STATE OF IDAHO

Executive Agency Legislation Process

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INTRODUCTION

All legislation an agency is involved in must be reviewed and approved by the Governor's Office to determine consistency with gubernatorial policies and to assess the impact on state agencies and the public. All legislation bearing an agency name, or agency employee name, needs to go through the executive legislation process.

Following each legislative session, agencies should determine legislative needs to be addressed in the next legislative session. Please follow the 2020 Agency Legislation Priorities when determining needs. The agency is required to submit a legislative sponsor for each approved legislative proposal.

Agencies use the Executive Agency Legislative System (EALS) to input their legislative ideas and proposals: http://apps.dfm.idaho.gov/eals. To receive a user ID and password for the system, click "To request EALS access."

DFM and the Governor's Office may help develop legislation if needed. The Legislative Services Office (LSO) may help with technical questions such as formatting. Elected officials and legislative and judicial branches are exempt from this process.

2020 - Agency Legislation Priorities

- **Red Tape Reduction Legislation**: Similar to rules review during 2019, the Governor has requested that agencies do a red tape review of legislation within your agency's subject area. **Each agency shall submit a legislative idea that seeks to eliminate outdated or unnecessary provisions within your area of Idaho Code**. While we recognize cleaning up obsolete and unneeded statutes will be a multi-year effort, please begin the process this year and submit one omnibus legislative idea per agency to eliminate obsolete code.

- **Licensing Freedom Act Legislation**: As part of the LFA, agencies identified more than 240 recommendations to eliminate barriers to entry or renewal of licenses, enhance portability and mobility, or otherwise remove restrictions on Idahoans. Agencies should move forward with those recommendations that require legislation as part of the 2020 submission.

- **Legislation to Advance Governor's Priories.** Last year, each agency submitted key objectives outlining how their organization will advance the Governor's priorities. Legislation necessary to advance these key objectives is encouraged.

DEADLINES

Activity	Deadline
Last Day to Preview Idea with Governor Office Contact and DFM Analyst	June 12, 2020
Last Day to Submit Legislative Ideas	July 10, 2020
Last Day to Submit Proposed Legislation (If Idea is Approved)	August 14, 2020
Last Day to Submit Legislative Sponsor (If Proposed Legislation is Approved)	December 11, 2020

PROCESS

May - July

Ideas may be submitted any time after May 1. If you have a legislative idea you are working on, you must schedule a meeting with your Governor's Office contact and DFM analyst **prior to submitting** the legislative idea form. This is especially important for those ideas that would impact the state General Fund, add regulatory burdens, require new rulemaking, or would likely receive opposition from stakeholders. These meetings must occur by **June 12**.

The deadline for ideas for proposed legislation is **July 10**. Use the online EALS program to input ideas and submit them electronically to DFM.

Ideas for proposed legislation should be reviewed with the Governor's Office, DFM, 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.

The later ideas are submitted, the tighter the turnaround will be to get them approved and proposals drafted, so it is best to submit early, if possible.

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?
- What will the impact be to local governments?

July - August

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

Once ideas are approved, agencies may begin working on proposed legislation. All proposed legislation for approved ideas must be submitted to DFM by **August 14**. The Governor's Office gives final approval of proposed legislation.

Language should be kept as simple as possible. Legislation will be read by several individuals who must readily come to an agreement on what the 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:

- **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 and page 8 for additional information.

- **Legislation Text**: a proposed amendment or addition to Idaho Code. See information beginning on page 13 regarding drafting legislation text.

A submitted proposal should be the final version, not a draft or work in progress.

August - October

DFM and the Governor's Office review all proposed legislation submitted in EALS. Upon final approval, DFM delivers proposals to LSO for bill drafting.

October - December

LSO reviews and drafts each proposal in bill format with an assigned Routing Slip (RS) number (an identification number used by LSO while the document is in the proposal stage). 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 LSO and forwards the agency a copy of the legislation for review. The agency may make changes to the legislation or approve it.

December 11th is the last day to submit legislative sponsors for approved legislative proposals to DFM.

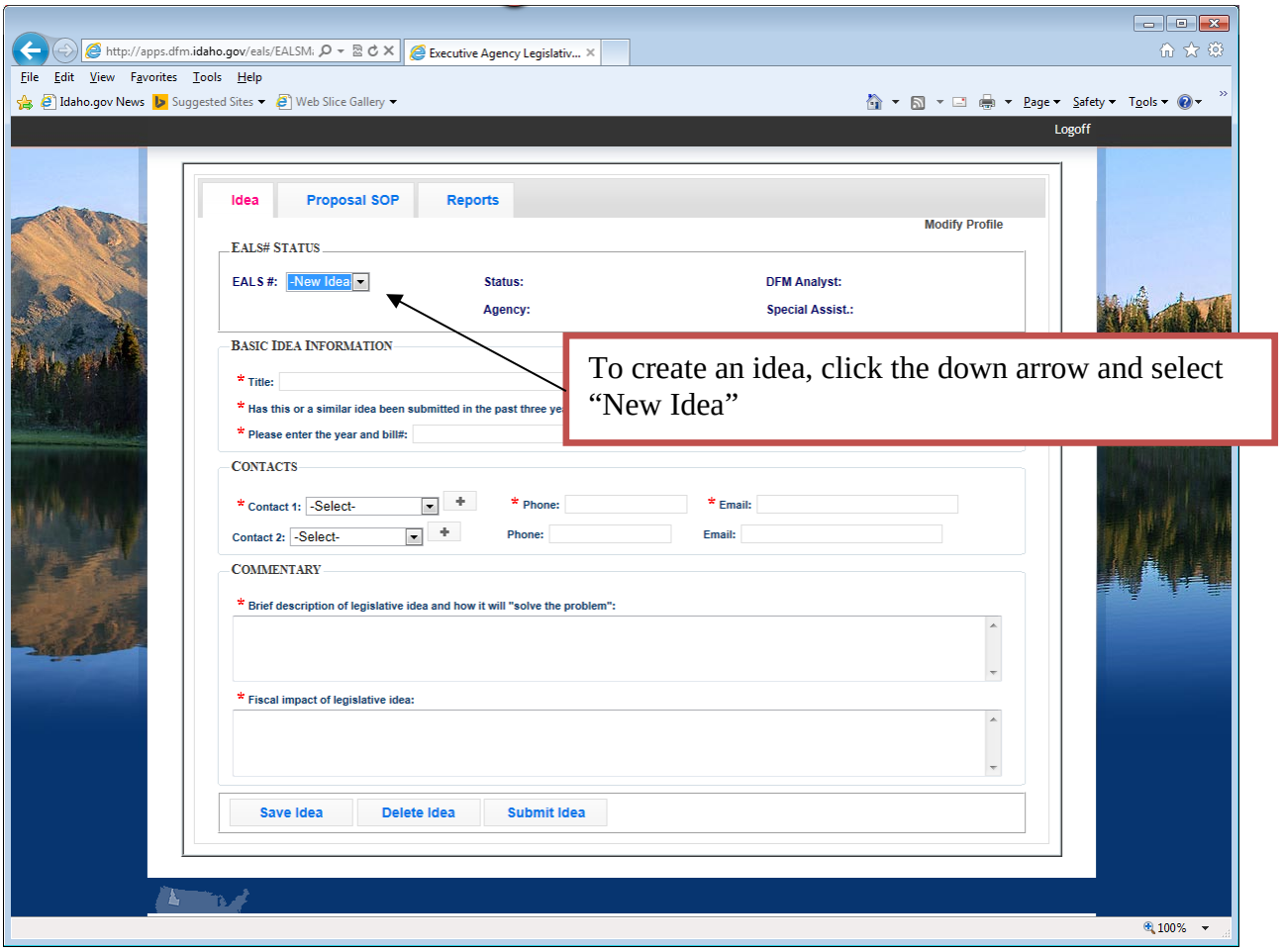
January

DFM writes the agency's preferred house of origin and committee on the outside of each RS packet, along with agency contact information. 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 or Senate.

The agency's designated contact person will be notified by a House or Senate committee secretary to appear before a committee when the proposed legislation is under consideration. If legislation is mistakenly scheduled for introduction in a committee other than the one the agency requested, contact DFM to get the legislation to the correct committee.

SUBMITTING IDEAS

Ideas for proposed legislation must be submitted to DFM for review. 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 fill it out completely.

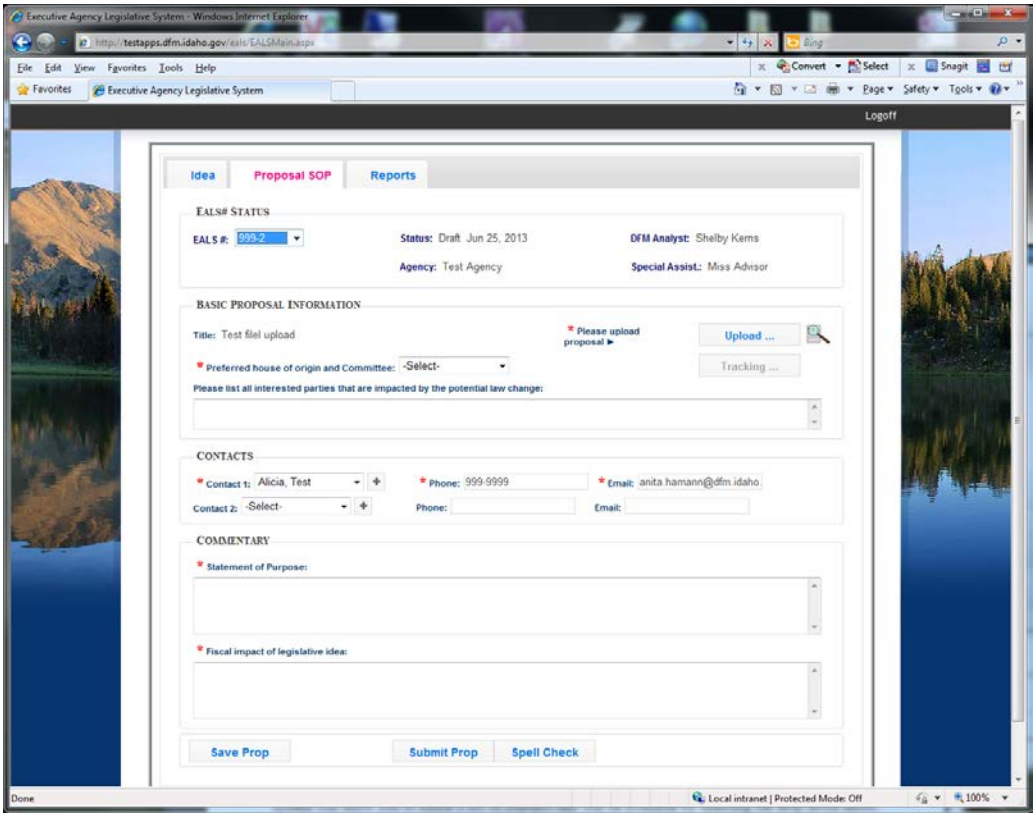


This legislation idea submittal form is not a submittal of proposed legislation. The purpose is to give DFM and the Governor's Office an overview of the legislation's impact.

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

SUBMITTING PROPOSALS, SOPS, FISCAL NOTES

Once an idea has been approved, fill out the Proposal/SOP form and submit the proposed legislation to DFM for review. The form can be accessed by the online EALS program. Please fill it out completely.



All proposals, Statements of Purpose (SOPs), and Fiscal Notes need to be the final version, not drafts.

Each agency is required to identify a preferred house of origin and committee. A list of legislative committees can be found on page 12. DFM can help determine committee selection if an agency is unsure.

An SOP is a brief description of the purpose of the legislation proposal. It should answer the question, "What is this legislation trying to accomplish?" The SOP must be written exactly as it will appear on the attachment to the actual bill.

If text is copied and pasted from Word or another program, please fix the resulting formatting errors in the EALS form. The program “Notepad” works well for copying and pasting text into EALS.

A Fiscal Note is a statement estimating the amount of revenue or expenditure (all funds). It 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 returned to the agency for editing.

If the Fiscal Note states there is no projected fiscal impact, then the Fiscal Note must contain a statement of the reasons why.

Do not include the SOP and Fiscal Note in the legislation text that you will attach; only write it in the online EALS Proposal/SOP form.

Multiple sections of code may be included in one proposal with breaks between sections. See “Amending the Code” on page 14 for more information.

Avoid using special characters in legislation file names when attaching proposals in EALS.

Agencies should proofread SOPs and Fiscal Notes for accuracy, typos, and other errors. LSO does not edit SOPs and Fiscal Notes. If SOPs and Fiscal Notes in EALS are returned to an agency for edits, be sure to click “Save” and then “Submit” in EALS when resubmitting edited items.

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 and Fiscal Note will be returned to agencies along with the RS legislation for review. When agencies approve the RS document they should also approve the SOP and Fiscal Note. Changes made to the RS may also affect the SOP and Fiscal Note. Remember to update that information if necessary.

All legislation bearing an agency or agency employee name needs to go through the executive legislation process.

Proposals submitted after the deadline, including during the legislative session, must have Governor’s Office approval before submission to DFM.

SAMPLE General Format for Proposed Language

Proposals submitted after the deadline, including during the legislative session, must have Governor’s Office approval before submission to DFM.

99-9999. Sample Section 1:

(a) When drafting the text of your proposed legislation use ~~strikethrough and blue text formatting for any language you are removing.~~ When you are adding language use red text.

FISCAL NOTES GUIDE

Idaho Joint Rule 18

Statement of Purpose and Fiscal Notes — General Provisions. — 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. Statements of purpose and fiscal notes may be combined in the same statement.

Statement of Purpose. — (a) The statement of purpose applies only to a bill as introduced, and does not necessarily reflect any amendment to the bill that may be adopted. All statements of purpose shall be reviewed for compliance with this rule by the committee to which the bill is assigned, excepting that any review is subject to Joint Rule 18(e).

Fiscal Notes. — (b) The fiscal note applies only to a bill as introduced, and does not necessarily reflect any amendment to the bill that may be adopted. The fiscal note shall reasonably contain the proponent's full fiscal year projected increase or decrease in existing or future appropriations, and/or the increase or decrease in revenues by the state or unit(s) of local government. The bill's proponent bears the responsibility to provide a reasonably accurate fiscal note. If the fiscal note states there is no projected fiscal impact, then the fiscal note must contain a statement of the reasons that no fiscal impact is projected. All fiscal notes shall be reviewed for compliance with this rule by the committee to which the bill is assigned, excepting that any compliance review is subject to Joint Rule 18(e). A member of the committee may challenge the sufficiency of a fiscal note at any time prior to the committee's final action on the bill.

Additional Information

- The contact person must be included on the SOP and Fiscal Note. The person listed as "Contact 1" in EALS will be the one shown on the SOP and Fiscal Note.

- 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, the Fiscal Note should state why.

- The Fiscal Note should address the fiscal impact on any other fund or expenditure, not just the General Fund or General Fund programs.

- Joint Rule 18 applies to fiscal impacts on local government as well.

- The Fiscal 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.

- Fiscal impacts should be concise. They should not exceed one page and should be included on the same page as the Statement of Purpose if length allows. They should address the total fiscal impact of the legislation, not just the mathematics of the changes, i.e., 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."

- Fiscal Notes should identify the source of revenues or funds affected, i.e., 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.

- If the Fiscal Note states there is no projected fiscal impact, then the Fiscal Note must contain a statement of the reasons that no fiscal impact is projected.

- The committee to which the bill is assigned will review the SOP and Fiscal Note to be sure they meet these requirements.

Sample: Fiscal Note Check List Used by Committees During the 2020 Legislative Session

☐ Have you stated the projected increase/decrease for a full fiscal year in existing or future appropriations for the State?

☐ Have you stated the projected increase/decrease in revenues for the State?

☐ Is there a fiscal impact to units of local governments (cities, counties etc.), whether positive or negative?

☐ If so, have you included the increase or decrease in your FN?

☐ If you are indicating there is no fiscal impact to either the State and/or units of local governments, have you explained why? <u>The term “no fiscal impact” is insufficient and does not comply with Joint Rule 18 unless further explanation is provided.</u>

MAKING CHANGES TO PROPOSALS

After LSO processes proposed legislation and assigns it an RS number, DFM receives an RS packet from LSO and forwards it to the agency for review. The agency may make changes to the legislation or approve it.

If changes are desired, the agency should make and send them as quickly as possible.

If the agency chooses to make changes to the legislation, the RS legislation should be used. Edits need to be written in red ink, scanned, and emailed to DFM. The same is true for the SOP and Fiscal Note. Do not retype the RS, SOP, or Fiscal Note. Both LSO and DFM need to be able to identify where changes have been made to avoid having to retype the entire document.

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

When changes are made, the process starts over—DFM delivers the proposal to LSO; LSO makes the changes and delivers to DFM; DFM sends to agency for approval. The agency should keep this in mind when making changes and allow for the necessary review and process time.

All interactions with LSO at this point in the process should go through DFM for tracking purposes. Contact DFM if questions arise.

WORKING WITH THE LEGISLATURE

Legislation that has been approved through EALS has already been vetted by the Governor's Office with the expectation that agencies present, testify in support of, and work for the passage of these bills. Keep your Governor's Office contact and DFM analyst informed on meetings and hearings regarding executive agency legislation.

Non-executive branch legislation

In some cases, it may be appropriate for agencies to testify on bills that are not executive agency legislation. Prior written (including by email) approval from your Governor's office contact is required in order to testify.

Fiscal Notes

All legislation must bear a fiscal note that explains the impact of the bill on revenue or expenditures. If an agency impacted by legislation disagrees with a fiscal note, please contact your DFM analyst to identify an appropriate course of action.

LEGISLATIVE COMMITTEES LIST

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

DRAFTING LEGISLATION

All legislation should be the final version and should be as clean as possible when it is submitted.

Please refer to LSO's Legislation Drafting Manual for drafting questions: https://legislature.idaho.gov/wp-content/uploads/research/draftingmanual.pdf. Below are highlights from the manual.

All legislation should have:

- A centered heading;
- A title in capital letters listing each Idaho 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 unless the section of Code being amended contains a lower-case letter, i.e., 63-302a.

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, i.e., 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 Idaho Code, sections of Code can be downloaded from the internet at https://legislature.idaho.gov/statutesrules/idstat/. Code is not updated with new language from the previous legislative session until July 1 of each year. 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.

If problems with downloading arise, contact Lara Disney at LSO (ldisney@lso.idaho.gov) for help with 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." Do not use “track changes” for a major overhaul. If a major overhaul of the existing statute is required, contact LSO for help determining the best way to proceed.

Material to be deleted should be stricken 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 making changes to consecutive sections of Code, be sure that all changes are included in one piece of legislation. An exception to this might be if a certain section contains a controversial fiscal impact that might affect passage of the entire bill.

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

Another state may have 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. Laws from other states often do not follow the same formatting as Idaho law, and those formatting changes need to be made before legislation is submitted.

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 when possible, but keep them 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, 2020.

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. The Oxford Comma is not used in legislation.
- Use common words that everyone will understand.
- Statutory usage requires lower case whenever possible. LSO has a standing rule that only the word Idaho is capitalized. Please do not ask LSO 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.

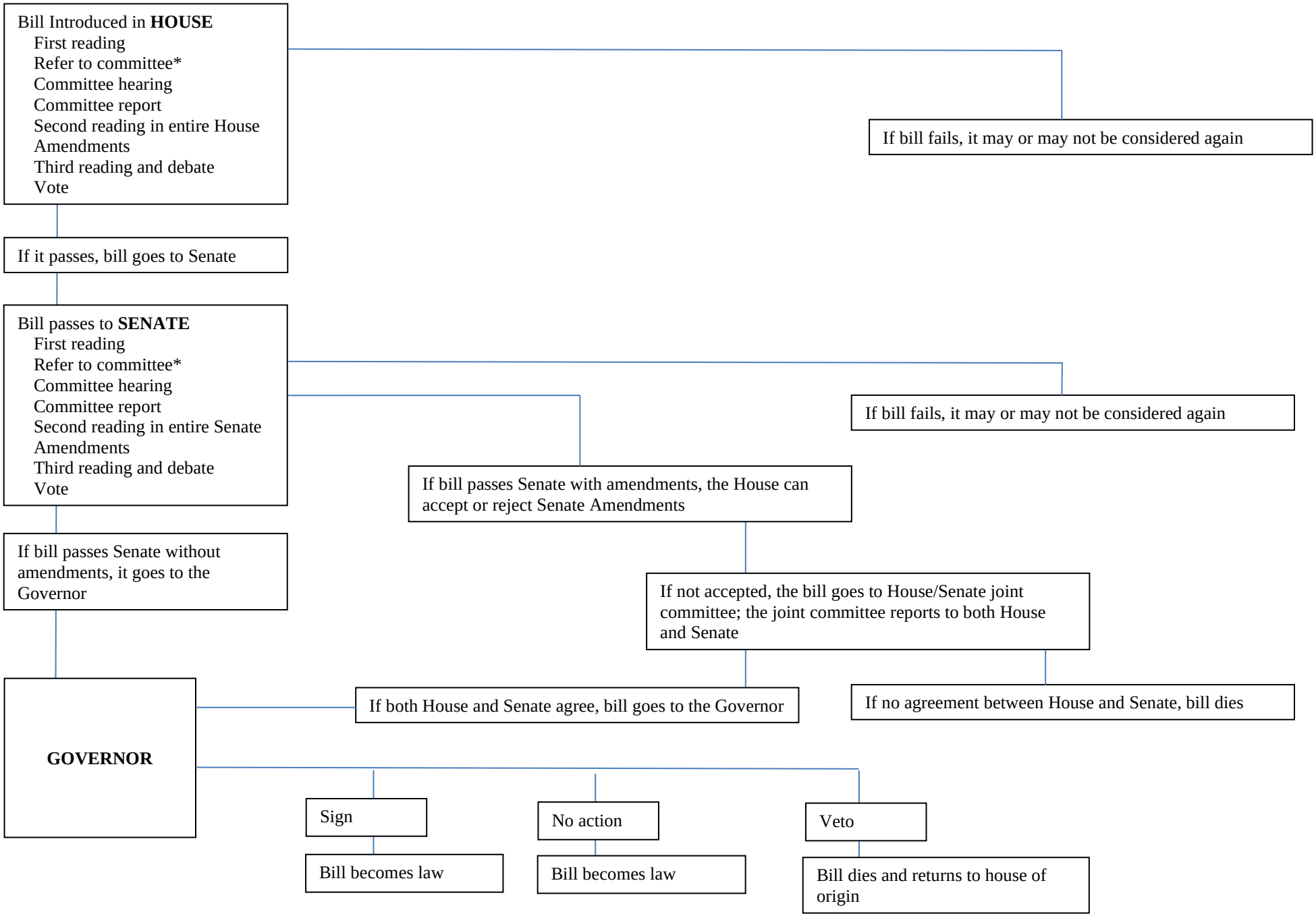
  "AND" is a conjunction. If the legislative intent is that all requirements be fulfilled, where one or more requirements occur, then you should use "and."

  "OR" is a disjunction. If the fulfillment of any one of several requirements is sufficient then 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," "FOLLOWING," "BELOW," and "ABOVE." Instead, refer to a section by its number.
- Use the word "DATE" not "time" when referring to a specific date.

HOW A BILL BECOMES A LAW

This example begins with an introduction in the House. A bill introduced in the Senate follows the same steps, but the House and Senate actions are reversed.



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