

Executive Agency Legislation Process

Prepared by

Office of the Governor
and
Division of Financial Management
State of Idaho
June 2016

TABLE OF CONTENTS

Introduction	1
An Overview of the Process and Submittal Deadlines.....	2
How a Bill Becomes Law	4
Submitting Ideas	5
Proposal/SOP.....	6
Making Changes to Proposals.....	8
List of Legislative Committees.....	9
The Guide for Fiscal Notes.....	10
Drafting Legislation Text.....	11

INTRODUCTION

This document is designed to assist agencies with the mechanics of drafting legislation.

Proposed agency legislation is reviewed by the Division of Financial Management (DFM) and the Governor's Office to determine consistency with gubernatorial policies and to assess the impact on state agencies and the general public. This review culminates in the development of the executive agency legislation package. Elected officials and legislative and judicial branches of state government are not required to participate in this process.

Following each legislative session, agencies must determine any legislative needs to be addressed in the next Legislature. Assistance in developing legislation is available from DFM, the Governor's Office, and the Legislative Services Office (LSO).

An online Executive Agency Legislative System (EALS) has been developed for agencies to input their Legislative Ideas and Proposals. EALS can be accessed at <http://apps.dfm.idaho.gov/eals>. If you need a user ID and password for the system, click on "To request EALS access" from the main log on page.

IMPORTANT DEADLINES

August 5 - Last day to submit legislative ideas.

September 16 - Last day to submit proposed legislation.

December 5 - Last day for any changes to legislation.

January (2017) - All approved legislation is delivered to the House and Senate.

AN OVERVIEW OF THE PROCESS AND SUBMITTAL DEADLINES

May - August

Ideas can be submitted any time after May 1. The deadline for ideas for proposed legislation is **August 5**.

The online Executive Agency Legislative System will allow you to input your ideas and submit them electronically to DFM.

Ideas for proposed legislation should be reviewed with the Governor's staff, DFM analysts, interested legislators, and affected citizen groups during the summer with assurance given that "***these are tentative ideas and are only in the form of possible recommendations***" Agency legal staff may coordinate with the Attorney General's Office to address possible ramifications and specific issues prior to drafting and introducing legislation.

Agencies should consider, and be prepared to answer, the following questions about all ideas.

- Why is this legislation necessary? What problem is being addressed?
- Can the problem be addressed through administrative action, rulemaking, executive order, etc., without legislation?
- What are the advantages and disadvantages of the proposed legislation? Who will benefit?
- What will happen if the proposed legislation is not introduced or does not pass?
- Which interest groups will support or oppose the proposed legislation?
- Have there been or will there be public hearings or other public involvement?
- Who has been involved in drafting the legislation?
- What other state agencies will be impacted? Have those agencies been consulted?

June - September

DFM will notify agencies of approval or disapproval of ideas via e-mail as they are reviewed. Notification will include the assigned EALS tracking number.

Once ideas are approved, agencies may begin working on proposed legislation. All approved proposed legislation must be submitted to DFM by **September 16**. Proposed legislation is subject to final approval by the Governor's Office.

Language should be kept as simple as possible (i.e., legislation will be read and re-read by several individuals who must readily come to an agreement on what that legislation specifies. The less complicated and easy to understand the proposed legislation is, the better its chances of passage).

When submitted, each proposal will include the following:

- **The Statement of Purpose** – a concise statement describing the purpose of the proposed legislation. See page 6 instructions.
- **Fiscal Note** – an estimate of the amount of revenue or expenditure (for all funds) the legislative proposal would incur if enacted. See page 6 for instructions.

- **The Legislation Text** – a proposed amendment to the *Idaho Code*, or an addition to the *Idaho Code*. Make sure to attach your final version, no drafts or works in progress. See detailed information beginning on page 11 regarding drafting legislation text.

September - December

The Governor’s staff and DFM analysts review all proposed legislation submitted in EALS. Upon final approval, DFM submits the proposals to the Legislative Services Office.

The Legislative Services Office reviews and drafts each proposal in bill format with an assigned Routing Slip (RS) number (an identification number used by the Legislative Services Office while the document is in proposal stages). Proposed legislation is identified by this RS number until it is introduced and receives a House or Senate Bill number.

DFM receives an RS packet from the Legislative Services Office and forwards the agency a copy of the legislation for review. The agency may make changes to the legislation or approve it.

All approved RS packets will be posted on the DFM website.

January

The agency’s preferred house of origin and committee are noted on the outside of each RS packet, along with an agency contact and phone number. During the first week of the session, all executive branch agency legislation that has been assigned an RS is delivered to the appropriate committee in the House of Representatives or the Senate.

The agency’s designated contact person will be notified by a committee secretary (House or Senate) to appear before the committee when the proposed legislation is under consideration.



IMPORTANT REMINDER IF YOU ARE ASKED TO ASSIST

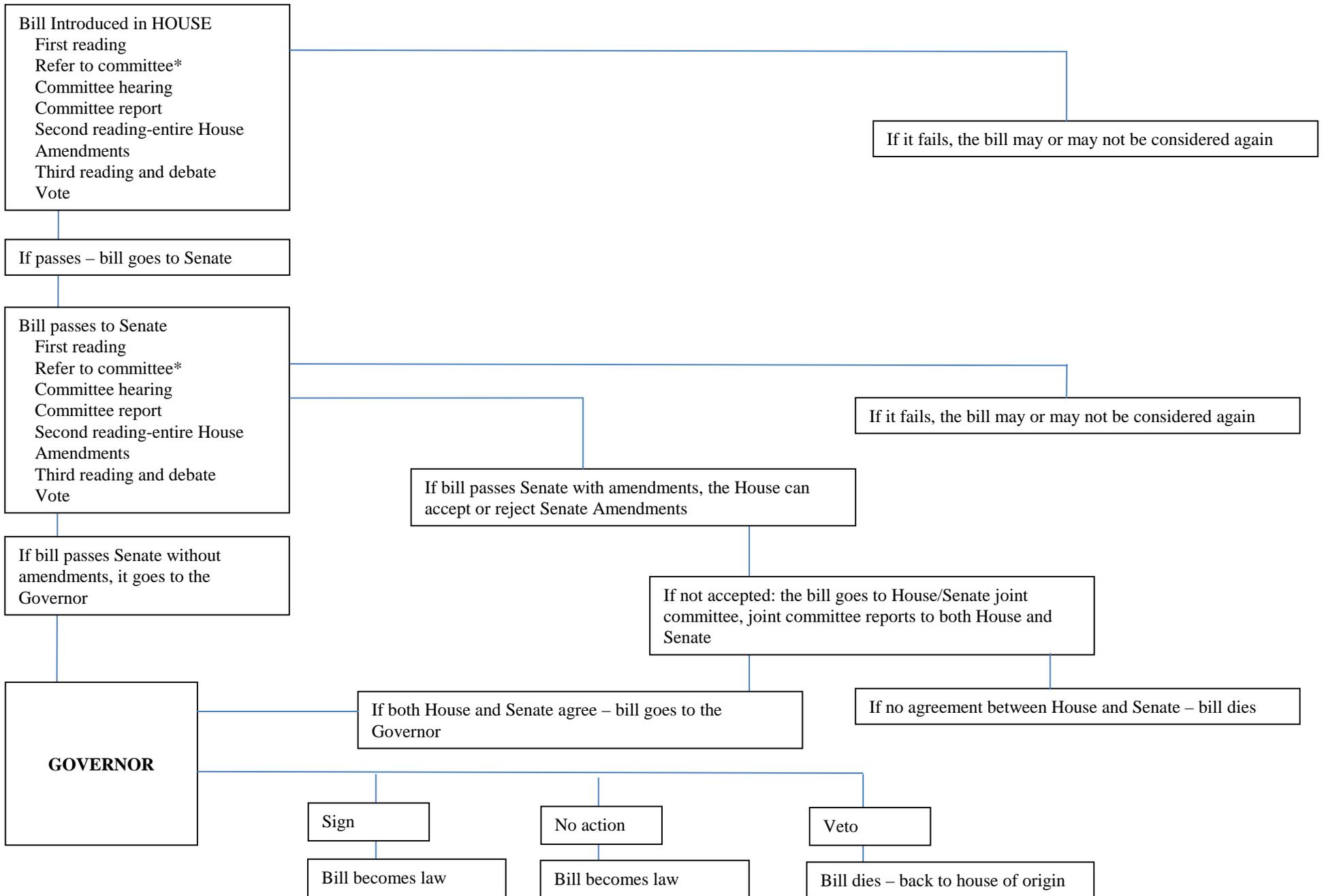
Agency personnel may be asked to assist in drafting, or to testify on, legislation. To ensure agency actions are consistent with the Governor’s positions, agencies are required to notify their DFM analyst and special assistant in the Governor’s Office with the following information: *(Note: This notification is not necessary for agency legislation that has gone through EALS and was approved.)*

- Name of legislator or interest group representative requesting assistance in drafting or testifying on legislation.
- Bill number and supporting documentation. If the proposal does not have a bill number, provide subject matter, agencies/programs affected, agency contact person, and fiscal impact.

HOW A BILL BECOMES A LAW

This example begins with an introduction in the House.

A bill introduced in the Senate would follow the same steps except that the House and Senate action would be reversed.



*Rule suspension is allowed. A bill does not necessarily have to be referred to committee, but may continue on to next reading.

SUBMITTING IDEAS

Ideas for proposed legislation must be submitted to DFM for review with the Governor's Office. A Legislation Idea Submittal Form has been designed to aid in the review process. The form can be accessed by the online EALS program. Please make sure that it is filled out completely.

The screenshot shows a web browser window with the URL <http://apps.dfm.idaho.gov/eals/EALSM>. The page has a navigation bar with 'Idea', 'Proposal SOP', and 'Reports' tabs. Below the navigation bar, there is a 'Logoff' link. The main content area is titled 'Idea' and contains the following sections:

- EALS# STATUS**: Includes a dropdown menu for 'EALS #' (currently set to '-New Idea-'), a 'Status:' field, and 'DFM Analyst:' and 'Special Assist.:' fields.
- BASIC IDEA INFORMATION**: Includes a 'Title:' field, a checkbox for 'Has this or a similar idea been submitted in the past three years?', and a field for 'Please enter the year and bill#:'.
- CONTACTS**: Includes two contact entries, each with a dropdown menu for '-Select-', a '+' button, and fields for 'Phone:' and 'Email:'.
- COMMENTARY**: Includes two text areas for 'Brief description of legislative idea and how it will "solve the problem":' and 'Fiscal impact of legislative idea:'.

At the bottom of the form, there are three buttons: 'Save Idea', 'Delete Idea', and 'Submit Idea'. A red box highlights the 'EALS #' dropdown menu with the text: 'To create an Idea select the down arrow and select -New Idea-'.

This Legislation Idea Submittal Form is not a submittal of proposed legislation. The purpose is to advise the Governor and DFM of agency concerns.

No proposed legislation will be processed unless a Legislation Idea Submittal form has been submitted and approved.

Ideas submitted after the August deadline, including the following legislative session, must have the approval of the Governor's Office before submission to DFM.

PROPOSAL/SOP

Once an idea has been approved, fill out the Proposal/SOP form and submit the proposed legislation to DFM for review with the Governor's Office. The form can be accessed by the online EALS program. Please make sure that it is filled out completely.

Please make sure when you submit your proposal to DFM it is the final version – not a draft.

Each agency is required to **identify a preferred house of origin and committee**. A list of legislative committees can be found on page 9. The DFM analyst can help determine committee selection if the agency is unsure.

A **Statement of Purpose** is a brief description of the purpose of the legislation proposal – it should answer the question "What is this legislation trying to accomplish?" The Statement of Purpose must be written exactly as it will appear on the attachment to the actual bill.

A **Fiscal Note** is a statement estimating the amount of revenue or expenditure (all funds) the proposed legislation would incur.

A fiscal note must be written exactly as it will appear on the attachment to the actual bill. A fiscal note must be precise and include impacts for all funds. Use of such terms as "minimal" or "undetermined" are inadequate and will be rejected.

Be sure to give your agency's fiscal officer all information pertaining to proposed legislation that affects your agency's operating budget (revenue, expenditure, or both). This information must be shown in the agency budget request.

A copy of the SOP/FN will be returned to agencies along with the RS legislation for review. When agencies approve the RS document they should also approve their SOP/FN. *Changes made to the RS may also affect the SOP/FN, remember to update that information if necessary.*

MAKING CHANGES TO PROPOSALS

After the Legislative Services Office processes an agency's proposed legislation and assigns it an RS number, DFM receives an RS packet from the Legislative Services Office and forwards to the agency a copy of their legislation for review. The agency may make changes to the legislation or approve it.

If changes are desired, a timely response is critical. ***Constant changes and delays are not acceptable.***

If agencies choose to make changes to their legislation, they must edit a copy of the version with a RS. **DO NOT RETYPE THE RS.** The Legislative Services Office needs to be able to identify where changes have been made to avoid having to retype the entire document. The Legislative Services Office has the original on its computer system and only needs to enter the applicable changes.

Agencies need to make sure the SOP/FN information is updated (if necessary) when changes are made to an RS.

Changes start the process over (i.e., DFM delivers the proposal to the Legislative Services Office, LSO makes the changes and deliver to DFM, DFM delivers to agency for approval). The agency should keep this in mind when making changes and allow for the necessary review and process time.

All transactions with the Legislative Services Office must go through DFM for tracking purposes. If you have a question or special situation, please call DFM.

SENATE COMMITTEES

Agricultural Affairs
Commerce and Human Resources
Education
Finance*
Health and Welfare
Judiciary and Rules*
Local Government and Taxation
Resources and Environment
State Affairs*
Transportation

HOUSE COMMITTEES

Agricultural Affairs
Appropriations*
Business
Commerce and Human Resources
Education*
Environment, Energy and Technology
Health and Welfare
Judiciary, Rules and Administration
Local Government
Resources and Conservation
Revenue and Taxation*
State Affairs*
Transportation and Defense
Ways and Means*

* Privileged Committees

Idaho Legislature GUIDE FOR FISCAL NOTES

JOINT RULE 18: Statement of Purpose and Fiscal Notes. No bill shall be introduced in either House unless it shall have attached thereto a concise statement of purpose and fiscal note. The contact person for the statement of purpose and fiscal note shall be identified on the document. No bill making an appropriation, increasing or decreasing existing appropriations, or requiring a future appropriation, or increasing or decreasing revenues of the state or any unit of local government, or requiring a significant expenditure of funds by the state or a unit of local government, shall be introduced unless it shall have attached thereto a fiscal note. This note shall contain an estimate of the amount of such appropriation, expenditure or change under the bill. The fiscal note shall identify a full fiscal year's impact of the legislation. Statements of purpose and fiscal notes may be combined in the same statement. All statements of purpose and fiscal notes shall be reviewed for compliance with this rule by the committee to which the bill is assigned. A member may challenge the sufficiency of a statement of purpose or fiscal note at any time prior to passage, except upon introduction.

1. The contact person must be included on the statement of purpose and fiscal note. While not required by Joint Rule 18, listing the telephone number for the contact person is helpful.
2. The fiscal note should address the impact to the General Fund in dollar terms, not exclusively in statements of general economic benefit. If there is no impact to the General Fund, then the note should so state this.
3. The note should address the fiscal impact on any other state fund or expenditure, not just the General Fund or General Fund programs.
4. Remember, Joint Rule 18 applies to fiscal impacts on local government as well.
5. The note should identify the fiscal impact of at least one full fiscal year (not calendar year), and care should be given to understanding the fiscal impact of legislation that is phased in or has changing requirements over more than one fiscal year.
6. Fiscal impacts should be concise - not exceed one page and may be included on the same page as the statement of purpose - and address the total fiscal impact of the legislation, not just the mathematics of the changes, e.g. a fiscal impact that changes the grocery credit from \$15 to \$30 for an estimated 500,000 income tax filers should state: "Fiscal Impact to state General Fund revenues is an estimated loss of \$7,500,000 from individual income tax collections for FY 2011," as opposed to a statement like, "an additional credit of \$15 per filer would benefit 500,000 filers by doubling their refund of sales tax paid on groceries, which amounts to another \$300 worth of groceries that could be purchased tax free."
7. Fiscal notes should identify the source of revenues or funds affected, e.g. corporate income tax, cigarette tax, mine license tax, etc., (or) Department of Commerce - Tourism Promotion Fund, etc. Referencing only the fund is often not sufficient to identify the tax or fee source that is impacted.
8. The committee to which the bill is assigned will review the statement of purpose and fiscal note to be sure that they meet the above requirements.

DRAFTING TEXT OF PROPOSED LEGISLATION

The Legislative Services Office has drafters available during the summer months (June, July, and August) to review legislation in preparation for the October submittal date.

All legislation should have:

- A centered heading;
- A title in capital letters listing each Code section amended, added, or repealed with a brief description of the change;
- An enacting clause;
- A section or sections.

Writing a Title:

The title must agree with the body of the bill.

Titles are printed in ALL CAPS. *Except if the section of the Code being amended contains a lower-case letter (63-302a), be sure the letter does not get capitalized.*

All sections of the *Code* or *Session Laws* being amended must be referenced in the title.

Phrases pertaining to one section should be set off by commas and a semicolon should punctuate the material between sections.

Do not use the double number system –twenty (20) years – in the title.

The word "striking" or "deleting" should be used to indicate material that is to be deleted from the *Code*.

If there is an effective date, emergency clause, severability, etc., in the body, be sure this information is included in the title.

Amending the Code:

If an agency plans to amend the *Idaho Code*, the Legislative Services Office can provide double- or triple-spaced copies of existing statutes or the agency can photocopy the section that needs amending. **DO NOT RETYPE THE CODE. Sections of the *Idaho Code* can also be downloaded from the Internet at <http://www.legislature.idaho.gov/>.** If you need several sections for amendment, please contact LSO and they will download them for you. Please contact Jackie Gunn (jgunn@lso.idaho.gov) to get the download. If the changes are extensive, mark the copy with "Insert 1" (or something similar) and type out the changes on a separate piece of paper labeled "Insert 1." If a major overhaul of the existing statute is required, call the Legislative Services Office for help determining the best way to proceed.

Always check the pocket supplement in the back of the *Code* first to make sure the most recent version of the section is being amended.

Material to be deleted should be struck through with a single line through each word (include punctuation which is to be deleted).

There should be a new section of the bill for each *Code* section amended, added or repealed.

If you are making changes to consecutive sections of Code, you must make sure that all changes are included in ONE PIECE OF LEGISLATION. The only exception to this might be if a certain section contained a controversial fiscal impact that might affect passage of the entire bill.

Asterisks in the *Code* are to be ignored.

Italics in the *Code* should be treated as regular printing.

Adding a New Section to the Code:

If the legislation adds a new section to the existing *Code*, the number must follow one already in the *Code*. Do not use a number currently used in the *Code*.

Proposed legislation must be clear and understandable in and of itself, so that "Legislative Intent" is not necessary.

A heading or subtitle should be provided (in capital letters) for each new *Code* number.

Using the Laws of Other States:

Often, another state already has a law similar to what an agency is proposing. A copy of that law may be used as an edit copy. Be sure to incorporate all changes necessary to make the edit conform to Idaho law.

Phrases Used in Drafting Legislation:

- **Introductory clauses:**

For an Act: Be It Enacted by the Legislature of the State of Idaho:

For a Resolution: Be It Resolved by the Legislature of the State of Idaho:

For a Senate Joint Memorial: We, your Memorialists, the Senate and the House of Representatives of the State of Idaho assembled in the _____ Regular Session of the _____ Idaho Legislature, do hereby respectfully represent that:

For a House Joint Memorial: We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the _____ Regular Session of the _____ Idaho Legislature, do hereby respectfully represent that:

- **To add a section:**

That Chapter __, Title __, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section __, Idaho Code, and to read as follows:

- **To amend a section:**

That Section __, Idaho Code, be, and the same is hereby amended to read as follows:

- **To repeal a section:**

That Section __, Idaho Code, be, and the same is hereby repealed.

- **Severability clause:**

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 portion of this act.

- **Effective date:**

This act shall be in full force and effect on and after _____.

Legislation will become effective July 1 following the legislative session unless an emergency clause or other specification exists in the bill.

- **Emergency clause:**

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.

Emergency clauses have been overused; avoid them whenever possible, however, keep this clause in mind for retroactive action.

- **Retroactive effective date clause:**

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, 2012.

General Suggestions

- When drafting legislation, remember that long sentences require greater thought; short ones are more easily read. Use a single word instead of a phrase when the same meaning can be expressed.
- Use punctuation sparingly and only to clarify a thought.
- Use common words that everyone will understand.
- Statutory usage requires lower case whenever possible. The Legislative Services Office has a standing rule that only the word Idaho is capped. Please do not ask the Legislative Services Office to make exceptions to this rule.
- The singular *always* includes plural.
- The masculine *always* includes feminine.
- Use the present tense of a verb rather than the future tense. Statutes should speak in the present tense.

Example: "THIS ACT APPLIES" rather than "This act shall apply."

- Avoid using "SUCH," "SAID," "AFORESAID," "DULY," "RESPECTIVELY." These clutter up sentences and do not clarify.
- "SHALL" is used to impose an enforceable duty and is generally mandatory.
- "MAY" is used to grant permission and is usually permissive.
- "IF" is usually better than "WHEREVER."
- "ANY" is usually more accurate than "EVERY."
- Never use "AND/OR." It has no definite meaning.

"AND" is a conjunction. If the legislative intent is that all requirements be fulfilled, where one or more requirements occur, then you should use "and."

"OR" is a disjunction. If the fulfillment of any one of several requirements is sufficient then the use of the disjunction "or" makes it clear.

- Spell out figures with letters together with figures (*except in a title*).

Example: "FIVE HUNDRED DOLLARS (\$500)."

- The position of a section may change by amendment or revision. Avoid using the words "HEREINAFTER," "HEREINBEFORE," "PRECEDING," or "FOLLOWING." It is better to refer to a section by its number.
- Use the word "DATE" not "time" when referring to a specific date.