMENTS SUBMITTED MORE THAN SIXTY DAYS AFTER NOTICE OF LAPSING, TO PROVIDE FOR THE REINSTATEMENT OF SUCH PERMITS AND THE ADVANCEMENT OF PRIORITY DATES AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-218a, Idaho Code, be, and the same is hereby amended to read as follows:

42-218a. LAPSE OF APPLICATION FOR FAILURE TO REQUEST EXTENSION OR SUBMIT PROOF OF APPLICATION TO BENEFICIAL USE -- NOTICE OF LAPSING. A permit upon which the proof of beneficial use has not been submitted, or a request for extension of time has not been received on or before the date set for such proof, shall lapse and be of no further force nor effect. Notice of said lapsing shall be sent by the department to the applicant permit holder at the address of record by regular mail provided.

~~(1.) That within sixty (60) days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof.~~

~~(2.) That upon receipt of proof of beneficial use after sixty (60) days after such notice of lapsing, the director shall require sufficient evidence to be submitted by the permit holder to clearly establish the extent of beneficial use made during the time authorized by the permit and any extensions of time previously approved. Upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may reinstate the permit with the priority date advanced to the day that proof of beneficial use was received. In connection with a proof of beneficial use statement submitted more than sixty (60) days after such notice of lapsing, the director shall require all of the following items to be submitted to the department:~~

~~(a) A report prepared by a certified water right examiner as the result of an examination to clearly confirm and establish the extent of the beneficial use of water established in connection with the permit during the time authorized by the permit and any extensions of time previously approved. The report shall be on the form or forms specified by the director and shall provide the information specified in section 42-217, Idaho Code, for confirming beneficial use and such other information as may be required by the director.~~

~~(b) A statement of reasonable cause for filing a late proof of beneficial use.~~

~~(c) A reinstatement fee of two hundred fifty dollars (\$250).~~

~~Upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may reinstate the permit with the priority date advanced to the day that proof of beneficial use was received.~~

~~(3.) The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department.~~

Approved April 5, 2011.

CHAPTER 172  
(H.B. No. 31)

AN ACT

RELATING TO WATER; AMENDING SECTION 42-221, IDAHO CODE, TO DELETE REFERENCE TO APPLICATIONS TO CHANGE THE POINT OF DIVERSION, PLACE, PERIOD OR NATURE OF USE OF WATER UNDER A VESTED WATER RIGHT IN RELATION TO CERTAIN FEES, TO REVISE A FEE RELATING TO APPLICATIONS FOR AMENDMENT OF PERMIT AND TO PROVIDE FOR FEES FOR FILING APPLICATIONS TO CHANGE THE POINT OF DIVERSION, PLACE, PERIOD OR NATURE OF USE OF WATER UNDER A VESTED WATER RIGHT; AND AMENDING SECTION 42-248, IDAHO CODE, TO REVISE A PROVISION RELATING TO INFORMATION CONTAINED IN CERTAIN APPLICATIONS TO CHANGE A WATER RIGHT BEING DEEMED IN COMPLIANCE WITH SPECIFIED NOTIFICATION PROVISIONS AND TO PROVIDE FOR APPLICABILITY OF SPECIFIED FEE REQUIREMENTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-221, Idaho Code, be, and the same is hereby amended to read as follows:

42-221. FEES OF DEPARTMENT. The department of water resources shall collect the following fees which shall constitute a fund to pay for legal advertising, the publication of public notices and for investigations, research, and providing public data as required of the department in the performance of its statutory duties:

A. For filing an application for a permit to appropriate the public waters of this state ~~or an application to change the point of diversion, place, period or nature of use of water under a vested water right:~~

- 1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20 acre feet or less ..... \$100
- 2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s. or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet ..... \$250
- 3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet ..... \$250 plus \$40.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.
- 4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s. or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet ..... \$1,010 plus \$20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.
- 5. For a quantity greater than 100.0 c.f.s. but not exceeding 500.0 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet ..... \$2,610 plus \$10.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.
- 6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet ..... \$6,610 plus \$2.00 for each additional 1.0 c.f.s. or part thereof or 100 acre feet or part thereof over the first 500.0 c.f.s. or 50,000 acre feet.

B. For filing an application for an extension of time within which to resume the use of water under a vested water right ..... \$100

C. For filing application for amendment of permit ..... \$50-100

D.1. For filing claim to use right under section 42-243, Idaho Code ..... \$100

2. For filing a late claim to use a water right under section 42-243, Idaho Code, where the date filed with the department of water resources or, the postmark if mailed to the department of water resources, is:
- i. After June 30, 1998 ..... \$250
  - ii. After June 30, 2005 ..... \$500
  - iii. For every ten (10) years after June 30, 2005, an additional ..... \$500
- E. For filing an assignment of permit ..... \$25.00
- F. For readvertising application for permit, change, exchange, or extension to resume use ..... \$50.00
- G. For certification, each document ..... \$1.00
- H. For making photo copies of office records, maps and documents for public use ..... A reasonable charge as determined by the department.
- I. For filing request for extension of time within which to submit proof of beneficial use on a water right permit ..... \$50.00
- J. For tasks requiring in excess of one (1) hour research or for computerized data provided for public use .....  
..... A reasonable charge as determined by the department.
- K. For filing proof of beneficial use of water and requests for water right license examinations, a fee based upon the rate of diversion claimed in the proof of beneficial use:
1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20 acre feet or less ..... \$50.00  
except no fee shall be charged for domestic use for which a permit is not required.
  2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s., or for a storage volume greater than 20 acre feet, but not exceeding 100 acre feet ..... \$100
  3. For a quantity greater than 1.0 c.f.s., or for a storage volume greater than 100 acre feet ..... \$100  
plus \$25.00 for each additional c.f.s. or part thereof, or 100 acre feet or part thereof, over the first 1.0 c.f.s. or 100 acre feet with a maximum fee not to exceed \$600.
- L. For filing a protest or request to intervene in a protested matter ..... \$25.00
- M. For filing an application to alter a stream channel pursuant to chapter 38, title 42, Idaho Code:
1. Application for recreational dredge permits by residents of the state ..... \$10.00
  2. Application for recreational dredge permits by nonresidents of the state ..... \$30.00
  3. Other applications ..... \$20.00
- N. For receipt of all notices of application within a designated area, a reasonable annual charge as determined by the department.
- O. For filing an application to change the point of diversion, place, period or nature of use of water under a vested water right:
1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20 acre feet or less ..... \$200
  2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s., or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet ..... \$500
  3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet ..... \$500  
plus \$80.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.
  4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s., or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet ..... \$2,020

plus \$40.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.

5. For a quantity greater than 100 c.f.s. but not exceeding 500 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet ..... \$5,220

plus \$20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.

6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet ..... \$13,220

plus \$4.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 500 c.f.s. or 50,000 acre feet.

7. For any application to change the nature of use of water under one (1) or more vested water right(s), an additional fee of \$250 shall apply.

All fees received by the department of water resources under the provisions of this chapter shall be transmitted to the state treasurer for deposit in the water administration account.

SECTION 2. That Section 42-248, Idaho Code, be, and the same is hereby amended to read as follows:

42-248. NOTIFICATION OF CHANGE IN OWNERSHIP OF A WATER RIGHT OR CHANGE OF ADDRESS OF A WATER RIGHT OWNER -- NOTICE OF ACTION AFFECTING A WATER RIGHT. (1) All persons owning or claiming ownership of a right to use the water of this state, whether the right is represented by decree of the court, by claim to a water right filed with the department of water resources or by permit or license issued by the director of the department of water resources, shall provide notice to the department of water resources of any change in ownership of any part of the water right or of any change in the owner's mailing address, either of which occurs after June 30, 2000. Notice shall be provided within one hundred twenty (120) days of any change using forms acceptable to the director. Any notice received by the department of water resources more than one hundred twenty (120) days after the change in ownership or mailing address has occurred shall be accompanied by a late filing fee. The late filing fee shall be one hundred dollars (\$100). The director may waive the late filing fee or a portion thereof for good cause.

(2) All persons owning or claiming ownership of a right to use the water of this state that is evidenced by a water right recorded with the department of water resources prior to June 30, 2000, and for which a claim to water right, with current ownership and mailing address, is not on file with the department of water resources in the Snake River Basin Adjudication, Twin Falls Civil Case No. 39576, shall verify with the department that the ownership and mailing address information in the department's records is correct. Any incorrect ownership or mailing address shall be corrected by the owner or claimant of the water right by July 1, 2002, using forms acceptable to the director. Any mailing address or ownership corrections required by this subsection received by the department of water resources after July 1, 2002, shall be subject to the late filing fee described in subsection (1) of this section. The director may waive the late filing fee or a portion thereof for good cause.

(3) The director of the department of water resources will be deemed to have provided notice concerning any action by the director affecting a water right or claim if a notice of the action is mailed to the address and owner of the water right shown in the records of the department of water resources at the time of mailing the notice.

(4) Compliance with section 42-1409(6), Idaho Code, shall be deemed to be compliance with this section. The filing of an application to change a water right under the provisions of section 42-211 or section 42-222, Idaho Code, showing a change in address of the owner of the right, ~~and~~ or accompanied by evidence documenting any change in ownership of the water right,

shall be deemed compliance with this section. The fee requirements of this section shall apply in addition to the filing fee that may be required in connection with an application to change a water right under the provisions of section 42-211 or 42-222, Idaho Code.

(5) A filing fee of twenty-five dollars (\$25.00) per right shall accompany a notice of change of ownership of a water right, provided that the fee shall be one hundred dollars (\$100) per right if a request is made to change the department's records to reflect a division in the ownership of the water right resulting from a division in the ownership of the place of use under the water right. A notice of change of ownership of all or part of a water right shall be accompanied by evidence showing the basis for the change in ownership, and how the right is divided if the change divides the right among multiple owners.

(6) Any person having a security interest in a water right and desiring to be notified by the department regarding the filing of a change in ownership of that water right or of any proposed or final action to amend, transfer or otherwise modify that water right shall make the request upon a form provided by the department accompanied by a fee of twenty-five dollars (\$25.00) per right. The request shall be accompanied by evidence of the security interest including the expiration date of the security interest or other date defining the end of the period for which notification is requested. The request for notification shall expire at the end of the requested notification period unless renewed on a form provided by the department and accompanied by a renewal fee of twenty-five dollars (\$25.00) per right. The holder of a security interest requesting notification under this subsection shall provide notice to the department within sixty (60) days if the security interest is terminated prior to the end of the requested notification period.

Approved April 5, 2011.

CHAPTER 173  
(H.B. No. 39)

AN ACT

RELATING TO SEED CROPS; AMENDING SECTION 22-5118, IDAHO CODE, TO DELETE REFERENCE TO INSUFFICIENT FUNDS AND TO PROVIDE FOR PAYMENT FOR SEED CROPS; AND AMENDING SECTION 22-5126, IDAHO CODE, TO PROVIDE A LIMITATION RELATING TO PAYMENT FROM THE SEED INDEMNITY FUND FOR SPECIFIED SEED CROPS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-5118, Idaho Code, be, and the same is hereby amended to read as follows:

22-5118. ~~PAYMENT WITH INSUFFICIENT FUNDS A~~ AND VIOLATION. (1) A seed buyer shall pay the producer the purchase price for seed crops in legal tender within ninety (90) days of sale unless otherwise agreed to in writing.

(2) Any seed buyer that violates the provisions of section 18-3106, Idaho Code, in making payment to the producer for any seed crop without sufficient funds in, or credit with, such bank or other depository, also violates the provisions of this chapter. The word "credit" as used herein shall mean an arrangement or understanding with the bank or depository for such payment.

SECTION 2. That Section 22-5126, Idaho Code, be, and the same is hereby amended to read as follows:

22-5126. FAILURE TO FILE -- LOSS OF CLAIM ON FUND. No claim shall be paid from the fund to a producer who refuses or neglects to file a verified claim against a seed buyer:

(1) Within ninety (90) days from the date prescribed in the "notice of failure," or within the time limits of section 22-5125(1), Idaho Code, whichever is later; or

(2) If the claim is filed more than two (2) years from the date of transfer. Claims for seed crops used for lawns, turf and land reclamation including, but not limited to, bluegrass, ryegrass, native grasses, sagebrush and other native and nonnative shrubs, may not exceed two (2) years from the date of transfer or the date of sale, whichever occurs later.

Approved April 5, 2011.

CHAPTER 174  
(H.B. No. 88)

AN ACT

RELATING TO THE CATASTROPHIC HEALTH CARE COST PROGRAM; AMENDING SECTION 31-3517, IDAHO CODE, TO REVISE AUDIT REQUIREMENTS AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 31-3517, Idaho Code, be, and the same is hereby amended to read as follows:

31-3517. ESTABLISHMENT OF A CATASTROPHIC HEALTH CARE COST PROGRAM. (1) The governing board of the catastrophic health care cost program created by the counties pursuant to a joint exercise of powers agreement, dated October 1, 1984, and serving on June 30, 1991, is hereby continued as such through December 31, 1992, to complete the affairs of the board, to continue to pay for those medical costs incurred by participating counties prior to October 1, 1991, until all costs are paid or the moneys in the catastrophic health care cost account contributed by participating counties are exhausted, and to pay the balance of such contributions back to the county of origin in the proportion contributed. County responsibility shall be limited to the first eleven thousand dollars (\$11,000) per claim. The remainder of the eligible costs of the claim shall be paid by the state catastrophic health care cost program.

(2) Commencing October 1, 1991, a catastrophic health care cost program board is hereby established, and the board shall be the administrator of the catastrophic health care cost program. This board shall consist of twelve (12) members, with six (6) county commissioners, one (1) from each of the six (6) districts or regions established by the Idaho association of counties, four (4) members of the legislature, with one (1) each being appointed by the president pro tempore of the senate, the leader of the minority party of the senate, the speaker of the house of representatives and the leader of the minority party of the house of representatives, one (1) member appointed by the director of the department of health and welfare, and one (1) member appointed by the governor.

(a) The county commissioner members shall be elected by the county commissioners of the member counties of each district or region, with each board of county commissioners entitled to one (1) vote. The process and procedures for conducting the election and determining the members

shall be determined by the board itself, except that the election must be conducted, completed and results certified by December 31 of each year in which an election for members is conducted. The board recognized in subsection (1) of this section shall authorize and conduct the election in 1991.

(b) The term of office of a member shall be two (2) years, commencing on January 1 next following election or appointment, except that for commissioner members elected in 1991, the commissioner members from districts or regions 1, 3 and 5 shall serve for a term of one (1) year, and the commissioner members from districts or regions 2, 4 and 6 shall serve for a term of two (2) years. Members may be reelected or reappointed. Election or appointment to fill vacancies shall be for the balance of the unexpired term.

(c) The member appointed by the governor shall be reimbursed as provided in section 59-509(b), Idaho Code, from the catastrophic health care cost account.

(d) At the first meeting of the board in January of each year, the board shall organize by electing a chair, a vice-chair, and such other officers as desired.

~~(3) The legislative council shall cause a full and complete audit of the financial statements of the program as required in section 67-702, Idaho Code. All moneys received or expended by the program shall be audited annually by a certified public accountant designated by the governing board, who shall furnish a copy of such audit to the director of legislative services.~~

(4) The board shall submit a request to the governor and the legislature in accordance with the provisions of chapter 35, title 67, Idaho Code, for an appropriation for the maintenance and operation of the catastrophic health care cost program.

Approved April 5, 2011.

CHAPTER 175  
(H.B. No. 124)

AN ACT

RELATING TO PROPERTY TAXATION; AMENDING SECTION 63-301A, IDAHO CODE, TO REVISE PROVISIONS RELATING TO NEW CONSTRUCTION ROLL TO PROVIDE FOR A CERTAIN TIME FRAME AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-301A, Idaho Code, be, and the same is hereby amended to read as follows:

63-301A. NEW CONSTRUCTION ROLL. (1) The county assessor shall prepare a new construction roll, which shall be in addition to the property roll, which new construction roll shall show:

- (a) The name of the taxpayer;
- (b) The description of the new construction, suitably detailed to meet the requirements of the individual county;
- (c) A description of the land and its change in use, suitably detailed to meet the needs of the individual county;
- (d) The amount of taxable market value added to the property on the current year's property roll that is directly the result of new construction or a change in use of the land or both;
- (e) The amount of taxable market value added as provided in subsection (3) (g) of this section as a result of dissolution of any revenue allocation area;

(f) The amount of taxable market value to be deducted to reflect the adjustments required in paragraphs (f) (i), (f) (ii) and (f) (iii) of this subsection:

(i) Any board of tax appeals or court ordered value change, if property has a taxable value lower than that shown on any previous new construction roll in any one (1) of the immediate five (5) tax years preceding the current tax year;

(ii) Any reduction in value resulting from correction of value improperly included on any previous new construction roll as a result of double or otherwise erroneous assessment;

(iii) Any reduction in value, in any one (1) of the immediate five (5) tax years preceding the current tax year, resulting from a change of land use classification.

(2) As soon as possible, but in any event by no later than the first Monday in June, the new construction roll shall be certified to the county auditor and a listing showing the amount of value on the new construction roll in each taxing district or unit be forwarded to the state tax commission on or before the fourth Monday in July. Provided however, the value shown in subsection (3) (f) of this section shall be reported to the appropriate county auditor by the state tax commission by the third Monday in July and the value sent by the county auditor to each taxing district. The value established pursuant to subsection (3) (f) of this section is subject to correction by the state tax commission until the first Monday in September and any such corrections shall be sent to the appropriate county auditor, who shall notify any affected taxing districts.

(3) The value shown on the new construction roll shall include the taxable market value increase from:

(a) Construction of any new structure that previously did not exist; or  
(b) Additions or alterations to existing nonresidential structures; or  
(c) Installation of new or used manufactured housing that did not previously exist within the county; or

(d) Change of land use classification; or

(e) Property newly taxable as a result of loss of the exemption provided by section 63-602W, Idaho Code; or

(f) The construction of any improvement or installation of any equipment used for or in conjunction with the generation of electricity and the addition of any improvement or equipment intended to be so used, except property that has a value allocated or apportioned pursuant to section 63-405, Idaho Code, or that is owned by a cooperative or municipality, as those terms are defined in section 61-332A, Idaho Code, or that is owned by a public utility, as that term is defined in section 61-332A, Idaho Code, owning any other property that is allocated or apportioned. No replacement equipment or improvements may be included; or

(g) Increases in value over the base value of property on the base assessment roll within an urban renewal revenue allocation area that has been terminated pursuant to section 50-2909(4), Idaho Code, to the extent that this increment exceeds the incremental value as of December 31, 2006, or, for revenue allocation areas formed after December 31, 2006, the entire increment value. Notwithstanding other provisions of this section, the new construction roll shall not include new construction located within an urban renewal district's revenue allocation area, except as provided in this subsection (3) (g); or

(h) New construction, previously in any one (1) of the immediate five (5) tax years preceding the current tax year, allowable but never included on a new construction roll, provided however, that, for such property, the value on the new construction roll shall reflect the taxable value that would have been included on the new construction roll for the first year in which the property should have been included.

(hi) Formerly exempt improvements on state college or state university owned land for student dining, housing, or other education related purposes approved by the state board of education and board of regents of the university of Idaho as proper for the operation of such state college or university provided however, such improvements were never included on any previous new construction roll.

(4) The amount of taxable market value of new construction shall be the change in net taxable market value that is attributable directly to new construction or a change in use of the land or loss of the exemption provided by section 63-602W(3), Idaho Code. It shall not include any change in value of existing property that is due to external market forces such as general or localized inflation, except as provided in subsection (3) (g) of this section.

Approved April 5, 2011.

CHAPTER 176  
(H.B. No. 136)

AN ACT

RELATING TO WATER; AMENDING SECTION 42-605, IDAHO CODE, TO REVISE VERBIAGE RELATING TO THE REMOVAL OF WATERMASTERS, TO REVISE VERBIAGE RELATING TO OATHS AND TO PROVIDE THAT CERTAIN WATERMASTERS SHALL NOT BE REQUIRED TO TAKE AND FILE ADDITIONAL OATHS; AMENDING SECTION 42-608, IDAHO CODE, TO PROVIDE TERM OF SERVICE PROVISIONS RELATING TO WATERMASTERS, TO PROVIDE FOR THE ASSUMPTION OF DUTIES BY WATERMASTERS, TO REVISE PROVISIONS RELATING TO THE CESSATION OF PERFORMANCE OF SERVICES FOR THE DISTRIBUTION AND CONTROL OF WATER, TO REVISE AND TO PROVIDE FACTORS UNDER WHICH WATERMASTER SERVICES SHALL BE EXTENDED, TO PROVIDE FOR PAYMENT FOR EXTENDED TERMS OF SERVICE AND TO PROVIDE THAT AMOUNTS PAID FOR EXTENDED TERMS OF SERVICE SHALL BE INCLUDED IN THE CALCULATION OF ASSESSMENT AMOUNTS AND RATES FOR THE PURPOSE OF DETERMINING VOTING RIGHTS; AMENDING SECTION 42-615, IDAHO CODE, TO REVISE PROVISIONS RELATING TO PROPOSED BUDGETS FOR SUCCEEDING YEARS; AND AMENDING SECTION 42-619, IDAHO CODE, TO PROVIDE THAT CERTAIN TREASURERS SHALL NOT BE REQUIRED TO TAKE AND FILE ADDITIONAL OATHS, TO REFERENCE A CODE PROVISION SETTING FORTH THE MANNER OF REMOVAL OF WATER DISTRICT TREASURERS AND TO REVISE PROVISIONS RELATING TO THOSE DISTRICTS THAT MAY AUTHORIZE WATERMASTERS TO SERVE AS WATER DISTRICT TREASURERS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-605, Idaho Code, be, and the same is hereby amended to read as follows:

42-605. DISTRICT MEETINGS -- WATERMASTER AND ASSISTANTS -- ELECTION -- REMOVAL -- OATH AND BOND -- ADVISORY COMMITTEE. (1) There shall be held on the first Monday in March in each year, and, except as provided in subsection (2) of this section, commencing at two o'clock P.M., a meeting of all persons owning or having the use of a water right, in the waters of the stream or water supply comprising such district, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources.

(2) Such meeting shall be held at some place within the water district, or at some nearby location convenient to a majority of those entitled to vote thereat, which place shall be designated by the director of the department of water resources. The director shall, at least twenty-one (21) days prior to the meeting date, send notification by regular mail to all persons, com-

panies or corporations known by the director to hold rights to the use of the waters of such district, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources, of the time, date, location and purpose of the annual meeting. At any annual meeting the water users may vote to waive the requirement for notice by mail and provide for notice to be given for future meetings by publication of the time, date, location and purpose of the meeting in a newspaper or newspapers in general circulation in the district. Published notice shall be made once per week for two (2) consecutive weeks with the second notice appearing at least fourteen (14) and not more than thirty (30) days prior to the meeting. In water districts whose area includes land in more than four (4) counties the annual meeting shall commence at ten o'clock A.M. instead of two o'clock P.M.: provided, that the water users of any water district may, by resolution adopted at an annual meeting or at a special meeting properly called for that purpose, change the time of day when the meeting shall commence or change the date for annual meetings in subsequent years to any day except Saturday and Sunday between the second Monday of January and the third Monday in March or change both the time and the date, in which case the director of the department of water resources shall send notification at least twenty-one (21) days prior to said meeting date. At an annual meeting the water users may adopt resolutions to assure or improve the distribution of the waters of the district within state law, and may provide that such resolutions shall continue from year to year.

(3) At the meeting of the water users of a district there shall be elected a watermaster for such water district, who may be authorized to employ such other regular assistants as the water users shall deem necessary, and who, upon appointment by the director of the department of water resources, shall be responsible for distribution of water within said water district, and the water users shall, prior to the election of such watermaster and approval of the employment of assistants, fix the compensation to be paid them during the time actually engaged in the performance of their duties.

(4) Voting shall be by majority vote of the water users present at the meeting unless one (1) or more water users requests voting using the procedure which follows in this subsection. In such case the meeting chairman shall appoint a credentials committee to determine the number of votes each water user present is authorized to cast. If requested, each person present, owning or having the use for the ensuing season of any water right in the stream or water supply comprising such water district, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources, shall be entitled to a number of votes equal to the average annual dollar amount and any fraction thereof assessed for that person's qualifying water right for the previous five (5) years, or such lesser number of years as the right has been assessed. If a right has not previously been assessed, a person present, owning or having the use of the right for the ensuing season shall be entitled to a number of votes equal to the dollar amount and any fraction thereof which the right would have been assessed had it existed and been reasonably used when water was available under the priority of the right during the previous season.

(5) At such meeting the water users shall choose a meeting chairman and meeting secretary and shall determine the manner and method of electing the watermaster. The water users shall, at the annual meeting, provide for the water district treasurer functions in accordance with section 42-619, Idaho Code. Within five (5) days after such meeting the meeting chairman and meeting secretary shall forward a certified copy of the minutes of such meeting to the department of water resources. The meeting chairman, or the meeting secretary, if the meeting chairman is not present, from the immediately preceding annual meeting shall call the meeting to order and preside over the election of officers for the meeting.

(6) At such meeting the water users may choose an advisory committee to be composed of members selected as may be determined at the meeting, which committee shall serve as advisors to the director and the watermaster in matters pertaining to the distribution of water within the district. The advisory committee may be authorized to carry out policies as set forth in resolutions duly adopted by the water users at the annual meeting or at a special meeting. The advisory committee may also serve as the local committee to facilitate the rental of stored water if appointed by the water resource board for such purpose under the provisions of section 42-1765, Idaho Code.

(7) A corporation or a water delivery organization, including, but not limited to a corporation, a water company, an irrigation district, an irrigation company or a canal company, shall be considered a person for the purpose of this section and shall cast its vote by someone to be designated by the corporation.

(8) Should said meeting not be held, or should said watermaster not be elected or the watermaster's compensation not be fixed as above provided, then the director of the department of water resources is authorized to appoint a watermaster and fix the watermaster's compensation.

(9) The director of the department of water resources may remove any watermaster whenever such watermaster fails to perform the watermaster's duty, upon complaint in that respect being made to the director in writing, by one (1) person owning or having the right to the use of a water right in such district, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources provided, that upon investigation the director, after a hearing with the other water users of said district, which shall be held in the district or at some location convenient to the water users of the district, finds such charge to be true, and the director may appoint a successor for the unexpired term.

(10) Before entering upon the duties of the watermaster's office, said watermaster shall take and subscribe to an oath before some officer authorized by the laws of the state to administer oaths, to faithfully perform the duties of the watermaster's office, as provided in section 42-607, Idaho Code, and shall file that oath with the department of water resources. Upon appointment by the director of the department of water resources, the actions taken by a watermaster in fulfillment of the duties of his office are covered by the state group surety bond as provided by sections 59-801 through 59-804, Idaho Code. A duly appointed watermaster that is reelected in consecutive years shall not be required to take and file additional oaths with the department of water resources for each consecutive year the watermaster is reelected.

(11) The director shall call a special meeting of the water users of a district upon receipt of a written request for such meeting from a majority of the members of the advisory committee for a district, a written request from water users representing thirty percent (30%) or more of the votes cast at the last regular annual meeting, a written request from the watermaster or on the director's own motion if the director determines a meeting is necessary to address matters that cannot be delayed until the next regular annual meeting. Notice of the time, place and purpose of the special meeting shall be given by the director in the manner provided in subsection (2) of this section, provided however, that a special meeting notice shall be sent at least fourteen (14) days prior to the meeting date.

(12) The water users may, by resolution, authorize the watermaster to acquire, hold and dispose of such real and personal property, equipment and facilities in the name of the water district as necessary for the proper distribution of water and shall provide that all such real and personal property shall remain in the custody of the watermaster and the watermaster's successor.

SECTION 2. That Section 42-608, Idaho Code, be, and the same is hereby amended to read as follows:

42-608. WATERMASTER'S TERM OF SERVICE. (1) ~~A watermaster shall not begin work until called upon by one (1) or more owners or managers of ditches or persons controlling ditches or other diversion facilities, in the district, by application in writing to the department of water resources, stating that there is a necessity for the use and control of the waters of such district~~ The director of the department of water resources, upon receipt of a certified copy of the meeting minutes and the oath of the watermaster as provided for in section 42-605, Idaho Code, shall appoint the watermaster to a term of service throughout the year, extending until the annual meeting for the ensuing year, or until a successor is appointed. A full-year appointment of the watermaster by the director shall have no effect on the watermaster's compensation fixed by the water users at the annual water district meeting as provided for in section 42-605, Idaho Code.

(2) ~~In the absence of application or in water districts in which there are five (5) or fewer adjudicated water rights, the watermaster may be called upon to assume the watermaster's duties at any time the department of water resources finds that there is a necessity for the use and control of the waters of the district~~ A watermaster shall not begin work for the distribution and control of water required under section 42-607, Idaho Code, until called upon by one (1) or more owners or managers of ditches or persons controlling ditches or other diversion facilities in the district stating that there is a necessity for the distribution and control of the waters of the district. In the absence of a call by one (1) or more water users, the watermaster may be called upon to assume the watermaster's duties at any time the department of water resources finds that there is a necessity for the distribution and control of the waters of the district.

(3) The watermaster shall not continue performing services for the distribution and control of water after the necessity therefor shall cease, which shall be determined by the department of water resources, and which shall not be after the first of November of each year, unless determined necessary by the director of the department of water resources, or is otherwise provided by a resolution adopted at the annual water users' meeting for said the water district, or upon receipt of a petition requesting an extension of the watermaster's services for the distribution and control of water in any year from the holder of a water right authorizing the diversion or storage of water during the time period for which the extension is sought and upon a determination of necessity for the diversion or storage of water. Payment for watermaster services during the extension shall be the responsibility of the holders of water rights delivered by the watermaster during the extension. For the purpose of determining voting rights at a water district meeting, amounts paid for watermaster services pursuant to this subsection shall be included in the calculation of annual assessment amounts and assessment rates under sections 42-605 and 42-605A, Idaho Code.

(4) At any annual meeting the water users may, by resolution, provide that the watermaster shall serve throughout the year, or for a set term during each year, for purposes of distribution and control as provided in section 42-607, Idaho Code. The department of water resources, upon receipt of a certified copy of the minutes of said meeting containing such resolution and upon the receipt of the oath of said watermaster, as provided for in section 42-605, Idaho Code, shall immediately issue a certificate of appointment ordering said watermaster to assume the watermaster's duties at once and continue the same throughout the year as provided for in said resolution.

(5) The director of the department of water resources, upon receipt of a petition requesting an extension of the watermaster's term of service in any year from the holder of a water right authorizing the diversion or storage of water during the time period for which the extension is sought and upon

~~a determination of necessity therefor shall extend the watermaster's term of service for the period of time determined necessary by the director in any year. Payment for watermaster services during the extended term of service ordered by the director shall be the responsibility of the holders of water rights delivered by the watermaster during the extended term of service. For the purpose of determining voting rights at a water district meeting, amounts paid for watermaster services pursuant to this subsection shall be included in the calculation of annual assessment amounts and assessment rates under sections 42-605 and 42-605A, Idaho Code.~~

SECTION 3. That Section 42-615, Idaho Code, be, and the same is hereby amended to read as follows:

42-615. PROPOSED BUDGET FOR SUCCEEDING YEAR. Each watermaster shall, at least ~~thirty~~ fourteen (3014) days prior to the annual meeting of the water users of the water district, also prepare and file with the department of water resources a proposed budget for the succeeding year, together with a distribution of the amount of said the budget to the respective water users, using the actual deliveries for the past irrigation season or seasons, as the basis for said distribution as hereinabove provided, which said. The proposed budget and distribution shall be submitted to the water users for consideration and approval at the next annual water meeting.

SECTION 4. That Section 42-619, Idaho Code, be, and the same is hereby amended to read as follows:

42-619. ALTERNATE PLAN FOR PAYMENT OF DISTRICT EXPENSES. (1) The county commissioners of any county having determined that providing the service of payment of water district expenses by the county treasurer from water district funds pursuant to section 42-613, Idaho Code, is an undue burden upon the county and shall no longer be provided, shall notify the director of the department of water resources of this action by December 1 in the year preceding the year for which the action shall first be effective by providing to the director a certified copy of the resolution of the commissioners taking such action.

(2) Notice of the action of the county commissioners shall be given to the water users of the district by the department of water resources together with the notice of the annual meeting given pursuant to section 42-605, Idaho Code.

(3) At each annual meeting of a district for which the county commissioners have taken the action provided for in subsection (1) of this section, the water users shall provide for the election or appointment of a water district treasurer. If a water district treasurer is not elected at the annual meeting, and one is found to be necessary, the director of the department of water resources shall appoint a water district treasurer. The water district treasurer shall keep a complete, accurate and permanent record of all moneys received by and disbursed for and on behalf of the district. The water district treasurer shall deposit all moneys of the district in a designated depository approved at the annual meeting, and shall comply with the public depository law as contained in chapter 1, title 57, Idaho Code.

(4) Before undertaking the duties of the office, the water district treasurer shall take and subscribe to an oath before an officer authorized by the laws of the state to administer oaths, to faithfully perform the duties of the office, and shall file the oath with the director of the department of water resources. Upon issuance by the director of a certificate confirming the election or appointment of a water district treasurer, the actions taken by the water district treasurer in fulfillment of the duties of the office are covered by the state group surety bond as provided in sections 59-801 through 59-804, Idaho Code. A duly appointed treasurer that is reelected

in consecutive years shall not be required to take and file additional oaths with the department of water resources for each consecutive year the treasurer is reelected.

(5) The water district treasurer shall serve until a successor is elected or appointed, and qualified. A water district treasurer may be removed from office by the director for failure to perform the duties of the office in the manner provided for removal of a watermaster as provided by section 42-605(9), Idaho Code.

(6) Compensation for the services of the water district treasurer shall be set at the annual meeting and may be established on a fixed-sum, per diem, or voluntary basis. If a water district treasurer is appointed by the director in the absence of being elected at the annual meeting, the director shall fix the compensation to be paid, if any.

(7) With respect to any district for which the county commissioners have taken the action provided for in subsection (1) of this section, or for which the water users have taken the action provided for in subsection (10) of this section and have notified the county thereof, the county auditor shall in the time and manner provided by section 63-1202, Idaho Code, transmit to the water district treasurer of the water district a settlement of all moneys belonging to such district paid into the county treasury and apportioned to such water district on or after the second Monday of the preceding month; provided, however, that in the months of July and January the money may be transmitted no later than the 25th of the month. The treasurer of the water district shall immediately deposit the funds in the designated depository for the district.

(8) The treasurer of the water district shall only disburse moneys from the water district account upon submission of a written voucher approved by the watermaster for expenses incurred for water district purposes related to the delivery of water or by a voucher approved by the chairman of the advisory committee for activities pursuant to resolutions adopted by the water users from district funds or funds retained pursuant to section 42-613A, Idaho Code.

(9) It shall be the duty of the water district treasurer to prepare a statement of the financial affairs of the district at the end of each fiscal year and to file the statement with the director of the department of water resources. An audit of the financial affairs of the district shall be made as required in section 67-450B, Idaho Code. A certified copy of the audit shall be filed with the director of the department of water resources following the audit.

(10) In any water district for which the county commissioners have not taken the action provided for in subsection (1) of this section, the water users may at the annual meeting of the district approve a resolution authorizing the election or appointment of a water district treasurer who shall exercise all duties and responsibilities of a treasurer provided for in this section.

(11) In water districts with an annual budget of three seven thousand five hundred dollars (\$3,07,500) or less, the water users may, by resolution adopted at the annual meeting, authorize the watermaster to serve as water district treasurer. Watermasters in water districts with annual budgets in excess of three seven thousand five hundred dollars (\$3,07,500) shall not be authorized to act as water district treasurer.

Approved April 5, 2011.

CHAPTER 177  
(H.B. No. 138)

AN ACT

RELATING TO IRRIGATION; AMENDING SECTION 42-1207, IDAHO CODE, TO PROVIDE THAT THE HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS AND ASSIGNS OF A LANDOWNER WHO MAKES A CHANGE IN A DITCH, CANAL, LATERAL, DRAIN OR BURIED IRRIGATION CONDUIT, BURIES THE DITCH, CANAL, LATERAL OR DRAIN OF ANOTHER IN PIPE OR DIRECTS THE RELOCATION OF CONDUIT, SHALL BE RESPONSIBLE FOR CERTAIN COSTS AND TO REMOVE THE REQUIREMENT THAT AGREEMENTS RELATING TO THE RELOCATION OF CONDUIT BE IN WRITING.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-1207, Idaho Code, be, and the same is hereby amended to read as follows:

42-1207. CHANGE OF DITCH, CANAL, LATERAL, DRAIN OR BURIED IRRIGATION CONDUIT. Where any ditch, canal, lateral or drain or buried irrigation conduit has heretofore been, or may hereafter be, constructed across or beneath the lands of another, the person or persons owning or controlling said land shall have the right at their own expense to change said ditch, canal, lateral or drain or buried irrigation conduit to any other part of said land, but such change must be made in such a manner as not to impede the flow of the water therein, or to otherwise injure any person or persons using or interested in such ditch, canal, lateral or drain or buried irrigation conduit. Any increased operation and maintenance shall be the responsibility of the landowner who makes the change, his heirs, executors, administrators, successors and assigns.

A landowner shall also have the right to bury the ditch, canal, lateral or drain of another in pipe on the landowner's property, provided that the pipe, installation and backfill reasonably meet standard specifications for such materials and construction, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done. The right and responsibility for operation and maintenance shall remain with the owner of the ditch, canal, lateral or drain, but the landowner, his heirs, executors, administrators, successors and assigns, shall be responsible for any increased operation and maintenance costs, including rehabilitation and replacement, unless otherwise agreed in writing with the owner.

The written permission of the owner of a ditch, canal, lateral, drain or buried irrigation conduit must first be obtained before it is changed or placed in buried pipe by the landowner.

While the owner of a ditch, canal, lateral, drain or buried irrigation conduit shall have no right to relocate it on the property of another without permission, a ditch, canal, lateral or drain owner shall have the right to place it in a buried conduit within the easement or right-of-way on the property of another in accordance with standard specifications for pipe, materials, installation and backfill, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done, and so long as the pipe and the construction is accomplished in a manner that the surface of the owner's property and the owner's use thereof is not disrupted and is restored to the condition of adjacent property as expeditiously as possible, but no longer than thirty (30) days after the completion of construction. A landowner shall have the right to direct that the conduit be relocated to a different route than the route of the ditch, canal, lateral or drain, provided that the landowner, his heirs, executors, administrators, successors and assigns, shall agree in writing

to be responsible for any increased construction or future maintenance costs necessitated by said relocation. Maintenance of the buried conduit shall be the responsibility of the conduit owner.

Approved April 5, 2011.

CHAPTER 178

(H.B. No. 140, As Amended in the Senate)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING CHAPTER 5, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-519A, IDAHO CODE, TO PROVIDE FOR A CERTAIN EXAMINATION TO DETERMINE COMPETENCY TO PROCEED, TO PROVIDE FOR THE APPOINTMENT OF PSYCHIATRISTS, PSYCHOLOGISTS AND EVALUATION COMMITTEES, TO PROVIDE FOR HOSPITALIZATION AND TO REQUIRE CERTAIN REPORTS; AMENDING CHAPTER 5, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-519B, IDAHO CODE, TO PROVIDE FOR A HEARING TO DETERMINE WHETHER A JUVENILE IS COMPETENT TO PROCEED, TO PROVIDE FOR THE SUSPENSION OF PROCEEDINGS, TO PROVIDE FOR CERTAIN COURT ORDERS AND TO PROVIDE A PROCESS TO RESTORE COMPETENCY TO PROCEED; AMENDING CHAPTER 5, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-519C, IDAHO CODE, TO REQUIRE THAT CERTAIN REPORTS BE FILED WITHIN SPECIFIED TIME FRAMES AND TO REQUIRE A CERTAIN REVIEW HEARING BE HELD WITHIN A SPECIFIED TIME FRAME; AND AMENDING CHAPTER 5, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-519D, IDAHO CODE, TO PROVIDE THAT CERTAIN STATEMENTS ARE NOT ADMISSIBLE IN CERTAIN PROCEEDINGS AND TO PROVIDE AN EXCEPTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 5, Title 20, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 20-519A, Idaho Code, and to read as follows:

20-519A. EXAMINATION OF JUVENILE -- COMPETENCY -- APPOINTMENT OF PSYCHIATRISTS, LICENSED PSYCHOLOGISTS OR EVALUATION COMMITTEE -- HOSPITALIZATION -- REPORT. (1) At any time after the filing of a delinquency petition, a party may request in writing, or the court on its own motion may order, that the juvenile be examined to determine if the juvenile is competent to proceed. The request shall state the facts in support of the request for a competency examination. If, based upon the provisions of subsection (2) of this section, the court determines that there is good cause to believe that the juvenile is incompetent to proceed, then the court shall stay all proceedings and appoint at least one (1) examiner who shall be a qualified psychiatrist or licensed psychologist, or shall order the department of health and welfare to designate, within two (2) business days, at least one (1) examiner who shall be a qualified psychiatrist or licensed psychologist, to examine and report upon the mental condition of the juvenile. If there is reason to believe the basis for the juvenile's incompetency is due to a developmental disability, the court shall appoint an evaluation committee as defined in section 66-402, Idaho Code, or shall order the department of health and welfare to designate, within two (2) business days, an evaluation committee, to examine and report upon the mental condition of the juvenile. The county shall be responsible for the cost of such evaluation subject to any reimbursement by the parents or other legal guardian of the juvenile. The court may order the parents or other legal guardian of the juvenile, unless indigent, to contribute to the costs of such examination in an amount to be

set by the court after due notice to the parent or other legal guardian and the opportunity to be heard.

(2) A juvenile is competent to proceed if he or she has:

- (a) A sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding;
- (b) A rational and factual understanding of the proceedings against him or her; and
- (c) The capacity to assist in preparing his or her defense.

(3) Within three (3) business days of the appointment or designation of an examiner or an evaluation committee pursuant to the provisions of subsection (1) of this section, the examiner or evaluation committee shall determine the best location for the examination. The examination shall be conducted on an outpatient basis unless the court specifically finds that hospitalization or confinement of the juvenile for evaluation of competency is necessary, the juvenile is currently hospitalized in a psychiatric hospital or the juvenile is detained. The court may order the juvenile be confined to a hospital or other suitable facility, including detention as defined in section 20-502, Idaho Code, after a hearing to determine whether such confinement is necessary. Any such confinement shall be for the purpose of examination and shall be for a period not exceeding ten (10) days from the date of admission to the hospital or other suitable facility. The court, upon request, may make available to the examiner or the evaluation committee any court records relating to the juvenile.

(4) The examiner or evaluation committee may employ any method of examination that is accepted by the examiner's profession for the examination of juveniles alleged not to be competent, provided that such examination shall, at a minimum, include formal assessments of the juvenile in each of the following domains:

- (a) Cognitive functioning;
- (b) Adaptive functioning;
- (c) Clinical functioning;
- (d) Comprehension of relevant forensic issues; and
- (e) Genuineness of effort.

(5) If at any time during the examination process, the examiner has reason to believe that the juvenile's alleged incompetency may be the result of a developmental disability and the matter has not already been referred to an evaluation committee for review, the examiner shall immediately notify the court. The court shall appoint an evaluation committee, or shall order the department of health and welfare to designate, within two (2) business days, an evaluation committee, to examine and report upon the mental condition of the juvenile. Conversely, if at any time during the examination process an evaluation committee has reason to believe the juvenile's alleged incompetency is not the result of a developmental disability, the evaluation committee shall immediately notify the court so the examination can be completed by a qualified psychiatrist or licensed psychologist as set forth in subsection (1) of this section. The new examination and report shall be conducted within the time frames set forth in subsection (6) of this section.

(6) The examiner or evaluation committee shall submit a written report to the court within thirty (30) days of receipt of the appointment or designation. The report shall address the factors set forth in section 20-519B, Idaho Code. If the examiner or evaluation committee determines that the juvenile is incompetent to proceed, the report shall also include the following:

- (a) The nature of the mental disease, defect, disability or other condition including chronological age that is the cause of the juvenile's incompetency;
- (b) The juvenile's prognosis;

(c) Whether the examiner or evaluation committee believes the juvenile may be restored to competency and an estimated time period in which competence could be restored with treatment;

(d) If the juvenile may be restored to competency, the recommendations for restoration shall be the least restrictive alternative that is consistent with public safety;

(e) If the juvenile is not competent and there is no substantial probability that the juvenile can be restored to competency within six (6) months, a recommendation as to whether the juvenile meets the criteria set forth in section 16-2418, 66-329(11) or 66-406(11), Idaho Code, and identification of any other services recommended for the juvenile that are the least restrictive, community based and consistent with public safety; and

(f) No statements of the juvenile relating to the alleged offense shall be included in the report unless such statements are relevant to the examiner or evaluation committee's opinion regarding competency.

(7) The court, upon a finding of good cause, may alter the time frames for the designation of an examiner or evaluation committee, the completion of the examination or the completion of the report but shall ensure that the examination and competency determination occur as expeditiously as possible. The court may, upon a finding of good cause, vacate or continue the ninety (90) day restoration review hearing set forth in section 20-519C, Idaho Code.

(8) The report of the examination shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the juvenile.

(9) If the examination cannot be conducted by reason of the unwillingness of the juvenile to participate, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the juvenile was the result of age, mental disease, defect or disability and whether the examiner recommends that a second examiner be appointed to examine the juvenile.

SECTION 2. That Chapter 5, Title 20, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 20-519B, Idaho Code, and to read as follows:

20-519B. DETERMINATION OF COMPETENCY OF JUVENILE TO PROCEED -- SUSPENSION OF PROCEEDINGS -- RESTORATION ORDER -- COMMITMENT. (1) The court shall hold a hearing no later than thirty (30) days after the report of the examiner or evaluation committee is filed pursuant to the provisions of section 20-519A, Idaho Code. At the hearing, the court may receive as evidence the report of the examiner or evaluation committee. In considering whether the juvenile is competent to proceed, the court shall consider the following:

(a) A description of the nature, content, extent and results of the examination and any test that was conducted;

(b) The juvenile's capacity to understand the charges or allegations against the juvenile;

(c) The juvenile's capacity to understand the range and nature of possible penalties that may be imposed in the proceedings;

(d) The juvenile's capacity to understand the adversarial nature of the legal process;

(e) The juvenile's capacity to disclose to counsel facts pertinent to the proceedings at issue;

(f) Whether the juvenile is able to display appropriate courtroom behavior;

(g) Whether the juvenile is able to receive accurate impressions of the facts about which he or she is examined, is able to appreciate the mean-

ing of an oath to tell the truth and has an understanding of the potential consequences of not telling the truth;

(h) The examiner's opinion as to the competency of the juvenile as defined in subsection (2) of section 20-519A, Idaho Code.

(2) The weight to be given to each of the factors listed in subsection (1) of this section is discretionary with the court and a determination that the juvenile is or is not competent to proceed may be based on any one (1) or a combination of such factors, which shall be recited in the court's order regarding competency.

(3) If neither the prosecuting attorney nor counsel for the juvenile contests the findings of the report of the examiner or evaluation committee, the court may make the determination on the basis of such report. If a party contests the findings of such report, they shall have the right to cross-examine the qualified psychiatrist or licensed psychologist who prepared and submitted the report and to offer evidence upon this issue. A finding of incompetency shall be based upon a preponderance of the evidence.

(4) If the court finds the juvenile is competent to proceed, the proceedings shall continue without delay.

(5) If the court initially finds that the juvenile is incompetent and there is not a substantial probability that the juvenile will be restored to competency within six (6) months, the court may stay or dismiss the matter. In determining whether to stay or dismiss the matter, the court shall consider all relevant factors including, but not limited to, the seriousness of the alleged offense, resources available to the juvenile and any issues of public safety. Prior to a stay or dismissal of the matter, the court may convene a screening team consisting of representatives from the department of health and welfare, county probation, local school officials, and/or other agencies or persons designated by the court to develop a treatment plan for the juvenile. In developing such treatment plan, the recommendations contained in the competency examination shall be considered to ensure necessary services for the juvenile are put into place. Parents and guardians of the juvenile, if available, shall be included in the screening team and consulted with regard to the plan of treatment. If appropriate, the court may hold a hearing to determine whether proceedings under chapter 24, title 16, or chapter 3 or 4, title 66, Idaho Code, should be instituted. If such proceedings are initiated, the juvenile court may retain jurisdiction over said proceedings.

(6) If the court determines that the juvenile is incompetent to proceed, but may be restored to competency within six (6) months, the court shall order a plan of treatment to be developed by the department of health and welfare for the juvenile to undergo efforts at restoration to competency. The court may:

(a) Convene a restoration treatment team to make recommendations on a plan of treatment;

(b) Order any agencies that have treated or had custody of the juvenile to release any pertinent information or records to the department of health and welfare to be used in the development and implementation of the juvenile's restoration plan;

(c) Order the department of health and welfare, county probation, school officials and the department of juvenile corrections to release all pertinent information regarding the juvenile to the court, the department of health and welfare and any restoration treatment team to be used in the development and implementation of the juvenile's restoration plan;

(d) Require the parents or guardians of the juvenile, and where appropriate require the juvenile, to allow information pertinent to the restoration treatment plan be released to the department of health and welfare, the court and any restoration treatment team.

(7) If the court determines that the juvenile is incompetent to proceed, but may be restored to competency, the court may order a juvenile to participate in the competency restoration program as developed by the department of health and welfare. The purpose of the treatment or training is the restoration of the juvenile's competency to proceed. In determining the type and location of the competency restoration program and in designating a restoration provider, the department of health and welfare shall identify the least restrictive alternative that is consistent with public safety and consider whether inpatient treatment, residential care or secure confinement is necessary for program participation.

(a) An inpatient or residential or secure detention facility is only appropriate if all available less restrictive alternatives in community settings which would offer an opportunity for improvement of the juvenile's condition are inappropriate. If the department of health and welfare's plan of restoration requires the juvenile be placed in an inpatient, residential or secure detention facility, the court shall hold a hearing on whether to order such placement unless the hearing is waived by the juvenile and the juvenile's parents or guardians. Juveniles charged with only a status offense or multiple status offenses shall not be held in a secure confinement or detention facility for restoration purposes.

(b) The department of health and welfare is responsible for determining the competency restoration program and services. All costs associated with restoration services shall be the responsibility of the parents of the juvenile according to their ability to pay based upon the sliding fee scale established pursuant to section 16-2433, Idaho Code. The financial obligation of the parents shall be determined after consideration of all available payment and funding sources including title XIX of the social security act, as amended, all available third party sources including funding available to the juvenile from other programs, grants or agencies and parent resources according to any order for child support under chapter 10, title 32, Idaho Code. Services shall not be conditioned upon transfer of custody of parental rights.

(8) If a juvenile is determined to be incompetent to proceed but may be restored to competency, the court shall retain jurisdiction of the juvenile for up to six (6) months. A restoration order issued pursuant to this section is valid for six (6) months from the date of the initial finding of incompetency or until one (1) of the following, whichever occurs first:

(a) The restoration program submits a report that the juvenile has become competent to proceed or that there is no substantial probability that the juvenile will regain competency within the period the order is valid;

(b) The charges are dismissed; or

(c) The juvenile reaches twenty-one (21) years of age.

(9) The court may extend the restoration order beyond six (6) months upon a showing of good cause. If the juvenile reaches twenty-one (21) years of age, the matter shall be dismissed. If the court concludes that there is no substantial probability that the juvenile will regain competency within the period the order is valid, then the provisions of subsection (5) of this section shall apply.

SECTION 3. That Chapter 5, Title 20, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 20-519C, Idaho Code, and to read as follows:

20-519C. RESTORATION REPORTS -- HEARINGS. (1) A report shall be filed by the restoration provider at least every ninety (90) days or whenever the restoration provider believes the juvenile is competent to proceed or whenever the restoration provider believes there is no substantial probability

that the juvenile will regain competency before the expiration of the order to participate in a competency restoration program or fourteen (14) days before expiration of the restoration order.

(2) The court shall hold a review hearing regarding the progress towards competency at least every ninety (90) days while the juvenile participates in a restoration program. The court may consider the restoration provider's report at the review hearing to assess the juvenile's progress and to determine whether restoration services should continue.

SECTION 4. That Chapter 5, Title 20, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 20-519D, Idaho Code, and to read as follows:

20-519D. ADMISSIBILITY OF STATEMENTS BY EXAMINED OR TREATED JUVENILE. A statement made by a juvenile subject to a competency examination or restoration treatment pursuant to section 20-519A or 20-519B, Idaho Code, for the purposes of such examination or treatment shall not be admissible in evidence in any delinquency or criminal proceeding against the juvenile on any issue other than the juvenile's ability to assist counsel at trial or to form any specific intent which is an element of the crime charged, except that such statements of a juvenile to the examiner, evaluation committee or restoration provider as are relevant for impeachment purposes may be received subject to the usual rules of evidence governing matters of impeachment.

Approved April 5, 2011.

#### CHAPTER 179

(H.B. No. 147, As Amended in the Senate)

#### AN ACT

RELATING TO THE RULES OF THE ROAD; AMENDING SECTION 49-601, IDAHO CODE, TO PROVIDE AN EXCEPTION TO APPLICATION OF SPECIFIED LAW FOR OWNERS OR OPERATORS OF A DITCH, CANAL, CONDUIT OR DRAIN WHILE ENGAGED IN WORK WITHIN AND PURSUANT TO A RIGHT-OF-WAY FOR THE SAME AND TO PROVIDE THAT SPECIFIED PROVISIONS OF LAW RELATING TO RULES OF THE ROAD SHALL APPLY TO OWNERS AND OPERATORS OF DITCHES, CANALS, CONDUITS AND DRAINS WHEN TRAVELING TO AND FROM CERTAIN WORK.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-601, Idaho Code, be, and the same is hereby amended to read as follows:

49-601. APPLICATION. The provisions of this chapter relate exclusively to the operation of vehicles upon highways, except where a different place is specifically referred to in a given section.

They shall not apply to persons, motor vehicles and equipment while actually engaged in work upon a highway, or to owners or operators of a ditch, canal, conduit or drain while engaged in work within and pursuant to a right-of-way for a ditch, canal, conduit or drain, but shall apply to persons, owners, operators and vehicles when traveling to or from that work.

Approved April 5, 2011.

CHAPTER 180  
(H.B. No. 150, As Amended)

AN ACT

RELATING TO CONFINED ANIMAL FEEDING OPERATIONS; AMENDING SECTION 67-6529C, IDAHO CODE, TO REVISE THE DEFINITION OF "CAFO"; AMENDING SECTION 67-6529E, IDAHO CODE, TO PROVIDE THAT COUNTIES REQUESTING SUITABILITY DETERMINATIONS ARE TO INCLUDE THE COUNTY'S DEFINITION OF "CAFO" AS SET FORTH IN ANY APPLICABLE COUNTY ORDINANCE IN THEIR REQUEST; AND AMENDING CHAPTER 65, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-6529H, IDAHO CODE, TO PROVIDE FOR APPLICATION FEES RELATING TO SITE SUITABILITY DETERMINATIONS, TO PROVIDE A PROCESS AND TO PROVIDE EXEMPTIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-6529C, Idaho Code, be, and the same is hereby amended to read as follows:

67-6529C. DEFINITIONS. As used in this act, the following definitions shall apply:

(1) "CAFO," also referred to as "concentrated animal feeding operation" or "confined animal feeding operation," means, for those counties that have requested a site suitability determination, a CAFO as defined in the applicable ordinance of the county wherein the CAFO is located. If the requesting county has not defined CAFO in its ordinances, CAFO means a lot or facility where the following conditions are met:

(a) Animals have been, are, or will be stabled or confined and fed or maintained for a total of ninety (90) consecutive days or more in any twelve-month period;

(b) Crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility; and

(c) The lot or facility is designed to confine or actually does confine as many as or more than the numbers of animals specified in any of the following categories: seven hundred (700) mature dairy cows, whether milked or dry; one thousand (1,000) veal calves; one thousand (1,000) cattle other than mature dairy cows or veal calves; two thousand five hundred (2,500) swine each weighing fifty-five (55) pounds or more; ten thousand (10,000) swine each weighing less than fifty-five (55) pounds; five hundred (500) horses; ten thousand (10,000) sheep or lambs; or eighty-two thousand (82,000) chickens.

Two (2) or more concentrated animal feeding operations under common ownership are considered, for the purposes of this definition, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes;

(2) "CAFO site advisory team" shall mean representatives of the Idaho state department of agriculture, Idaho department of environmental quality and Idaho department of water resources who review a site proposed for a CAFO, determine environmental risks and submit a suitability determination to a county. The department of agriculture shall serve as the lead agency for the team;

(3) "Environmental risk" shall mean that risk to the environment deemed posed by a proposed CAFO site, as determined and categorized by the CAFO site advisory team and set forth in the site advisory team's suitability determination report;

(4) "Suitability determination" shall mean that document created and submitted by the CAFO site advisory team after review and analysis of a pro-

posed CAFO site that identifies the environmental risk categories related to a proposed CAFO site, describes the factors that contribute to the environmental risks and sets forth any possible mitigation of risk.

SECTION 2. That Section 67-6529E, Idaho Code, be, and the same is hereby amended to read as follows:

67-6529E. PROCESS FOR COUNTY REQUEST -- CONTENTS OF THE REQUEST. (1) A board of county commissioners shall submit its request for a suitability determination by a site advisory team in writing to the director of the department of agriculture and shall support its request by the adoption of a resolution.

(2) Information in the request shall include, but not be limited to, the county's definition of "CAFO" as set forth in any applicable county ordinance, the relevant legal description and address of a proposed facility, the actual animal capacity of the facility, the types of animals to be confined at the proposed facility, all information related to water and water rights of the facility, any relevant vicinity maps and any other information relevant to the site that will assist the site advisory team in issuing its suitability determination. The board of county commissioners shall also provide the site advisory team with a copy of the odor management plan for the CAFO, if required to be submitted by the site applicant at the time of application.

SECTION 3. That Chapter 65, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-6529H, Idaho Code, and to read as follows:

67-6529H. SITE SUITABILITY DETERMINATION -- APPLICATION FEES. (1) The board of county commissioners shall collect a CAFO site suitability fee from each applicant that will require a suitability determination by the site advisory team. The fee shall be one thousand two hundred dollars (\$1,200) plus mileage and per diem calculated based on distance traveled from the department of agriculture's Boise office to the proposed CAFO site. Mileage and per diem shall not exceed the established state rate existing at the time of the suitability determination.

(a) The board of county commissioners requesting the suitability determination shall forward the CAFO site suitability fee to the department of agriculture at the time of the request;

(b) Whenever the cost of the suitability determination is less than one thousand two hundred dollars (\$1,200) plus per diem and mileage, the difference shall be refunded to the applicant by the department of agriculture;

(c) The department of agriculture shall distribute the fee to the site advisory team on a pro rata basis according to time spent by team members on the suitability determination.

(2) Any applicant subject to the butterfat assessment pursuant to section 37-407, Idaho Code, following the issuance of a permit is hereby exempt from paying the CAFO site suitability fee.

(3) Any applicant subject to a brand inspection fee pursuant to section 25-1160, Idaho Code, is exempt from paying the CAFO site suitability fee.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 5, 2011.

CHAPTER 181  
(H.B. No. 151)

AN ACT

RELATING TO THE ALFALFA AND CLOVER SEED COMMISSION; AMENDING SECTION 22-4204, IDAHO CODE, TO REMOVE REFERENCE TO THE DEPARTMENT OF AGRICULTURE, TO PROVIDE THAT THE ALFALFA AND CLOVER SEED COMMISSION SHALL BE ESTABLISHED IN THE DEPARTMENT OF SELF-GOVERNING AGENCIES AND TO REMOVE OBSOLETE VERBIAGE; AMENDING SECTION 22-4205, IDAHO CODE, TO REMOVE REFERENCE TO THE TIME AND PLACE OF ANNUAL MEETING, TO REVISE PROVISIONS RELATING TO THE NOMINATION OF GROWER MEMBERS OF THE ALFALFA AND CLOVER SEED COMMISSION, TO PROVIDE FOR NOMINATION AT A MEETING OF THE IDAHO ALFALFA AND CLOVER SEED GROWERS ASSOCIATION, TO PROVIDE FOR SUBMISSION OF NAMES TO THE GOVERNOR AND TO REMOVE REFERENCE TO AN ANNUAL MEETING; AMENDING SECTION 22-4206, IDAHO CODE, TO REMOVE AN EXCEPTION RELATING TO VACANCIES IN COMMISSION OFFICES AND TO REMOVE OBSOLETE VERBIAGE RELATING TO THE TERMS OF OFFICE OF COMMISSION MEMBERS; AND AMENDING SECTION 67-2601, IDAHO CODE, TO INCLUDE THE IDAHO ALFALFA AND CLOVER SEED COMMISSION AS ONE OF THE AGRICULTURAL COMMODITY COMMISSIONS UNDER THE DEPARTMENT OF SELF-GOVERNING AGENCIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-4204, Idaho Code, be, and the same is hereby amended to read as follows:

22-4204. CREATION OF COMMISSION -- MEMBERS -- QUALIFICATIONS -- COMPENSATION. There is hereby created and established in the department of self-governing agencies an alfalfa and clover seed commission ~~within the department of agriculture~~, to be thus known and designated. The commission shall be composed of six (6) ~~practical~~ alfalfa seed or clover seed growers and one (1) ~~practical~~ alfalfa seed or clover seed dealer.

The six (6) grower members shall be citizens and residents of the state of Idaho, each of whom is and has been actively engaged in the growing and producing of alfalfa seed or clover seed within the state of Idaho, and a substantial portion of whose income has been derived from growing alfalfa seed or clover seed.

The one (1) dealer member shall be a person who, individually or as executive officer of a corporation, firm, partnership, association or cooperative organization, is and has been actively engaged as a dealer in alfalfa seed or clover seed within the state of Idaho, is a citizen and resident of this state, and a substantial portion of his income shall have been derived from handling, packing, shipping, buying and selling alfalfa seed or clover seed, or acting as sales or purchasing agent, broker or factor of alfalfa seed or clover seed.

The qualifications of members of the commission as herein set forth must continue during their term of office. Each member of the commission shall be compensated as provided by section 59-509(n), Idaho Code.

SECTION 2. That Section 22-4205, Idaho Code, be, and the same is hereby amended to read as follows:

22-4205. ~~APPOINTMENT OF NOMINATING COMMITTEE -- PRESENTATION OF NOMINEES TO ANNUAL MEETING -- TIME AND PLACE OF ANNUAL MEETING NOMINATIONS FOR GROWER MEMBERS OF COMMISSION -- QUALIFICATIONS.~~ (1) ~~The director of the department of agriculture shall appoint a grower nominating committee of three (3) growers, whose responsibility shall be to select a slate of nominees for vacancies occurring on the commission either by expiration of term or for~~

~~other reasons a vacancy may occur. Two (2) grower members shall be nominated by the nominating committee for each vacancy occurring on the commission membership. The nominations of the nominating committee shall be presented to the annual meeting of alfalfa seed and clover seed growers for concurrence in the list of nominees, or for such substitutions to the list as the annual meeting may make by majority vote. For the purpose of nominating grower members of the commission, at a meeting of the Idaho alfalfa and clover seed growers association, the board of directors shall review the names of active growers in Idaho that meet the qualifications as provided in this section. By June 1 of each year, the names of two (2) grower members nominated by the association for each vacancy occurring on the commission shall be submitted to the governor for his consideration. Each member nominated for the commission shall be a resident citizen of the state of Idaho for a period of four (4) years prior to his election or selection, shall have active experience in growing alfalfa seed or clover seed and shall be now actually engaged in growing alfalfa seed or clover seed in Idaho and shall derive a substantial portion of his income from growing alfalfa seed or clover seed or be the directing or managing head of a corporation, firm, partnership, or other business unit which derives a substantial portion of its income from growing alfalfa seed or clover seed. To continue holding office, each member must remain qualified. The governor may remove any member who becomes disqualified during his term of office or who is unable to carry out his duties. The term of office of each member of the commission shall terminate on the last day of June of the year in which the term for which the member was elected ends, but each member of the commission shall serve until his respective successor is elected and has qualified. From such list of nominees, the governor shall designate and appoint one (1) as a member of the commission. Said annual meeting shall be held at a time and place designated by the alfalfa and clover seed growers association with notification mailed to all alfalfa seed and clover seed growers in Idaho.~~

(2) A general meeting of the Idaho Eastern Oregon Seed Association shall nominate two (2) dealers, one (1) of whom shall be appointed as provided for in this act by June 30 of each year, and one (1) of whom shall be designated as alternate.

SECTION 3. That Section 22-4206, Idaho Code, be, and the same is hereby amended to read as follows:

22-4206. VACANCIES -- TERMS. Any office which becomes vacant before expiration of the member's term shall be filled by appointment in the manner provided for regular appointments, ~~except that such office may remain vacant until the next annual meeting of the growers if the vacancy is for less than one (1) year.~~

~~Commencing on July 1, 1975, the grower members of the commission shall draw lots to determine their respective terms of office. Two (2) of the members shall serve for one (1) year; two (2) of the members shall serve for two (2) years; and two (2) of the members shall serve for three (3) years. The dealer member shall be appointed for a term of three (3) years. The term of office of the members of the commission thereafter shall be three (3) years, commencing on July 1, 1975.~~

Members of the commission may not serve more than two (2) consecutive terms, provided, upon serving two (2) consecutive terms, and the lapse of one (1) full term, such member may again be nominated and appointed to the commission.

SECTION 4. That Section 67-2601, Idaho Code, be, and the same is hereby amended to read as follows:

67-2601. DEPARTMENT CREATED -- ORGANIZATION -- DIRECTOR -- BUREAU OF OCCUPATIONAL LICENSES CREATED. (1) There is hereby created the department of self-governing agencies. The department shall, for the purposes of section 20, article IV of the constitution of the state of Idaho, be an executive department of the state government.

(2) The department shall consist of the following:

(a) Agricultural commodity commissions: Idaho apple commission, as provided by chapter 36, title 22, Idaho Code; Idaho bean commission, as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as provided by chapter 29, title 25, Idaho Code; Idaho cherry commission, as provided by chapter 37, title 22, Idaho Code; Idaho dairy products commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea and lentil commission, as provided by chapter 35, title 22, Idaho Code; Idaho potato commission, as provided by chapter 12, title 22, Idaho Code; the Idaho wheat commission, as provided by chapter 33, title 22, Idaho Code; and the Idaho aquaculture commission, as provided by chapter 44, title 22, Idaho Code; and the Idaho alfalfa and clover seed commission, as provided in chapter 42, title 22, Idaho Code.

(b) Professional and occupational licensing boards: Idaho state board of certified public accountancy, as provided by chapter 2, title 54, Idaho Code; board of acupuncture, as provided by chapter 47, title 54, Idaho Code; board of architectural examiners, as provided by chapter 3, title 54, Idaho Code; office of the state athletic director, as provided by chapter 4, title 54, Idaho Code; board of barber examiners, as provided by chapter 5, title 54, Idaho Code; board of commissioners of the Idaho state bar, as provided by chapter 4, title 3, Idaho Code; board of chiropractic physicians, as provided by chapter 7, title 54, Idaho Code; Idaho board of cosmetology, as provided by chapter 8, title 54, Idaho Code; Idaho counselor licensing board, as provided by chapter 34, title 54, Idaho Code; state board of dentistry, as provided by chapter 9, title 54, Idaho Code; state board of dentistry, as provided by chapter 33, title 54, Idaho Code; state board of engineering examiners, as provided by chapter 12, title 54, Idaho Code; state board for registration of professional geologists, as provided by chapter 28, title 54, Idaho Code; speech and hearing services licensure board, as provided by chapter 29, title 54, Idaho Code; Idaho physical therapy licensure board, as provided by chapter 22, title 54, Idaho Code; Idaho state board of landscape architects, as provided by chapter 30, title 54, Idaho Code; liquefied petroleum gas safety board, as provided by chapter 53, title 54, Idaho Code; state board of medicine, as provided by chapter 18, title 54, Idaho Code; state board of morticians, as provided by chapter 11, title 54, Idaho Code; board of naturopathic medical examiners, as provided by chapter 51, title 54, Idaho Code; board of nurses, as provided by chapter 14, title 54, Idaho Code; board of examiners of nursing home administrators, as provided by chapter 16, title 54, Idaho Code; state board of optometry, as provided by chapter 15, title 54, Idaho Code; Idaho outfitters and guides board, as provided by chapter 21, title 36, Idaho Code; board of pharmacy, as provided by chapter 17, title 54, Idaho Code; state board of podiatry, as provided by chapter 6, title 54, Idaho Code; Idaho state board of psychologist examiners, as provided by chapter 23, title 54, Idaho Code; Idaho real estate commission, as provided by chapter 20, title 54, Idaho Code; real estate appraiser board, as provided by chapter 41, title 54, Idaho Code; board of social work examiners, as provided by chapter 32, title 54, Idaho Code; the board of veterinary medicine, as provided by chapter 21, title 54, Idaho Code; the board of examiners of residential care facility administrators, as provided by chapter 42, title 54, Idaho Code; the certified shorthand reporters board, as provided by chapter 31, title 54, Idaho Code; the driving businesses licensure board, as

provided by chapter 54, title 54, Idaho Code; the board of drinking water and wastewater professionals, as provided by chapter 24, title 54, Idaho Code; and the board of midwifery, as provided by chapter 55, title 54, Idaho Code.

(c) The board of examiners, pursuant to section 67-2001, Idaho Code.

(d) The division of building safety: building code board, chapter 41, title 39, Idaho Code; manufactured housing board, chapter 21, title 44, Idaho Code; electrical board, chapter 10, title 54, Idaho Code; public works contractors license board, chapter 19, title 54, Idaho Code; plumbing board, chapter 26, title 54, Idaho Code; public works construction management, chapter 45, title 54, Idaho Code; the heating, ventilation and air conditioning board, chapter 50, title 54, Idaho Code; and modular building advisory board, chapter 43, title 39, Idaho Code.

(e) The division of veterans services to be headed by a division administrator who shall be a nonclassified employee exempt from the provisions of chapter 53, title 67, Idaho Code. The administrator of the division shall administer the provisions of chapter 2, title 65, Idaho Code, and chapter 9, title 66, Idaho Code, with the advice of the veterans affairs commission established under chapter 2, title 65, Idaho Code, and shall perform such additional duties as are imposed upon him by law.

(f) The board of library commissioners, pursuant to section 33-2502, Idaho Code.

(g) The Idaho state historical society, pursuant to section 67-4123, Idaho Code.

(3) The bureau of occupational licenses is hereby created within the department of self-governing agencies.

Approved April 5, 2011.

CHAPTER 182  
(H.B. No. 165)

AN ACT

RELATING TO PUBLIC ASSISTANCE; AMENDING CHAPTER 2, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-209p, IDAHO CODE, TO PROVIDE PAYMENT FOR MIDWIFE SERVICES AND PROVIDING LEGISLATIVE INTENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-209p, Idaho Code, and to read as follows:

56-209p. PAYMENT FOR MIDWIFE SERVICES. A midwife licensed pursuant to chapter 55, title 54, Idaho Code, shall be entitled to payment under the rules of the medical assistance program for midwife services provided to an eligible recipient of medical assistance.

SECTION 2. LEGISLATIVE INTENT. It is the intent of the Legislature that the services of a licensed midwife be an option for an eligible recipient who qualifies for medical assistance. It is not the intent of the Legislature that such eligible recipient be required to use the services of a licensed midwife.

Approved April 5, 2011.

CHAPTER 183  
(H.B. No. 179)

AN ACT

RELATING TO UNAUTHORIZED INSURERS AND SURPLUS LINES; AMENDING SECTION 41-1212, IDAHO CODE, TO PROVIDE THAT CERTAIN CODE SECTIONS APPLY ONLY WHEN THE INSURED'S HOME STATE IS IDAHO AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-1213, IDAHO CODE, TO DEFINE TERMS AND TO REVISE DEFINITIONS; AMENDING SECTION 41-1214, IDAHO CODE, TO PROVIDE THAT A CERTAIN SEARCH REQUIREMENT IS NOT REQUIRED IN CERTAIN CIRCUMSTANCES, TO PROVIDE RECORD MAINTENANCE REQUIREMENTS, TO PROVIDE RESTRICTIONS RELATING TO INSURERS WITH WHICH SURPLUS LINE BROKERS MAY INSURE, TO GRANT THE DIRECTOR CERTAIN RULEMAKING AUTHORITY AND TO PROVIDE A PENALTY; AMENDING SECTION 41-1223, IDAHO CODE, TO GRANT THE DIRECTOR THE AUTHORITY TO PARTICIPATE IN A CERTAIN DATABASE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-1229, IDAHO CODE, TO REVISE PROVISIONS RELATING TO A TAX ON SURPLUS LINES; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-1212, Idaho Code, be, and the same is hereby amended to read as follows:

41-1212. EXEMPTIONS FROM SURPLUS LINE LAW. (1) The provisions of this surplus line law controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or, except as to subsection (2) below, to the following insurances when so placed by licensed agents or surplus line brokers of this state:

(a) Ocean marine and foreign trade insurances.

(b) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state.

(c) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.

(d) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in commercial scheduled interstate flight, or cargo of such aircraft, or against liability, other than ~~workmen's~~ worker's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(2) Brokers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this law. The record shall be preserved for not less than five (5) years from the effective date of the insurance and shall be kept available in this state and open to the examination of the director. The broker shall furnish to the director at his request and on forms as designated and furnished by him a report of all such coverages so placed in a designated calendar year.

(3) The following sections apply only when the insured's home state is Idaho:

(a) Section 41-1214, Idaho Code (conditions for export);

(b) Section 41-1215, Idaho Code (broker's affidavit);

(c) Section 41-1216, Idaho Code (open lines for export);

(d) Section 41-1217, Idaho Code (eligible surplus lines insurers);

(e) Section 41-1218, Idaho Code (eligible surplus line insurers -- penalty for violation);

(f) Section 41-1219, Idaho Code (evidence of the insurance -- changes -- penalty);

- (g) Section 41-1220, Idaho Code (endorsement of contract);
- (h) Section 41-1227, Idaho Code (records of broker);
- (i) Section 41-1228, Idaho Code (annual report of broker);
- (j) Section 41-1229, Idaho Code (tax on surplus lines);
- (k) Section 41-1233, Idaho Code (report and tax of independently pro-  
cured coverages);
- (l) Section 41-1234, Idaho Code (records of insureds).

SECTION 2. That Section 41-1213, Idaho Code, be, and the same is hereby amended to read as follows:

41-1213. DEFINITIONS. As used in this chapter and any applicable rules, the following definitions shall apply:

(1) "Affiliated" means, with respect to an insured, any entity that controls, is controlled by or is under common control with the insured.

(2) "Affiliated group" means any group of entities that are all affiliated.

(3) "Broker" as used in this chapter means a surplus line broker duly licensed as such under this chapter, including resident surplus line brokers and nonresident surplus line brokers.

(4) "Control" means:

(a) An entity directly or indirectly, or acting through one (1) or more other persons, owns or controls another entity or has the power to vote twenty-five percent (25%) or more of any class of voting securities of another entity; or

(b) An entity controls in any manner the election of a majority of the directors or trustees of another entity.

(5) (a) "Exempt commercial purchaser" means any person purchasing commercial insurance who, at the time of placement, meets the following requirements:

(i) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars (\$100,000) in the immediately preceding twelve (12) months.

(iii) The person meets at least one (1) of the following criteria:

1. The person possesses a net worth in excess of twenty million dollars (\$20,000,000) as such amount is adjusted pursuant to the provisions of paragraph (b) of this subsection.

2. The person generates annual revenues in excess of fifty million dollars (\$50,000,000) as such amount is adjusted pursuant to the provisions of paragraph (b) of this subsection.

3. The person employs more than five hundred (500) full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand (1,000) employees in the aggregate.

4. The person is a nonprofit organization or public entity generating annual budgeted expenditures of at least thirty million dollars (\$30,000,000) as such amount is adjusted pursuant to the provisions of paragraph (b) of this subsection.

5. The person is a municipality with a population in excess of fifty thousand (50,000) persons.

(b) The amounts provided in subparagraph (iii) 1., 2. and 4. of paragraph (a) of this subsection must be adjusted to reflect the percentage change for the five (5) year period in the consumer price index for

all urban consumers published by the bureau of labor statistics of the United States department of labor.

(c) For the purposes of this subsection, "commercial insurance" means property and casualty insurance pertaining to a business, profession, occupation, nonprofit organization or public entity.

(26) To "eExport" means to place in an unauthorized insurer under this surplus line law insurance covering a subject of insurance resident, located, or to be performed in Idaho.

(7) (a) "Home state" means:

(i) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) If one hundred percent (100%) of the insured risk is located out of state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) If more than one (1) insured from an affiliated group are named insureds on a single nonadmitted insurance contract, then "home state" means the home state, as determined pursuant to the provisions of paragraph (a) of this subsection, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(c) For the purposes of this subsection, "principal place of business" means the state where the insured maintains its headquarters and where the insured's high level officers direct, control and coordinate the business activities of the insured.

(8) "Qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(a) The person is an employee of, or a third party consultant retained by, the commercial policyholder;

(b) The person provides skilled services in loss prevention, loss reduction or risk and insurance coverage analysis, and purchase of insurance; and

(c) The person:

(i) Has at least ten (10) years of experience in risk financing, claim administration, loss prevention, risk and insurance coverage analysis or purchasing commercial lines of insurance; or

(ii) Has a graduate degree from an accredited college or university in risk management, business administration, finance, economics or any other field determined by a state insurance director or other state regulatory official or entity to demonstrate minimum competence in risk management; or

(iii) Has at least seven (7) years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis or purchasing commercial lines of insurance and has one (1) of the designations specified in subparagraph (iv) 1. through 5. of this paragraph; or

(iv) Has a bachelor's degree or higher education from an accredited college or university in risk management, business administration, finance, economics or any other field determined by a state insurance director or other state regulatory official or entity to demonstrate minimum competency in risk management; and either has three (3) years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis or purchasing commercial lines of insurance, or has one (1) of the following designations:

1. A designation as a chartered property and casualty underwriter (CPCU) issued by the American institute for CPCU and insurance institute of America;

2. A designation as an associate in risk management (ARM) issued by the American institute for CPCU and insurance institute of America;
3. A designation as a certified risk manager (CRM) issued by the national alliance for insurance education and research;
4. A designation as a RIMS fellow (RF) issued by the global risk management institute; or
5. Any other designation, certification or license determined by a state insurance director or other state insurance regulatory official or entity to demonstrate minimum competency in risk management.

SECTION 3. That Section 41-1214, Idaho Code, be, and the same is hereby amended to read as follows:

41-1214. CONDITIONS FOR EXPORT. If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines," may be procured from unauthorized insurers, subject to the following conditions:

(1) The insurance must be procured through a licensed surplus line broker who is a member of a surplus line association approved by the director.

(2) The full amount or kind of insurance required must not be procurable from insurers who are authorized to do business in this state. The amount of insurance exported shall be only the excess over the amount procurable from authorized insurers unless the excess is not available without support of other coverages, provided that a diligent search is made among the insurers authorized to transact and actually writing that particular kind and class of insurance in this state.

(3) The insurance must not be so exported for the purpose of securing advantages either as to:

(a) A lower premium rate than would be accepted by an authorized insurer; or

(b) Terms of the insurance contract.

(4) A surplus line broker seeking to procure from or place insurance with an unauthorized insurer for an exempt commercial purchaser is not required to satisfy the diligent search requirement set forth in subsection (2) of this section when:

(a) The surplus line broker or referring insurance producer procuring or placing the surplus line insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(b) The exempt commercial purchaser has subsequently requested in writing the surplus line broker or referring insurance producer to procure or place such insurance from an unauthorized insurer.

(5) Records of the surplus line broker's satisfaction of the requirements of subsection (4) of this section shall be maintained in compliance with the provisions of section 41-1227, Idaho Code.

(6) A surplus line broker may not knowingly place surplus line insurance with insurers that are financially unsound. The surplus line broker may only so insure with the following:

(a) Any foreign insurer that is authorized to write the kind of insurance in its domiciliary jurisdiction and has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the following: (i) the minimum capital and surplus requirements under the laws of this state; or (ii) fifteen million dollars (\$15,000,000); or

(b) Any alien insurer that is listed on the quarterly listing of alien insurers maintained by the international insurers department of the national association of insurance commissioners.

(7) The requirements in paragraph (a) of subsection (6) of this section may be satisfied by an insurer that possesses less than the minimum capital and surplus upon an affirmative finding of acceptability by the director. Such finding shall be based upon factors such as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability and company record and reputation within the industry. The director is prohibited from making an affirmative finding of acceptability when the foreign insurer's capital and surplus is less than four million five hundred thousand dollars (\$4,500,000).

(8) The director may promulgate rules to prescribe the terms under which the financial requirements provided in this section may be waived in circumstances where insurance cannot be otherwise procured on risks located in this state.

(9) For any violation of the provisions of this section, a surplus line broker may be subject to a fine of not less than one hundred dollars (\$100) and not more than five thousand dollars (\$5,000), or the surplus line broker's license may be revoked, suspended or nonrenewed, or both such fine and license revocation, suspension or nonrenewal.

SECTION 4. That Section 41-1223, Idaho Code, be, and the same is hereby amended to read as follows:

41-1223. LICENSING OF SURPLUS LINE BROKERS. (1) Any individual while licensed as a producer licensed for property or casualty insurance who has had at least two (2) years' experience as a producer for the lines of insurance for which he is seeking to be licensed as a surplus line broker, and who is deemed by the director to be competent and trustworthy with respect to the handling of surplus lines, may be licensed as a surplus line broker.

(2) Application for the license shall be made to the director on forms as designated and furnished by the director.

(3) The license and continuation fee shall be as set forth by rule pursuant to section 41-401, Idaho Code.

(4) The license and licensee shall be subject to the applicable provisions of chapter 10, title 41, Idaho Code (producers--- licensing).

(5) When a national insurance producer database of the national association of insurance commissioners, or other equivalent uniform national database, for the licensure of surplus line brokers is created, the director may participate in such database.

SECTION 5. That Section 41-1229, Idaho Code, be, and the same is hereby amended to read as follows:

41-1229. TAX ON SURPLUS LINES. (1) On or before the first day of March of each year each broker shall remit to the director a tax on the premiums, exclusive of sums collected to cover federal and state taxes and examination fees, on surplus line insurance subject to tax transacted by him with unauthorized insurers during the preceding calendar year as shown by his annual statement filed with the director, and at the following rates:

~~(a) For calendar years 2004, 2005 and 2006, beginning with the effective date of the policy, two and seventy-five hundredths percent (2.75%); and~~

~~(b) For calendar year 2007 and thereafter, beginning with the effective date of the policy, rate of one and five-tenths percent (1.5%).~~

Such tax shall be in lieu of all other taxes upon such insurers with respect to the business so reported.

(2) If a surplus line policy covers risks or exposures only partially in this state, the tax so payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state. For property and casualty insurance other than worker's compensation insurance, if Idaho is the insured's home state, then the tax so payable shall be computed upon the entire premium under subsection (1) of this section, without regard to whether the policy covers risks or exposures that are located in Idaho. For all other lines of insurance, if a surplus line policy covers risks or exposures only partially in Idaho, the tax so payable shall be computed upon the proportion of the premium that is properly allocable to the risks or exposures located in Idaho.

SECTION 6. Section 5 of this act shall be in full force and effect on and after July 21, 2011.

Approved April 5, 2011.

#### CHAPTER 184

(H.B. No. 183, As Amended in the Senate)

#### AN ACT

RELATING TO THE MOBILE HOME PARK LANDLORD-TENANT ACT; AMENDING THE HEADING FOR CHAPTER 20, TITLE 55, IDAHO CODE, TO PROVIDE FOR THE MANUFACTURED HOME RESIDENCY ACT; AMENDING SECTION 55-2001, IDAHO CODE, TO REVISE THE SHORT TITLE; AMENDING SECTION 55-2003, IDAHO CODE, TO DEFINE TERMS AND TO REVISE DEFINITIONS; AMENDING SECTION 55-2004, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE GOVERNANCE OF THE CHAPTER AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 55-2005, IDAHO CODE, TO REVISE AND TO PROVIDE ADDITIONAL PROVISIONS RELATING TO RENTAL AGREEMENTS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 55-2006, IDAHO CODE, TO REVISE AND TO PROVIDE ADDITIONAL PROVISIONS RELATING TO ADJUSTMENTS TO RENT AND AMENDMENTS TO RENTAL AGREEMENTS, TO SPECIFY THE ACCEPTABLE METHOD OF NOTICE AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 55-2007, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 55-2008, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO REVISE A CODE REFERENCE; AMENDING SECTION 55-2009, IDAHO CODE, TO PROVIDE THAT A LANDLORD MAY ACT AS AGENT FOR THE SELLER ONLY IF THE LANDLORD IS LICENSED AS REQUIRED BY LAW, TO REQUIRE CERTAIN CHARGES BE PAID AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 55-2009A, IDAHO CODE, TO REVISE PROVISIONS RELATING TO ABANDONMENT AND NOTICE TO A LIENHOLDER AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING CHAPTER 20, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-2009B, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO SALES TO SATISFY LIENS; AMENDING CHAPTER 20, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-2009C, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO NOTICE OF A CERTAIN SALE; AMENDING CHAPTER 20, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-2009D, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO THE RELEASE OF AN OWNER'S INTEREST IN AN ABANDONED HOME; AMENDING CHAPTER 20, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-2009E, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO AN INSPECTION OF AN ABANDONED HOME PRIOR TO SALE; AMENDING CHAPTER 20, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-2009F, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO THE DISPOSITION OF PROCEEDS OF A LIEN SALE; AMENDING SECTION 55-2010, IDAHO CODE, TO REVISE AND TO PROVIDE ADDITIONAL PROVISIONS RELATING TO THE TERMINATION OF A RENTAL AGREEMENT AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 55-2012, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 55-2013, IDAHO CODE, TO REMOVE PROVISIONS RELATING

TO THE APPLICATION OF CERTAIN CODE SECTIONS, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 55-2013A, IDAHO CODE, TO REVISE AND TO PROVIDE ADDITIONAL PROVISIONS RELATING TO COMMUNITY RESIDENT ASSOCIATIONS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 55-2014, IDAHO CODE, TO PROVIDE THAT THE LANDLORD IS NOT LIABLE FOR CERTAIN MAINTENANCE CONDITIONS, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 55-2015, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 55-2016, IDAHO CODE, TO REVISE PROVISIONS RELATING TO ARBITRATION, TO PROVIDE FOR MEDIATION AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 55-2019, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AND AMENDING CHAPTER 20, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-2020, IDAHO CODE, TO SPECIFY THE ACCEPTABLE METHOD FOR SERVICE OF NOTICE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That the Heading for Chapter 20, Title 55, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 20  
MOBILE MANUFACTURED HOME PARK LANDLORD-TENANT RESIDENCY ACT

SECTION 2. That Section 55-2001, Idaho Code, be, and the same is hereby amended to read as follows:

55-2001. SHORT TITLE. This chapter shall be known as and may be cited as the "Mobile Manufactured Home Park Landlord-Tenant Residency Act."

SECTION 3. That Section 55-2003, Idaho Code, be, and the same is hereby amended to read as follows:

55-2003. DEFINITIONS. For purposes of this chapter, unless the provisions or context otherwise requires, the following definitions shall govern:

- (1) "Abandoned home" means a home that:
  - (a) Is located in a community on a lot for which no rent has been paid for the preceding sixty (60) days; and
  - (b) The landlord reasonably believes under all the circumstances, by absence, words or actions, that the resident has left the home upon the lot with no intention of asserting any further claim to the lot or the home; or
  - (c) Is unoccupied or uninhabitable because of its total or partial destruction.
- (2) "Community" means any real property that is rented or held out for rent to others for the placement of two (2) or more homes for the primary purpose of production of income.
- (3) "Department" means the Idaho department of transportation.
- (4) "Fees" means financial obligations incidental to a resident's tenancy including, but not limited to, charges for late payments, pets, the storage of recreational vehicles and the use of community facilities.
- (5) "Home" means a mobile home, a manufactured home or a park model.
- (6) "Landlord" means the owner, lessor, sublessor or operator, or any combination thereof, of a mobile home park community and includes the agents of the landlord.
- (27) "Mobile home lot" means a specific area or portion of land in a mobile home park community for rent, designated as the location of and designed to accommodate one (1) mobile home and its accessory buildings, appurtenances and intended for the exclusive use of as a residence by the approved occupants of that mobile home.

~~(3) "Mobile home park" means any real property which is rented or held out for rent to others for the placement of two (2) or more mobile homes for the primary purpose of production of income.~~

~~(4) "Tenant" means any person, except a transient, who rents a mobile home lot or their agent of record.~~

(8) "Manager" means the person in charge of operations or in control of a community, whether or not he or she is the owner. "Manager" includes any company chosen by the landlord to administer or supervise the affairs of the community.

(9) "Manufactured home" or "manufactured house" means a structure as defined in subsection (8) of section 39-4105, Idaho Code.

(10) "Mobile home" means a structure as defined in subsection (9) of section 39-4105, Idaho Code.

(11) "Park model" means a vehicular type unit that has a floor area of four hundred (400) square feet or less, meets the American national standards institute (ANSI) recreational standard A119.5, is primarily designed for permanent or semipermanent installation and is used as a residence.

(12) "Other charges" means fees, service charges, utility charges or any other financial obligations specified in the rental agreement, but not including rent.

(13) "Recreational vehicle" means a vehicular type unit as defined in subsection (2) of section 39-4201, Idaho Code.

(14) "Rent" means periodic payments to be made in consideration for occupying a lot.

(15) "Rental agreement" means a lease or agreement between the landlord and the resident embodying the terms and conditions concerning the use and occupancy of a lot and includes month to month tenancies that arise out of the expiration of a fixed term rental agreement.

(16) "Resident" means a person lawfully entitled under a rental agreement or lease to occupy a lot in a community to the exclusion of others. "Resident" also means a tenant as that term is defined and used in other applicable state and federal laws.

(17) "Security" or "security deposit" means any refundable money or property given to assure payment or performance under a rental agreement.

(18) "Service charges" means separate charges paid for the use of electrical and gas service improvements that exist at a lot, or for trash removal, sewage and water, or any combination of the foregoing.

~~(19) "Transient" means a person who rents a mobile home lot for a period of less than one (1) month.~~

(20) "Utility" means a public utility that provides electricity, natural gas, liquefied petroleum gas, cable television, sewer services, garbage collection or water.

SECTION 4. That Section 55-2004, Idaho Code, be, and the same is hereby amended to read as follows:

55-2004. CHAPTER GOVERNS. This chapter shall regulate and determine legal rights, remedies and obligations arising from any rental agreement between a landlord and a ~~tenant resident~~ regarding a mobile home lot, except in those instances in which: (i) the landlord is renting both the lot and the mobile home to the tenant resident; or (ii) the lot is rented or held out for rent to a recreational vehicle or travel trailer, not including a park model. All such rental agreements shall be unenforceable to the extent of any conflict with any provision of this chapter. This chapter does not abrogate any rights the ~~park owner landlord or tenant resident~~ has under the laws and constitution of the United States or the state of Idaho.

SECTION 5. That Section 55-2005, Idaho Code, be, and the same is hereby amended to read as follows:

55-2005. RENTAL AGREEMENT. (1) ~~From and after the effective date of this chapter, any landlord offering mobile home lot for rent shall provide the prospective tenant a written rental agreement. This agreement must be executed by both parties~~ A written rental agreement or lease shall be executed in duplicate by the landlord and the prospective resident, each to receive a copy. The landlord shall provide a copy of the community rules when the prospective resident submits an application for residency and prior to the execution of the rental agreement. The provisions of this chapter shall apply to all such agreements and to all other rental agreements to the extent applicable as set forth in this chapter.

(2) The requirement of subsection (1) of this section shall not apply if:

(a) ~~The mobile home park community~~ or part thereof has been acquired by eminent domain or condemnation for a public works project; or

(b) ~~An employer-employee relationship exists between a landlord and tenant resident.~~

(3) The provisions of this section shall apply to any tenancy in existence on the effective date of this act, but only after expiration of the term of any oral or written rental agreement governing such tenancy, not to exceed twelve (12) months from the date of enactment of this section. Existing contracts may be perpetuated by agreement of both parties. If a resident fails to sign and return to the landlord, who has acted in good faith, any new or amended rental agreement following the written notice provided in accordance with the provisions of section 55-2006, Idaho Code, and the resident continues to hold the premises after the expiration of the notice period, then the notice shall of itself operate and be effectual to create and establish, as part of the rental agreement, the terms, rent, conditions and rules specified in the notice.

SECTION 6. That Section 55-2006, Idaho Code, be, and the same is hereby amended to read as follows:

55-2006. ADJUSTMENTS TO RENT, SERVICES, UTILITIES OR RULES. (1) A landlord may increase or decrease rents after expiration of the lease term, but only after with ninety (90) days' written notice to the tenants residents. Such written notice shall be sent by first class mail, certified mail or personal delivery.

(2) Rental increases shall be uniform throughout the ~~mobile home park community~~. When rents within a ~~mobile home park community~~ are structured by reason of lot or home size, amenities, lot location or otherwise, rental increases shall be uniform among all homes in the same rent tier.

(3) A landlord shall give written notice of such change to each affected mobile home owner at least ninety (90) days prior to any ~~increase in let rental amount, reduction in services or utilities provided by amendment to the rental agreement.~~ The landlord or changes in may not amend the rental agreement or rules or regulations not to exceed one (1) change in each category per more frequently than once in a six (6) month period.

(4) Rents in communities are governed by the provisions of subsection (2) of section 55-307, Idaho Code, which provides that a local governmental unit shall not enact, maintain, or enforce an ordinance or resolution that would have the effect of controlling the amount of rent charged for leasing private residential property.

(5) Notwithstanding the foregoing provisions, a rental agreement may include an escalation clause for a pro rata share of any increase or decrease in the ~~mobile home park's community's~~ ad valorem taxes, utility assessments, or other services as included in the monthly rental charge, after the effective date of such a change. Issues of public safety, health or property degradation may also be included in this section. The landlord shall give

thirty (30) days' written notice to a ~~tenant~~ resident before such an increase or decrease.

SECTION 7. That Section 55-2007, Idaho Code, be, and the same is hereby amended to read as follows:

55-2007. REQUIRED RENTAL AGREEMENT PROVISIONS AND EXCLUSIONS -- DISCLOSURES. (1) Any rental agreement executed between the landlord and ~~tenant~~ resident shall contain:

(a) The terms for the payment of rent, including the time and place for payment, and a description of any additional other charges to be paid to the landlord by the ~~tenant~~ resident. ~~Additional Other~~ charges that occur less frequently than monthly shall be itemized in a billing to the ~~tenant~~ resident;

(b) A description of the utilities and services which are included in the monthly rent;

(c) The rules of the park community;

(d) The names and addresses of the manager of the ~~mobile home park~~ community and the owner of the ~~mobile home park~~ community or a person who resides in the state where the ~~mobile home park~~ is located who is authorized to act as agent for the owner; and

(e) The terms and conditions under which any deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement if any moneys are paid to the landlord by the ~~tenant~~ resident as a deposit or as security for performance of the ~~tenant's~~ resident's obligations in a rental agreement.

(2) Any rental agreement executed between the landlord and ~~tenant~~ resident shall not contain:

(a) Any provision by which the ~~tenant~~ resident agrees to waive or forego rights or remedies under this chapter; or

(b) Any provision allowing the landlord to charge an "entrance fee" or an "exit fee." The expense of repairs or maintenance required by the landlord as a condition of the landlord's approval of a rental application shall not constitute an "entrance fee" or "exit fee" as those terms are used herein.

(c) Any provision which unreasonably restricts access to the ~~mobile home park~~ community by invitees of the ~~tenant~~ resident.

(3) The following terms and conditions shall be an implicit part of any rental agreement between the landlord and ~~tenant~~ resident:

(a) The landlord shall provide a base upon which the ~~mobile home~~ is to be located, prepared in accordance with the provisions of section 44-2201, Idaho Code.

(b) The landlord shall, prior to removal of the wheels and axles, approve the positioning of the ~~mobile home~~ upon the ~~mobile home~~ lot.

(c) The landlord shall not permit any portion of the ~~mobile home~~, including the tongue, to extend into a roadway.

(d) The landlord shall maintain street lights, entry lights and common area lighting, if any, in good working condition.

(e) The landlord shall have the right of entry upon the ~~mobile home~~ lot for maintenance of utilities, protection of the ~~mobile home park~~ community and periodic inspection of the premises, but shall not, except in the case of emergency or suspected abandonment by the ~~tenant~~ resident, otherwise have the right of entry to such lot without the consent of the ~~tenant~~ resident.

(f) The landlord shall notify each ~~tenant~~ resident within fifteen (15) days after a petition has been filed by the landlord for a change in the zoning of the land upon which the ~~mobile home park~~ community is situated.

(4) Upon request, the landlord shall, prior to the execution of a rental agreement, provide the ~~tenant~~ resident with a written statement containing the following information:

- (a) The name, address and telephone number of the owner or manager of the ~~mobile home park~~ community.
- (b) A general description of the types of homes which may be brought into the ~~mobile home park~~ community.
- (c) A general description of the boundaries of the space lot to be provided.
- (d) A description of the utilities and services which are included in the rent.
- (e) A description of other utilities and services which are available within the park community.
- (f) A description of the zoning under which the ~~mobile home park~~ community operates, and the governmental entity having zoning jurisdiction.
- (g) The date and amount of the most recent rent increase.

SECTION 8. That Section 55-2008, Idaho Code, be, and the same is hereby amended to read as follows:

55-2008. RULES. (1) A written rule of the park community is enforceable against the ~~tenant~~ resident if it is part of the rental agreement signed by the ~~tenant~~ resident.

(2) A rule adopted or amended after the ~~tenant~~ resident enters into the rental agreement is not enforceable unless the ~~tenant~~ resident consents to it or is given ninety (90) days' notice in writing except as provided in section 55-2006(45), Idaho Code. A rule change restricting the type or size of a mobile home permitted in the park community shall not apply to a ~~tenant~~ resident whose mobile home was in compliance with park community rules prior to the adoption or amendment.

(3) Rules shall be fairly and uniformly enforced and contain the effective date.

SECTION 9. That Section 55-2009, Idaho Code, be, and the same is hereby amended to read as follows:

55-2009. SALES OF MOBILE HOMES AND TRANSFER OF ~~MOBILE HOME SPACES~~ LOTS. (1) No landlord shall deny any ~~mobile home~~ tenant resident who owns his mobile home the right to sell a ~~mobile~~ the home on a rented space lot or require the ~~tenant~~ resident to remove the mobile home from the space lot solely on the basis of the sale.

(2) The landlord shall not exact a commission or fee for the sale of a mobile home on a rented space unless the landlord has acted as agent for the seller pursuant to a written agreement. The landlord may act as agent for the seller only upon the voluntary agreement of the seller and only if the landlord is licensed if licensure is required by law.

(3) A new rental agreement must be signed between the landlord and a prospective ~~tenant~~ resident prior to the sale, transfer, assignment or subletting of the mobile home if the mobile home is to remain in the park community. From the date of sale, assignment, transfer or subletting the new ~~tenant~~ resident shall be bound by the terms of the agreement.

(4) The landlord shall approve or disapprove of the transfer, assignment or subletting of the mobile home space lot on the same basis that the landlord approves or disapproves of any new ~~tenant~~ resident. Notice of approval or disapproval shall be given in writing within five (5) working days of receiving a written application.

(5) No mobile home shall be removed from any park community until the rental payments, including the month when the mobile home is moved, together

with all other charges specified in the rental agreement, are paid, or the provisions of section 55-2009A, Idaho Code, have been fully complied with and the landlord notified of date and time of removal.

SECTION 10. That Section 55-2009A, Idaho Code, be, and the same is hereby amended to read as follows:

55-2009A. NOTICE OF LIENHOLDER -- LIMIT ON BACK RENT -- ABANDONMENT. (1) Any lienholder or legal owner of a ~~mobile home~~ who wants to be protected under this section must so notify the landlord in writing of his secured or legal interest.

(2) If the ~~tenant resident~~ becomes sixty (60) days in arrears in his rent or at the time of suspected abandonment by the ~~tenant resident~~ on a ~~mobile home space lot~~, it is incumbent upon the landlord to notify in writing the lienholder or and legal owner of the mobile home unit and to communicate to him his the lienholder and legal owner the liability for any costs incurred for the mobile home space for such mobile home unit, including rent owing rent and other charges specified in the rental agreement. The lienholder shall be responsible for utilities from the date of notice. However, the landlord shall be entitled to a maximum of sixty (60) days rent due prior to notice to lienholder. Any and all costs shall then become the responsibility of the legal owner or lienholder of the mobile home. The ~~mobile home unit~~ may not be removed from the ~~mobile home space lot~~ without a signed written agreement from the ~~mobile home park landlord, owner or manager~~ showing clearance for removal, showing all moneys due and owing paid in full, or an agreement reached with the legal owner and the landlord.

SECTION 11. That Chapter 20, Title 55, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 55-2009B, Idaho Code, and to read as follows:

55-2009B. SALE TO SATISFY LIENS. (1) When a home has been abandoned, the landlord, as the possessory lienholder, may proceed to conduct a sale of the abandoned home to satisfy the lien and costs of sale, if an authorization to conduct a lien sale has been issued by the department or a judgment has been entered in favor of the landlord on the claim which gives rise to the lien or the legal owner of the home and any lienholder have signed a release of any interest in the home.

(2) A possessory lienholder may apply to the department for the issuance of an authorization to conduct a lien sale. The application shall include all of the following information:

(a) A description of the abandoned home including the year and make and the vehicle identification number;

(b) The names and addresses of the legal owners of the abandoned home, if known, and the names and addresses of other persons whom the lienholder knows or reasonably should know to claim an interest in the home;

(c) A statement of the amount of the lien and the facts concerning the claim that give rise to the lien; and

(d) A statement that the lienholder has no information or belief that there is a valid defense to the claim that gives rise to the lien.

(3) Upon receipt of an application, the department shall send a copy of the application to the legal owners at their addresses of record with the department and to any other interested persons listed in the application. The department shall also send a notice which shall include the following information:

(a) That an application has been made with the department for the issuance of an authorization to conduct a lien sale;

(b) That the person has a legal right to a hearing in court;

(c) That if a hearing in court is desired, an enclosed declaration of opposition must be signed and returned;

(d) That if the declaration is signed and returned, the possessory lienholder will be allowed to sell the abandoned home only if he obtains a judgment in court or obtains a release from the legal owners;

(e) That the department will issue the authorization to conduct a lien sale unless the person signs and returns the declaration of opposition within ten (10) days after the date the notice was mailed; and

(f) That the person may be liable for costs if the lienholder brings an action and if a judgment is entered in favor of the lienholder.

(4) If the department receives a timely mailed declaration of opposition, it shall notify the possessory lienholder that he or she may not conduct a lien sale unless:

(a) A judgment has been entered in his or her favor on the claim which gives rise to the lien; or

(b) The legal owners of the abandoned home have signed a release of any interest in the home.

(5) An applicant shall include with his application for lien sale a fee of ten dollars (\$10.00), which shall be deposited in the abandoned vehicle trust account. The fee shall be recoverable as a cost by the lienholder.

SECTION 12. That Chapter 20, Title 55, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 55-2009C, Idaho Code, and to read as follows:

55-2009C. NOTICE OF SALE. Prior to any sale pursuant to the provisions of section 55-2009B, Idaho Code, the possessory lienholder shall give at least ten (10) days' notice of the sale by advertising in one (1) issue of a newspaper of general circulation in the county in which the abandoned home is located. Prior to the sale of any home to satisfy a lien, twenty (20) days' notice by certified mail shall be given to the legal owner and to the department. All notices shall specify the make, the vehicle identification number and the date, time and place of the sale.

SECTION 13. That Chapter 20, Title 55, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 55-2009D, Idaho Code, and to read as follows:

55-2009D. RELEASE OF OWNER'S INTEREST IN ABANDONED HOME. (1) A legal owner of an abandoned home in the possession of a person holding a lien under the provisions of this chapter may release any interest in the home after the lien has attached.

(2) The release shall contain the following information:

(a) A description of the abandoned home, including the year, make and vehicle identification number;

(b) The names and addresses of the legal owners of record;

(c) A statement of the amount of the lien and the facts concerning the claim which give rise to the lien; and

(d) A statement that the person releasing the interest understands that he or she has a legal right to a hearing in court prior to the sale of the abandoned home and that he or she waives the right to contest the claim.

(3) A copy of the release shall be filed with the department in connection with the transfer of interest in an abandoned home under the provisions of this section.

SECTION 14. That Chapter 20, Title 55, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 55-2009E, Idaho Code, and to read as follows:

55-2009E. INSPECTION PRIOR TO SALE. No lien sale conducted pursuant to this chapter shall be undertaken unless the landlord has permitted access for public inspection of the exterior of the abandoned home for at least one (1) hour prior to the sale. Sealed bids shall not be accepted. The possessory lienholder shall conduct the sale in a commercially reasonable manner.

SECTION 15. That Chapter 20, Title 55, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 55-2009F, Idaho Code, and to read as follows:

55-2009F. DISPOSITION OF PROCEEDS. (1) The proceeds of a lien sale shall be disbursed as follows:

(a) To discharge the lien; then to actual costs of selling the property. The cost of selling shall be the actual cost, not to exceed two hundred dollars (\$200), for each abandoned home;

(b) The balance, if any, shall be forwarded to the department within five (5) days of the sale for payment to the legal owner of any unpaid obligation or for deposit in the abandoned vehicle trust account.

(2) Any person claiming an interest in the abandoned home may file a claim with the department for any portion of the funds from the lien sale that were forwarded to the department. Upon determination by the department that the claimant is entitled to some amount, the department shall pay an amount that in no case shall exceed the amount forwarded to the department in connection with the sale of the abandoned home. The department shall not honor any claim not filed within two (2) years of the sale.

SECTION 16. That Section 55-2010, Idaho Code, be, and the same is hereby amended to read as follows:

55-2010. TERMINATIONS. (1) Tenancy during the term of a rental agreement may be terminated by the landlord only for one (1) or more of the following reasons:

(a) Substantial or repeated violation of the rental agreement or the written rules of the mobile home park community. The tenant resident shall be given written notice to comply. If the tenant resident does not comply within three (3) days, the tenant resident may be given notice of a twenty (20) day period in which to vacate. In the case of periodic rather than continuous violation, said notice shall specify that the same violation repeated shall result in the termination.

(b) Nonpayment of rent or other charges specified in the rental agreement. The tenant resident shall be given written notice. If the tenant resident does not pay within three (3) days the tenant resident may be given notice of a twenty thirty (230) day period in which to vacate.

(c) Closure of the community or any portion thereof by order of a federal, state or local authority. The resident shall be given the notice required by such order.

(d) In the event of a taking of the community or any portion thereof by eminent domain or cessation of the mobile home space lot rental operation or a portion thereof, provided that the landlord shall give the tenant affected resident and any subtenant not less than one hundred eighty (180) days' notice in writing prior to the date designated in the notice of termination. After the date notice of termination has been given as provided in this subsection, the landlord shall provide a copy of such notice to any prospective resident or purchaser if the home is to remain in the community. The landlord may not increase the rent during the notice period. This section does not limit a landlord's right to terminate a tenancy for nonpayment of rent or for other causes under this chapter during the closure period.

(e) Abandonment.

(2) ~~Except where there will be a cessation of the mobile home space rental operation when a rental agreement is terminated for the reason provided in paragraph (e) of subsection (1) of this section, a landlord shall give the tenant resident no less than ninety (90) days' written notice of an intention not to renew the rental agreement. Where there will be a cessation of the mobile home space rental operation, the landlord must provide the tenant with the same notice as required in subsection (1)(e) of this section.~~

(3) A ~~tenant resident~~ shall notify the landlord in writing thirty (30) days prior to the expiration of a rental agreement of an intention not to renew the rental agreement.

(4) Any ~~tenant resident~~ who is a member of the armed forces, including the national guard and armed forces reserves, may, without penalty, terminate a rental agreement with less than thirty (30) days' notice if he receives reassignment or deployment orders which do not allow greater notice.

(5) The ~~tenant resident~~ may terminate the rental agreement upon thirty (30) days' written notice whenever a change in the location of the ~~tenant's resident's~~ employment requires a change in his residence.

SECTION 17. That Section 55-2012, Idaho Code, be, and the same is hereby amended to read as follows:

55-2012. IMPROVEMENTS. (1) The landlord shall not restrict the ~~tenant's resident's~~ freedom of choice in purchasing goods or services but may reserve the right to approve or disapprove any exterior improvements on a mobile home lot. Any request for lot improvements or changes must be submitted in writing. The approval or disapproval must be given in writing, be reasonable and be uniformly applied.

(2) Improvements, except those fixed to the soil, the removal of which would significantly damage the landscape of the ~~mobile home~~ lot, shall remain the property of the ~~tenant resident~~. In removing improvements on termination of the rental agreement, the ~~tenant resident~~ shall leave the ~~mobile home~~ lot in better or substantially the same condition as upon taking possession.

SECTION 18. That Section 55-2013, Idaho Code, be, and the same is hereby amended to read as follows:

55-2013. DEPOSITS -- SECURITY. (1) Any payment, deposit, fee, or other charge which is required by the landlord in addition to periodic rent, utility charges or service fees, and is collected as prepaid rent or a sum to compensate for any ~~tenant resident~~ default is a deposit governed by the provisions of this section.

(2) The landlord shall maintain a separate record of the deposits.

(3) ~~The provisions of sections 6-320 and 6-321, Idaho Code, shall apply to landlords and tenants governed by this chapter.~~

(4) Upon termination of the landlord's interest in the ~~mobile home park community~~, the landlord shall either transfer to his successor in interest that portion of the deposit remaining after making any deductions allowed under this section or return such portion to the ~~tenant resident~~.

(5) The claim of the ~~tenant resident~~ to any deposit to which he is entitled by law takes precedence over the claims of any other creditor of the landlord.

SECTION 19. That Section 55-2013A, Idaho Code, be, and the same is hereby amended to read as follows:

55-2013A. ~~TENANT COMMUNITY RESIDENT ASSOCIATIONS.~~ (1) The ~~tenants residents~~ in a ~~mobile home park community~~ have the right to organize a ~~tenant resident~~ or homeowner's association to further their mutual interest and to

conduct any other business and programs which the association shall determine. Community residents have the right to peacefully assemble and freely associate. Subject to reasonable notice and community facility rules, an association shall have the right to use the facilities of the park community to conduct its business and programs including forums for or speeches by public officials or candidates for public office. When an association is organized it shall notify the landlord.

(2) A community resident association formed for the purpose of purchasing a community may give written notification to the landlord of the association's interest in purchasing the community.

(3) For the purpose of notification, the community resident association shall provide the names and addresses of the three (3) designated members or officers of their community association to the landlord annually.

(4) A community resident association that has notified the landlord of its interest to purchase the community may request in writing that it be notified by the landlord if the owner or agent of the owner enters into a listing agreement with a licensed real estate broker to affect the sale of all or part of the community. The landlord shall provide such notification to the three (3) members designated under subsection (3) of this section within fifteen (15) days of the owner entering into the listing agreement.

(5) This section shall not apply to any of the following:

(a) A governmental entity taking by eminent domain;

(b) A forced sale pursuant to foreclosure or a deed given in lieu of foreclosure;

(c) Transfer by gift, devise or operation of law;

(d) A transfer by a corporation to an affiliate;

(e) A conveyance incidental to financing the community;

(f) An exchange of the community for other real property;

(g) A transfer by a partnership to one (1) or more of its partners;

(h) A sale or transfer to a person who would be an heir, or to a trust the beneficiaries of which would be heirs, of the community owner if the community owner were to die intestate.

SECTION 20. That Section 55-2014, Idaho Code, be, and the same is hereby amended to read as follows:

55-2014. ~~TENANT RESIDENT~~ ACTION FOR DAMAGES -- SPECIFIC PERFORMANCE. (1) A ~~tenant resident~~ of a ~~mobile home park community~~ may file an action against a landlord for damages and specific performance for:

(a) Failure to maintain in good working order, to the terminal point of service, electrical, water or sewer services supplied by the landlord;

(b) Maintaining the premises in a manner hazardous to the health or safety of the ~~tenant resident~~, including, but not limited to, a continuing violation of any of the following:

(i) Any rule adopted by the department of environmental quality governing public drinking water systems;

(ii) Any rule adopted by the department of environmental quality governing hazardous waste;

(iii) Any rule adopted by the public health district in which the ~~mobile home park community~~ is located governing wastewater and ~~on-site onsite~~ sewage treatment systems;

(iv) Any provision of the international fire code, as amended by the provisions of any fire code adopted by the county or municipality in which the ~~mobile home park community~~ is located;

(v) Any provision of the uniform building code, as amended by the provisions of any building code adopted by the county or municipality in which the ~~mobile home park community~~ is located.

Nothing contained in the provisions of this subsection is intended to extend the application of any such rule or code provision to a previ-

ously existing condition which, as of July 1, 1993, was exempt from the enforcement of such rule or code provision.

(c) Failure to return a security deposit as and when required by law;

(d) Breach of any term or provision of the lease or rental agreement materially affecting the health and safety of the tenant resident, whether explicitly or implicitly a part thereof.

(2) Upon filing the complaint, a summons must be issued, served and returned as in other actions; provided however, that in an action exclusively for specific performance, at the time of issuance of the summons, the court shall schedule a trial within twelve (12) days from the filing of the complaint, and the service of the summons, complaint and trial setting on the defendant shall be not less than five (5) days before the day of trial appointed by the court. If the plaintiff brings an action for damages under this section, or combines this action for damages with an action for specific performance, the early trial provision shall not be applicable, and a summons must be issued returnable as in other cases upon filing the complaint.

(3) In an action under this section, the plaintiff, in his complaint, must set forth the facts on which he seeks to recover, describe the premises, and set forth any circumstances which may have accompanied the failure or breach by the landlord.

(4) If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff against the defendant, judgment shall be entered for such special damages as may be proven. General damages may be awarded but shall not exceed five hundred dollars (\$500). Judgment may also be entered requiring specific performance for any breach of agreement shown by the evidence, and for costs and disbursements.

(5) Before a tenant resident shall have standing to file an action under this section, he or she must give his or her landlord three (3) days' written notice, listing each failure or breach upon which his action will be premised and written demand requiring performance or cure. If, within three (3) days after service of the notice, any listed failure or breach has not been performed or cured by the landlord, the tenant resident may proceed to commence an action for damages and specific performance.

(6) The notice required in subsection (5) of this section shall be served either:

(a) By delivering a copy to the landlord or his agent personally; or

(b) If the landlord or his agent is absent from his usual place of business, by leaving a copy with an employee at the usual place of business of the landlord or his agent; or

(c) By sending a copy of the notice to the landlord or his agent by certified mail, return receipt requested.

(7) The landlord is not liable if the maintenance condition was caused by the deliberate or negligent act or omission of the resident, a member of the resident's family or other person on the premises with the resident's consent.

SECTION 21. That Section 55-2015, Idaho Code, be, and the same is hereby amended to read as follows:

55-2015. RETALIATORY CONDUCT BY LANDLORD PROHIBITED. The landlord shall not terminate a tenancy, refuse to renew a tenancy, increase rent or decrease services he normally supplies, or threaten to bring an action for repossession of a ~~mobile home~~ lot as retaliation against the tenant resident because the tenant resident has:

(a1) Complained in good faith about a violation of a building, safety or health code or regulation pertaining to a ~~mobile home park~~ community to the governmental agency responsible for enforcing the code or regulation.

(b2) Complained to the landlord concerning the maintenance or condition of the park community, rent charged or rules and regulations.

(e3) Organized, ~~became~~ become a member of or served as an official in a ~~homeowner's~~ community resident association, or similar organization, at a local, regional, state or national level.

(d4) Retained counsel or an agent to represent his interests.

SECTION 22. That Section 55-2016, Idaho Code, be, and the same is hereby amended to read as follows:

55-2016. ARBITRATION AND MEDIATION. The landlord and ~~tenant~~ resident may agree in writing to submit ~~a controversy~~ any dispute arising under the provisions of this chapter, or under the terms, conditions or performance of the rental agreement or under the rules of the community, to mediation or binding arbitration through the better business bureau, or similar private association, or as elsewhere provided in Idaho law by an independent third party.

SECTION 23. That Section 55-2019, Idaho Code, be, and the same is hereby amended to read as follows:

55-2019. VENUE. Venue for any action arising under this chapter shall be in the district court of the county in which the ~~mobile home~~ lot is located.

SECTION 24. That Chapter 20, Title 55, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 55-2020, Idaho Code, and to read as follows:

55-2020. SERVICE OF NOTICE. (1) Any three (3) day notice to the resident as required by the provisions of this chapter may be served either:

(a) By delivering a copy to the resident personally; or

(b) If the resident be absent from the lot, by leaving a copy with someone of suitable age and discretion at the lot and sending a copy through the mail addressed to the resident at the lot. If a person of suitable age or discretion cannot be found at the lot, then by affixing a copy in a conspicuous place on the lot and sending a copy by certified mail return receipt requested addressed to the resident at the lot.

(2) Unless otherwise provided, any notice to the resident in excess of three (3) days as required by the provisions of this chapter may be served either:

(a) By delivering a copy to the resident personally; or

(b) By sending a copy by certified mail return receipt requested addressed to the resident at the lot.

(3) Service upon a subtenant may be made in the manner as provided in this section.

Approved April 5, 2011.

CHAPTER 185  
(H.B. No. 217)

AN ACT

RELATING TO HOSPITAL DISTRICTS; AMENDING SECTION 39-1339, IDAHO CODE, TO REVISE WHAT IS IN THE INTEREST OF THE HOSPITAL DISTRICT AND IN THE PUBLIC INTEREST OR NECESSITY FOR INCURRING INDEBTEDNESS, TO PROVIDE THAT CERTAIN INDEBTEDNESS BE PAYABLE OUT OF TAXES IN ORDER TO BE SUBMITTED TO THE ELECTORS, TO REVISE THE AMOUNT REQUIRED TO SUBMIT CERTAIN MATTERS TO

THE ELECTORS, TO REMOVE PROVISIONS REGARDING THE REQUIREMENT TO SUBMIT CERTAIN MATTERS TO THE ELECTORS AND TO PROVIDE THAT INDEBTEDNESS OR LIABILITY MAY BE INCURRED WITHOUT ELECTION FOR CERTAIN MATTERS AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-1339, Idaho Code, be, and the same is hereby amended to read as follows:

39-1339. CREATION OF INDEBTEDNESS FOR WORKS, IMPROVEMENTS OR EQUIPMENT -- ELECTION ON PROPOSED INDEBTEDNESS -- INDEBTEDNESS OR LIABILITY WITHOUT ELECTION. (1) Whenever the board of the hospital district shall by resolution, determine that it is in the interest of said district and in the public interest or necessity demand, the acquisition, construction, installation, or completion of any works or other improvements of facilities or the construction, installation and maintenance of a hospital, hospital grounds, medical clinic, nursing home, nurses' quarters and other structural components or fixtures, or for the enlargement, improvement and acquisition of existing hospital, hospital grounds, medical clinic, nursing home, nurses' quarters and other structural components or fixtures, or the making of to purchase, contract, lease or construct or otherwise acquire facilities, equipment, technology and real property for health care operations or make any contract with the United States or other persons or corporations, public or private, municipalities or governmental subdivisions to carry out the said public works, acquisitions, improvements, objects or purposes of said district requiring the creation of an indebtedness payable out of taxes of one five hundred thousand dollars (\$1500,000) or more, and in any event when the indebtedness will exceed the income and revenue provided for the year, the board shall order the submission of the proposition of issuing such obligations or bonds or creating other indebtedness payable out of taxes to the qualified electors of the district at an election held, subject to the provisions of section 34-106, Idaho Code, for that purpose; whenever the board of the hospital district shall by resolution determine that the interest of said district and the public interest or necessity demand the acquisition of medical or business equipment for said district requiring the creation of an indebtedness of one hundred thousand dollars (\$100,000) or more and, in any event, when the indebtedness will exceed the income and revenue as provided for the year, the board shall order the submission of the proposition of creating such indebtedness to the qualified electors of the district at an election, subject to the provisions of section 34-106, Idaho Code, held for that purpose; provided, however, that no election shall be required for any lease or other transaction entered into between the hospital district and the Idaho health facilities authority. Notwithstanding any other provision, the hospital district shall be entitled to enter into a lease or other transaction regardless of the amount involved with the Idaho health facilities authority upon determination by the board of the hospital district that it is in the interest of the hospital district and best interests of the public to enter into such lease or other transaction. The declaration of public interest or necessity, herein required, and the provision for the holding of such election may be included within one (1) and the same resolution, which resolution, in addition to such declaration of public interest or necessity shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated costs of the works, improvements, or medical or business equipment, as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on such indebtedness. Such resolutions shall also fix the date upon which such election shall be held, and the manner of holding the same in accordance with the provisions of title

34, Idaho Code, and the method of voting for or against the incurring of the proposed indebtedness; such resolution shall designate the polling place or places and the county clerk shall appoint judges, provided, however, that no district shall issue or have outstanding its coupon bonds in excess of two percent (2%) of the market value for assessment purposes of the real and personal property within the said district, according to the assessment of the year preceding any such issuance of such evidence of indebtedness for any or all of the propositions specified in this election, provided, however, that such bonds shall not be issued, nor shall any indebtedness be incurred, at any time that there shall be a bond issue outstanding and unpaid for the construction, acquisition or maintenance of a county hospital in the county in which such district is organized.

(2) No election shall be required for any lease or other transaction entered into between the hospital district and the Idaho health facilities authority. Notwithstanding any other provision, the hospital district shall be entitled to enter into a lease or other transaction regardless of the amount involved with the Idaho health facilities authority upon determination by the board of the hospital district that it is in the interest of the hospital district and best interests of the public to enter into such lease or other transaction.

(3) Notwithstanding subsection (1) or (2) of this section and provided that no property tax revenues shall be used for payment of indebtedness authorized by this subsection, district hospitals, ancillary to their operations and in furtherance of health care needs in their service areas, may incur indebtedness or liability without an election to purchase, contract, lease or construct or otherwise acquire facilities, equipment, technology and real property for health care operations.

Approved April 5, 2011.

CHAPTER 186  
(H.B. No. 225)

AN ACT

RELATING TO THE IDAHO DRUG COURT AND MENTAL HEALTH COURT ACT; AMENDING SECTION 19-5604, IDAHO CODE, TO PROVIDE ADDITIONAL PROVISIONS RELATING TO THE ELIGIBILITY OF A PERSON TO BE ADMITTED INTO DRUG COURT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-5604, Idaho Code, be, and the same is hereby amended to read as follows:

19-5604. ELIGIBILITY. (1) No person has a right to be admitted into drug court. The drug court in each county shall determine the eligibility of persons who may be admitted into drug court except that each candidate, prior to being admitted, must undergo: (a) a substance abuse assessment; and (b) a criminogenic risk assessment.

(2) No person shall be eligible to participate in drug court if any of the following apply:

(1a) The person is currently charged with, has pled or has been adjudicated or found guilty of, a felony crime of violence or a felony crime in which the person used either a firearm or a deadly weapon or instrument.

(2b) The person is currently charged with, or has pled or been found guilty of, a felony in which the person committed, attempted to commit, conspired to commit, or intended to commit a sex offense.

(3) A drug court may, after consultation with the drug court team and with the consent of the prosecuting attorney, allow a person to participate

in drug court who would otherwise be ineligible only because of the provisions of subsection (2) (a) of this section.

Approved April 5, 2011.

CHAPTER 187  
(H.B. No. 226)

AN ACT

RELATING TO SUSPENSION OF JUDGMENT AND SENTENCE; AMENDING SECTION 19-2604, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE DISCHARGE OF DEFENDANT AND THE AMENDMENT OF JUDGMENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-2604, Idaho Code, be, and the same is hereby amended to read as follows:

19-2604. DISCHARGE OF DEFENDANT -- AMENDMENT OF JUDGMENT. (1) If sentence has been imposed but suspended, or if sentence has been withheld, upon application of the defendant and upon satisfactory showing that ~~the defendant has at all times complied with the terms and conditions upon which he was placed on probation,~~:

(a) The court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation; or

(b) The defendant has successfully completed and graduated from an authorized drug court program or mental health court program and ~~has at all times complied with the terms and conditions of probation during any period of probation that may have been served following such graduation, the court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation;~~

the court may, if convinced by the showing made that there is no longer cause for continuing the period of probation, and if it be compatible with the public interest, terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant; and or may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction. Tthis shall apply to the cases in which defendants have been convicted and granted probation by the court before this law goes into effect, as well as to cases which arise thereafter. The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights.

(2) If sentence has been imposed but suspended for any period during the first three hundred sixty-five (365) days of a sentence to the custody of the state board of correction, and the defendant placed upon probation as provided in subsection 4. of section 19-2601, Idaho Code, upon application of the defendant, the prosecuting attorney, or upon the court's own motion, and upon satisfactory showing that ~~the defendant has at all times complied with the terms and conditions of his probation,~~:

(a) The court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation; or

(b) The defendant has successfully completed and graduated from an authorized drug court program or mental health court program and ~~has at all times complied with the terms and conditions of probation during~~

any period of probation that may have been served following such graduation, the court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation;

the court may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction.

(3) Subsection (2) of this section shall not apply to any judgment of conviction for a violation of any offense requiring sex offender registration as set forth in section 18-8304, Idaho Code. A judgment of conviction for a violation of any offense requiring sex offender registration as set forth in section 18-8304, Idaho Code, shall not be subject to dismissal or reduction under this section. A conviction for the purposes of this chapter means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

Approved April 5, 2011.

CHAPTER 188  
(H.B. No. 235)

AN ACT

RELATING TO THE IDAHO CRIMINAL GANG ENFORCEMENT ACT; AMENDING SECTION 18-8502, IDAHO CODE, TO FURTHER DEFINE A TERM, TO REVISE DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 18-8503, IDAHO CODE, TO INCREASE CERTAIN PUNISHMENTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-8502, Idaho Code, be, and the same is hereby amended to read as follows:

18-8502. DEFINITIONS. As used in this chapter:

(1) "Criminal gang" means an ongoing organization, association, or group of three (3) or more persons, whether formal or informal, that has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity, having as one (1) of its primary activities the commission of one (1) or more of the criminal acts enumerated in subsection (3) of this section.

(2) "Criminal gang member" means any person who engages in a pattern of criminal gang activity and who meets two (2) or more of the following criteria:

- (a) Admits to gang membership;
- (b) Is identified as a gang member;
- (c) Resides in or frequents a particular gang's area and adopts its style of dress, its use of hand signs, or its tattoos, and associates with known gang members;
- (d) Has been arrested more than once in the company of identified gang members for offenses that are consistent with usual gang activity;
- (e) Is identified as a gang member by physical evidence such as photographs or other documentation; or
- (f) Has been stopped in the company of known gang members four (4) or more times.

(3) "Pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two (2) or more of the following offenses, provided that the offenses are committed on separate occasions or by two (2) or more gang members:

- (a) Robbery, as provided in section 18-6501, Idaho Code;
- (b) Arson, as provided in sections 18-801 through 18-804, Idaho Code;
- (c) Burglary, as provided in sections 18-1401, 18-1403, 18-1405 and 18-1406, Idaho Code;
- (d) Murder or manslaughter, as provided, respectively, in sections 18-4001 and 18-4006, Idaho Code;
- (e) Any violation of the provisions of chapter 27, title 37, Idaho Code, ~~that involves possession with intent to deliver, distribution, delivery or manufacturing of a substance prohibited therein;~~
- (f) Any unlawful use or possession of a weapon, ~~that is a felony bomb or destructive device~~ pursuant to chapter 33, title 18, Idaho Code;
- (g) Assault and battery, as provided in chapter 9, title 18, Idaho Code;
- (h) Criminal solicitation, as provided in section 18-2001, Idaho Code;
- (i) Computer crime, as provided in section 18-2202, Idaho Code;
- (j) Theft, as provided in sections 18-2401 and 18-2403, Idaho Code;
- (k) Evidence falsified or concealed and witnesses intimidated or bribed, as provided in sections 18-2601 through 18-2606, Idaho Code;
- (l) Forgery and counterfeiting, as provided in sections 18-3601 through 18-3603 and sections 18-3605 through 18-3616, Idaho Code;
- (m) Gambling, as provided in section 18-3802, Idaho Code;
- (n) Kidnapping, as provided in sections 18-4501 through 18-4503, Idaho Code;
- (o) Mayhem, as provided in section 18-5001, Idaho Code;
- (p) Prostitution, as provided in sections 18-5601 through 18-5614, Idaho Code;
- (q) Rape, as provided in sections 18-6101, 18-6108 and 18-6110, Idaho Code;
- (r) Racketeering, as provided in section 18-7804, Idaho Code;
- (s) Malicious harassment, as provided in section 18-7902, Idaho Code;
- (t) Terrorism, as provided in section 18-8103, Idaho Code; ~~or~~
- (u) Money laundering and illegal investment, as provided in section 18-8201, Idaho Code;
- (v) Sexual abuse of a child under the age of sixteen years, as provided in section 18-1506, Idaho Code;
- (w) Sexual exploitation of a child, as provided in section 18-1507, Idaho Code;
- (x) Lewd conduct with minor child under sixteen, as provided in section 18-1508, Idaho Code;
- (y) Sexual battery of a minor child sixteen or seventeen years of age, as provided in section 18-1508A, Idaho Code;
- (z) Escape or rescue of prisoners, as provided in sections 18-2501 through 18-2506, Idaho Code;
- (aa) Riot, as provided in sections 18-6401 and 18-6402, Idaho Code;
- (bb) Disturbing the peace, as provided in section 18-6409, Idaho Code;
- (cc) Malicious injury to property, as provided in section 18-7001, Idaho Code;
- (dd) Injuring jails, as provided in section 18-7018, Idaho Code;
- (ee) Injury by graffiti, as provided in section 18-7036, Idaho Code; or
- (ff) Human trafficking, as provided in sections 18-8602 and 18-8603, Idaho Code.

SECTION 2. That Section 18-8503, Idaho Code, be, and the same is hereby amended to read as follows:

18-8503. PUNISHMENT. (1) An adult, or any juvenile waived to adult court pursuant to section 20-508 or 20-509, Idaho Code, who is convicted of any felony or misdemeanor enumerated in section 18-8502(3), Idaho Code, that is knowingly committed for the benefit or at the direction of, or in association with, any criminal gang or criminal gang member, in addition to

the punishment provided for the commission of the underlying offense, shall be punished as follows:

(a) Any adult, or any juvenile waived to adult court pursuant to section 20-508 or 20-509, Idaho Code, who is convicted of a misdemeanor shall be punished by an additional term of imprisonment in the county jail for not more than one (1) year.

(b) Any adult, or any juvenile waived to adult court pursuant to section 20-508 or 20-509, Idaho Code, who is convicted of a felony shall be punished by an extended term of not more less than two (2) years and not more than five (5) years in prison.

(c) If the underlying offense described in section 18-8502(3), Idaho Code, is a felony and committed on the grounds of, or within one thousand (1,000) feet of, a public or private elementary, secondary or vocational school during hours when the facility is open for classes or school-related programs or when minors are using the facility, the extended term shall be not less than one two (12) years and not more than four five (45) years in prison.

(2) This section does not create a separate offense but provides an additional penalty for the primary offense, the imposition of which is contingent upon the finding of the prescribed facts.

(3) The court shall not impose an extended penalty pursuant to this section unless:

(a) The indictment or information charging the defendant with the primary offense alleges that the primary offense was committed knowingly for the benefit or at the direction of, or in association with, a criminal gang or criminal gang member with the specific intent to promote, further or assist the activities of the criminal gang; and

(b) The trier of fact finds the allegation to be true beyond a reasonable doubt.

(4) Except in a case of a juvenile who has been waived to adult court pursuant to section 20-508 or 20-509, Idaho Code, the imposition or execution of the sentences provided in this section may not be suspended.

(5) An extended sentence provided in this section shall run consecutively to the sentence provided for the underlying offense.

(6) Unless waived to adult court pursuant to section 20-508 or 20-509, Idaho Code, a juvenile who is adjudicated of any felony or misdemeanor enumerated in section 18-8502(3), Idaho Code, that is knowingly committed for the benefit or at the direction of, or in association with, any criminal gang or criminal gang member shall be sentenced according to the provisions of section 20-520, Idaho Code.

Approved April 5, 2011.

CHAPTER 189  
(H.B. No. 236)

AN ACT

RELATING TO COOPERATIVE SERVICE AGENCIES; AMENDING SECTION 33-317A, IDAHO CODE, TO REVISE PROVISIONS RELATING TO WHEN THE PHYSICAL CONSTRUCTION OF CERTAIN FACILITIES MAY COMMENCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-317A, Idaho Code, be, and the same is hereby amended to read as follows:

33-317A. LEGISLATIVE INTENT -- COOPERATIVE SERVICE AGENCY -- SCHOOL PLANT FACILITY LEVY. (1) For the purpose of constructing and maintaining fa-

cilities of a cooperative service agency, a properly constituted cooperative service agency may request from its member school districts additional funding to be furnished by a tax levy not to exceed four-tenths of one percent (.4%) of market value for assessment purposes in each year, as such valuation existed on December 31, of the previous year, for a period not to exceed three (3) years. Such levy shall be authorized by an election held in each of the school districts pursuant to chapter 4, title 33, Idaho Code. The question of a levy to be submitted to the electors of each member school district and the notice of such election shall state the dollar amount proposed to be collected each year during the period of years in each of which the collection is proposed to be made, the percentage of votes in favor of the proposal which are needed to approve the proposed dollar amount to be collected, and the purposes for which such funds shall be used. Said notice shall be given, the election shall be conducted and the returns canvassed as provided in chapter 4, title 33, Idaho Code; and the dollar amount to be collected shall be approved only if:

(a) Fifty-five percent (55%) of the district electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities of less than two-tenths of one percent (.2%) of market value for assessment purposes as such valuation existed on December 31 of the year immediately preceding the election;

(b) Sixty percent (60%) of the district electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities of two-tenths of one percent (.2%) or more and less than three-tenths of one percent (.3%) of market value for assessment purposes as such valuation existed on December 31 of the year immediately preceding the election; or

(c) Two-thirds ( $2/3$ ) of the district electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities of three-tenths of one percent (.3%) or more of market value for assessment purposes as such valuation existed on December 31 of the year immediately preceding the election.

If the question be approved, each member school district of the cooperative service agency may make a levy, not to exceed four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, in each year for which the collection was approved, sufficient to collect the dollar amount approved and may again submit the question at the expiration of the period of such levy, for the dollar amount to be collected during each year, and the number of years which the board may at that time determine. Or, during the period approved at any such election, if such period be less than three (3) years or the levy be less than four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, the cooperative service agency may request that its member school districts submit to the qualified school district electors in the same manner as before, the question whether the number of years, not to exceed three (3), or the levy, or both, be increased, but not to exceed the maximum herein authorized. If such increase or increases be approved by the electors, the terms of such levy shall be in lieu of those approved in the first instance, but disapproval shall not affect any terms theretofore in effect.

~~(2) No physical construction shall commence on any facility to be financed pursuant to the provisions of this section until the estimated cost of constructing such facility has been collected by the cooperative service agency. Physical construction may commence once moneys equal to the estimated cost of constructing the facility have been collected by the cooperative service agency, except that the cooperative service agency may commence physical construction before moneys equal to one hundred percent (100%) of the estimated cost of constructing the facility have been collected as long~~

as language is included in the instructions to bidders reflecting the following:

(a) Providing notice of the funding method and schedule;

(b) Clearly stating that if all moneys are not collected according to the schedule provided, the contractor may not be paid in a timely manner and such contractor will have to await payment until the necessary moneys are collected, but in no event shall such contractor have to await payment longer than three (3) years from the date of the contractor's last pay request;

(c) Stating that the cooperative service agency accepts no liability and will pay no interest on unpaid balances;

(d) Stating that should an inability to pay occur after the fifty percent (50%) completion point of the project, the contractor must complete the project irrespective of payment status; and

(e) Stating that if an inability to pay occurs before the fifty percent (50%) completion point, the contractor has the option to suspend work, receiving no compensation for delay, and restart the project when funding becomes available.

(3) If one (1) or more of the member districts fails to approve the tax levy in such election, the cooperative service agency may construct the facility through the support of the member districts approving the levy, but in no event shall the levy limits authorized in this section be exceeded.

(4) Nothing shall prevent a member district that initially failed to approve the levy from conducting a subsequent election, held pursuant to chapter 4, title 33, Idaho Code, to authorize that district's participation in construction of the facility.

(5) The administration and accounting of moneys received by imposition of the levy provided for in this section shall be the same as provided in section 33-317(2), Idaho Code.

Approved April 5, 2011.

CHAPTER 190  
(H.B. No. 258)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF LANDS FOR FISCAL YEAR 2011; APPROPRIATING MONEYS TO THE DEPARTMENT OF LANDS FOR FISCAL YEAR 2012; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; EXEMPTING THE FOREST AND RANGE FIRE PROTECTION PROGRAM FROM THE OBJECT TRANSFER LIMITATIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 2, Chapter 194, Laws of 2010, and any other appropriation provided for by law, there is hereby appropriated to the Department of Lands, from the American Reinvestment Fund, the following amounts to be expended for personnel costs for the designated programs for the period July 1, 2010, through June 30, 2011:

I. FOREST RESOURCES MANAGEMENT	\$86,000
II. FOREST AND RANGE FIRE PROTECTION	68,800
TOTAL	\$154,800

SECTION 2. There is hereby appropriated to the Department of Lands, the following amounts to be expended according to the designated programs and

expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
<b>I. SUPPORT SERVICES:</b>					
FROM:					
General					
Fund	\$324,700	\$235,200			\$559,900
Department of Lands					
Fund	407,400	286,700	\$104,800		798,900
Indirect Cost Recovery					
Fund	87,800	128,500			216,300
Endowment Administrative					
Fund	<u>2,313,100</u>	<u>2,498,300</u>	<u>244,600</u>		<u>5,056,000</u>
TOTAL	\$3,133,000	\$3,148,700	\$349,400		\$6,631,100
<b>II. FOREST RESOURCES MANAGEMENT:</b>					
FROM:					
General					
Fund	\$695,600	\$66,300			\$761,900
Department of Lands					
Fund	613,400	340,300			953,700
Indirect Cost Recovery					
Fund	82,800	320,000			402,800
American Reinvestment					
Fund	86,000				86,000
Endowment Administrative					
Fund	8,882,500	5,968,200	\$527,600	\$651,500	16,029,800
Community Forestry					
Fund		20,000		20,000	40,000
Federal Grant					
Fund	<u>314,500</u>	<u>962,700</u>	<u>0</u>	<u>1,306,300</u>	<u>2,583,500</u>
TOTAL	\$10,674,800	\$7,677,500	\$527,600	\$1,977,800	\$20,857,700
<b>III. LAND, RANGE, AND MINERAL RESOURCE MANAGEMENT:</b>					
FROM:					
General					
Fund	\$691,300	\$68,700			\$760,000
Department of Lands					
Fund	247,600	1,144,600			1,392,200
Endowment Administrative					
Fund	<u>1,672,800</u>	<u>1,992,800</u>	<u>\$110,000</u>	<u>\$20,600</u>	<u>3,796,200</u>
TOTAL	\$2,611,700	\$3,206,100	\$110,000	\$20,600	\$5,948,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
IV. FOREST AND RANGE FIRE PROTECTION:					
FROM:					
General					
Fund	\$912,500	\$270,700		\$656,400	\$1,839,600
Department of Lands					
Fund	2,546,600	716,900	\$246,100	858,300	4,367,900
Fire Suppression Deficiency					
Fund	129,500	22,100			151,600
American Reinvestment					
Fund	68,800				68,800
Federal Grant					
Fund	<u>1,042,300</u>	<u>538,500</u>	<u>0</u>	<u>2,059,100</u>	<u>3,639,900</u>
TOTAL	\$4,699,700	\$1,548,200	\$246,100	\$3,573,800	\$10,067,800
V. SCALING PRACTICES:					
FROM:					
Department of Lands					
Fund	\$174,700	\$47,100			\$221,800
GRAND TOTAL	\$21,293,900	\$15,627,600	\$1,233,100	\$5,572,200	\$43,726,800

SECTION 3. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Department of Lands is authorized no more than two hundred fifty-nine and forty-seven hundredths (259.47) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 4. EXEMPTIONS FROM OBJECT TRANSFER LIMITATIONS. For fiscal year 2012, the Department of Lands is hereby exempted from the provisions of Section 67-3511(1) and (3), Idaho Code, allowing unlimited transfers between object codes, for all moneys appropriated from the Forest and Range Fire Protection Program for the period July 1, 2011, through June 30, 2012. Legislative appropriations shall not be transferred from one fund to another fund unless expressly approved by the Legislature.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval.

Approved April 5, 2011.

CHAPTER 191  
(H.B. No. 259)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR FISCAL YEAR 2012; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; APPROPRIATING AND TRANSFERRING MONEYS TO THE GENERAL FUND; APPROPRIATING AND TRANSFERRING MONEYS TO THE ENVIRONMENTAL REMEDIATION FUND; EXPRESSING LEGISLATIVE INTENT REGARDING THE ENVIRONMENTAL REMEDIATION FUND AND REQUIRING AN ANNUAL REPORT; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO USE OF THE WATER POLLUTION CONTROL FUND.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Department of Environmental Quality, the following amounts to be expended according to the designated programs and expense classes, from the listed funds for the period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION AND SUPPORT SERVICES:					
FROM:					
General					
Fund	\$1,365,100	\$1,391,800			\$2,756,900
Air Quality Permitting					
Fund	190,800	188,600	\$14,500		393,900
Public Water System Supervision					
Fund	314,700	49,900	8,700		373,300
Water Pollution Control					
Fund	63,900	20,400	600		84,900
Department of Environmental Quality (Receipts)					
Fund	223,400	97,500	11,100		332,000
American Reinvestment					
Fund		48,700			48,700
Department of Environmental Quality (Federal)					
Fund	<u>1,933,300</u>	<u>1,665,300</u>	<u>98,800</u>		<u>3,697,400</u>
TOTAL	\$4,091,200	\$3,462,200	\$133,700		\$7,687,100

II. AIR QUALITY:

FROM:

General

Fund	\$2,468,400	\$247,600			\$2,716,000
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Air Quality Permitting

Fund	1,041,900	142,700		\$40,000	1,224,600
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Department of Environmental Quality (Receipts)

Fund	255,300	243,000			498,300
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	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
American Reinvestment					
Fund	40,000	200,000			240,000
Department of Environmental Quality (Federal)					
Fund	<u>1,158,900</u>	<u>674,200</u>	<u>\$28,000</u>	<u>41,400</u>	<u>1,902,500</u>
TOTAL	\$4,964,500	\$1,507,500	\$28,000	\$81,400	\$6,581,400
III. WATER QUALITY:					
FROM:					
General					
Fund	\$4,329,000	\$896,200		\$544,800	\$5,770,000
Public Water System Supervision					
Fund	904,400	163,200		336,500	1,404,100
Water Pollution Control					
Fund	520,300	309,500		158,200	988,000
Department of Environmental Quality (Receipts)					
Fund	419,600	158,000		51,600	629,200
Department of Environmental Quality (Federal)					
Fund	<u>3,885,700</u>	<u>1,629,500</u>		<u>2,683,200</u>	<u>8,198,400</u>
TOTAL	\$10,059,000	\$3,156,400		\$3,774,300	\$16,989,700
IV. COEUR D'ALENE BASIN COMMISSION:					
FROM:					
General					
Fund	\$96,200	\$10,200			\$106,400
Environmental Remediation (Basin)					
Fund	61,700	15,500			77,200
Department of Environmental Quality (Federal)					
Fund	<u>14,200</u>	<u>253,400</u>		<u>\$50,000</u>	<u>317,600</u>
TOTAL	\$172,100	\$279,100		\$50,000	\$501,200
V. WASTE MANAGEMENT AND REMEDIATION:					
FROM:					
General					
Fund	\$2,131,800	\$102,700		\$134,600	\$2,369,100
Environmental Remediation (Box)					
Fund	24,900	76,500		150,500	251,900
Environmental Remediation (Basin)					
Fund	78,600	841,600			920,200
Department of Environmental Quality (Receipts)					
Fund	526,400	2,092,100		51,800	2,670,300
American Reinvestment					
Fund	87,500	1,043,000			1,130,500

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Bunker Hill Trust					
Fund	30,000	420,000		250,000	700,000
Department of Environmental Quality (Federal)					
Fund	<u>3,038,500</u>	<u>16,603,400</u>		<u>15,500</u>	<u>19,657,400</u>
TOTAL	\$5,917,700	\$21,179,300		\$602,400	\$27,699,400
VI. IDAHO NATIONAL LABORATORY OVERSIGHT:					
FROM:					
General					
Fund	\$72,300	\$8,700			\$81,000
Department of Environmental Quality (Federal)					
Fund	<u>820,000</u>	<u>468,800</u>	<u>\$30,000</u>	<u>\$596,900</u>	<u>1,915,700</u>
TOTAL	\$892,300	\$477,500	\$30,000	\$596,900	\$1,996,700
GRAND TOTAL	\$26,096,800	\$30,062,000	\$191,700	\$5,105,000	\$61,455,500

SECTION 2. FTP AUTHORIZATION. In accordance with Section 67-3519, Idaho Code, the Department of Environmental Quality is authorized no more than three hundred seventy-six and five-hundredths (376.05) full-time equivalent positions at any point during the period July 1, 2011, through June 30, 2012, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. Notwithstanding the provisions of Section 39-4417, Idaho Code, there is hereby appropriated to the Department of Environmental Quality \$486,700 from the Hazardous Waste Emergency Management Fund to be transferred to the General Fund, on July 1, 2011, or as soon thereafter as practicable for the period July 1, 2011, through June 30, 2012.

SECTION 4. There is hereby appropriated to the Department of Environmental Quality \$1,500,000 from the Water Pollution Control Fund to be transferred to the Environmental Remediation Basin Fund, through monthly installments or as practicable for the period July 1, 2011, through June 30, 2012.

SECTION 5. LEGISLATIVE INTENT. It is the intent of the Legislature that moneys deposited into the Environmental Remediation Basin Fund are to be used for remediation of the Coeur d'Alene Basin in accordance with the superfund contract with the Environmental Protection Agency. The Department of Environmental Quality shall file an annual report with the Governor, the Legislature, and the Coeur d'Alene Basin Environmental Improvement Project Commission on the remediation progress and the expenditures involved.

SECTION 6. LEGISLATIVE INTENT. It is the intent of the Legislature that the appropriation of moneys from the Water Pollution Control Fund in this act specifically supersedes the provisions of Section 39-3630, Idaho Code.

Approved April 5, 2011.