



# IDAHO SOIL & WATER CONSERVATION COMMISSION

## REGULAR MEETING NOTICE & AGENDA

Idaho Soil & Water Conservation Commission  
February 17, 2020, 1:00 p.m. to 5:00 p.m. MT

Location: Idaho Water Center, 322 E Front St, Suite 560, Conference Room, Boise  
TELECONFERENCE # 1-877-820-7831 Passcode: 922837

Members of the public may address any item on the Agenda during consideration of that item. Those wishing to comment on any agenda item are requested to so indicate on the sign-in sheet in advance. Copies of agenda items, staff reports and/or written documentation relating to items of business on the agenda are on file in the office of the Idaho Soil & Water Conservation Commission in Boise. Upon request, copies can be emailed and will also be available for review at the meeting.

The Commission will occasionally convene in Executive Session, pursuant to Idaho Code § 74-206(1). Executive Session is closed to the public.

### AMERICANS WITH DISABILITIES ACT COMPLIANCE

The meeting will be held in facilities that meet the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations to attend, participate in, or understand the meeting, please contact the Idaho Soil & Water Conservation Commission at (208) 332-1790 or [Info@swc.idaho.gov](mailto:Info@swc.idaho.gov) so advance arrangements can be made.

1.	<b>WELCOME, SELF-INTRODUCTIONS, AND ROLL CALL</b>	Chairman Wright
2.	<b>PARTNER REPORTS (for information only)</b>	
* 3.	<b>AGENDA REVIEW (potential action item)</b> The Agenda may be amended by formal Board action, if necessary, at the meeting. If so, a motion that states the reason for the amendment and the good faith reason the item was not included in the original agenda will be made and approved by the Board.	Chairman Wright
<b>ACTION ITEMS</b>		
4.	<b>ADMINISTRATIVE</b>	
*# a.	<b>MINUTES</b> 1. January 13, 2020 <u>ACTION:</u> Approve	Chairman Wright
* b.	<b>FINANCIAL REPORT</b> 1. Financial Reports for the month ended January 31 <u>ACTION:</u> Approve	Young
* c.	<b>APPOINTMENT OF BOARD LIAISON TO IDAHO ASSOCIATION OF SOIL CONSERVATION DISTRICT MEETINGS</b> <u>ACTION:</u> Appoint Commissioner to attend IASCD Board meetings with staff	Chairman Wright

*#	d.	<b>ADMINISTRATOR'S REPORT</b> <ul style="list-style-type: none"> <li>• Activities</li> <li>• Update on State Level Memorandum of Agreement (MOA) and Conservation Cooperator Acknowledgement with NRCS and Districts</li> <li>• Payment of 2020 National Association of State Conservation Agencies dues</li> <li>• 2020 Legislative Session Update</li> <li>• Comment provided on the Environmental and Historic Report for the abandonment of approximately 0.64 mile of rail line on the Old Butte Main Line at Idaho Falls, Bonneville County</li> <li>• FY 2020 Commission Meeting Schedule</li> </ul> <p><u>ACTION:</u> Approve payment of NASCA 2020 dues</p>	Murrison
*#	e.	<b>OMNIBUS RULEMAKING PROCESS</b> <ul style="list-style-type: none"> <li>• Update on rule status</li> <li>• Review of Memorandum from DFM dated January 31, 2020</li> <li>• Notice of Omnibus Rulemaking - Adoption of Temporary Rule</li> </ul> <p><u>ACTION:</u></p> <p>“Pursuant to Section 67-5226, Idaho Code, the Governor has found that temporary adoption of this rule is appropriate to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens.</p> <p>These rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws.</p> <p>The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.</p> <p>The Governor has also found that the fee(s) or charge(s) being imposed or increased is/are justified and necessary to avoid immediate danger to the agency/department/board/commission’s budget, to the state budget, to necessary state functions and services, and to avoid immediate danger of a potential violation of Idaho’s constitutional requirement that it balance its budget.</p> <p>Therefore, we are adopting this temporary rule to be effective upon <i>sine die</i> of the 2020 session of the Idaho Legislature. The approval is conditional and will only become effective if the rules are not otherwise approved or rejected by the Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act, including sections 67-5291 and 67-5292, Idaho Code.”</p>	Dalzell
<b>NON-ACTION ITEMS</b>			
#	5.	<b>BOARD TRAINING</b> <ul style="list-style-type: none"> <li>• Public Records</li> <li>• Open Meetings</li> <li>• Ethics in Government</li> </ul> <p><u>ACTION:</u> None, for information only</p>	Chapple Knowlton
	6.	<b>OTHER REPORTS</b> <p><u>ACTION:</u> None, for information only</p>	Commissioners, Staff

<b>POSSIBLE ACTION ITEMS</b>		
7.	<p><b>EXECUTIVE SESSION</b> <i>Executive Session is closed to the public. Under the relevant Idaho Code Section(s) noted below, any Board action will be taken publicly in open session directly following Executive Session.</i></p> <p><u>ACTION:</u> Move to enter Executive Session pursuant to Idaho Codes § 74-206(1)(b) for employee review and § 74-206(1)(f) for the purpose of discussing pending litigation, or controversies not yet being litigated but imminently likely to be litigated with legal counsel.</p> <p><u>Roll Call Vote</u></p>	Chairman Wright
a.	<p><b>EMPLOYEE REVIEW</b></p> <p>The Commission will conduct an employee evaluation.</p> <p><u>ACTION:</u> For information and possible action.</p>	Chairman Wright
b.	<p><b>PENDING LITIGATION</b></p> <p>The Commission will discuss pending or imminent litigation with legal counsel.</p> <p><u>ACTION:</u> For information and possible action to direct legal counsel to act in pending or imminent litigation.</p>	Chapple Knowlton
<b>ADJOURN</b>		
<p><i>The next Regular Commission Meeting will be on April 9, 2020, at 10:00 AM MT in Boise, Idaho.</i></p>		Chairman Wright

IDAHO SOIL & WATER CONSERVATION COMMISSION  
PUBLIC MEETING & TELECONFERENCE

**Date and Time:**

Monday, January 13, 2020  
11:59 AM – 3:09 PM MT

**Location:**

322 E. Front St., Suite 560  
Boise, Idaho 83702

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**Draft** MINUTES

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**COMMISSION MEMBERS PRESENT:**

Norman Wright (Chair)  
Erik Olson (Secretary)

Cathy Roemer (Vice-Chair)  
Jerry Trebesch

**COMMISSION STAFF PRESENT:**

Teri Murrison  
Corrine Dalzell  
Delwyne Trefz

Crystal Rosen  
Jill Young

**PARTNERS AND GUESTS PRESENT:**

Matt Woodard, IASCD  
Mike Sommerville, IASCD  
Curtis Elke, NRCS  
Bas Hargrove, TNC  
Clinton Aston, Franklin SWCD (teleconference)  
Shantel Chapple Knowlton, Office of the Attorney General

Tom Daniel, IASCD  
Richard Kunau, IASCD  
Robbie Taylor, IDEA  
Brad Johnson, TNC (teleconference)

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**ITEM #1: WELCOME AND ROLL CALL**

Chairman Wright called the meeting to order at 11:59 a.m.

Roll call: Chairman Norman Wright, Commissioners Cathy Roemer, Jerry Trebesch and Erik Olson were present.

**ITEM #2: PARTNER REPORTS**

Action: None taken

**ITEM #3a: AGENDA REVIEW**

Action: None taken.

**ITEM #4a: MINUTES**

Action: Commissioner Olson made a motion to *approve the December 12, 2019 Regular Meeting minutes as submitted*. Commissioner Trebesch seconded the motion. Motion carried by unanimous vote.

**ITEM #4b: FINANCIAL REPORTS**

Action: Commissioner Roemer made a motion to *approve the Financial Reports for the month ended December 31, 2019*. Commissioner Olson seconded the motion. Motion carried by unanimous vote.

**ITEM #4c: ADMINISTRATOR'S REPORT**

Action: Commissioner Olson made a motion to *approve the State Level MOA as presented*. Commissioner Roemer seconded the motion. Motion carried by unanimous vote.

Action: Commissioner Wright made a motion to *authorize the Administrator to sign the State Level MOA and Conservation Cooperator Acknowledgements with small or insubstantial changes*. Commissioner Olson seconded the motion. Motion carried by unanimous vote.

**ITEM #4d: SEPERATING ADMINISTRATOR'S CADIDACY FOR PUBLIC OFFICE FROM OFFICIAL DUTIES**

Action: Commissioner Roemer made a motion to *formally adopt the measures to separate Administrator's candidacy for public office from official duties as presented*. Commissioner Trebesch seconded the motion. Motion carried by unanimous vote.

**ITEM #5: OTHER REPORTS**

Action: None taken

**ITEM #6: EXECUTIVE SESSION**

Action: Commissioner Roemer made a motion to *enter Executive Session pursuant to Idaho Code § 74-206(1)(b) for employee review and Idaho Code § 74-206(1)(f) for the purpose of discussing pending litigation or controversies not yet being litigated but imminently likely to be litigated with legal counsel*. Commissioner Olson seconded the motion. Motion carried by unanimous roll call vote.

Executive Session commenced at 2:10 PM.

Executive Session ended at 3:06 PM.

No action was taken.

**ITEM #7: OPEN SESSION and ADJOURN**

The meeting was adjourned at 3:09 PM. The next Commission Meeting will be held on February 17, 2020, at 1:00 PM in Boise.

Respectfully submitted,

Erik Olson, Secretary

DRAFT

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**TO: CHAIRMAN WRIGHT AND COMMISSIONERS ROEMER, OLSON, TREBESCH, AND PRATT**  
**FROM: JILL YOUNG, SENIOR FINANCIAL SPECIALIST**  
**DATE: FEBRUARY 3, 2020**  
**RE: FINANCIAL REPORTS, FISCAL MATTERS**

**FINANCIAL REPORTS**

The monthly Financial Report and the monthly Fund Summary Report for the month ending January 31, 2020 will be available at your meeting on February 17, 2020. They are not accompanying this meeting agenda, because the statewide financial reports needed to compile our board meeting reports will not be available until February 6, 2020. I will email copies of the internally generated reports when I have finished building them.

**COMMISSIONER HONORARIUMS**

Below is a schedule of the honorarium balances as of January 31, 2019. The amounts include your January honorariums that will be paid out on February 7. Included in the schedule are the days and amounts budgeted for each Commissioner for FY20. We are in good standing with the travel budget for Commissioners as we have spent 48.2% of the honorarium allocation and 34.9% of the operating allocation to date.

Commissioner	Days Budgeted/ Traveled to Date	Benefit Costs included in Honorariums	Honorariums Budgeted	Expended to Date	Projected Balance/ (Overage)
Wright	30 / 19	\$132	\$1,632	\$1,122	\$511
Roemer	20 / 9	\$88	\$1,088	\$509	\$579
Trebesch	10 / 6	\$44	\$544	\$323	\$221
Pratt	20 / 0	\$88	\$1,088	\$0	\$1,088
Olson	20 / 12	\$88	\$1,088	\$671	\$418
Totals		\$442	\$5,442	\$2,624	\$2,817

RECOMMENDED ACTION: Approve financial reports

Attachments will be provided at meeting

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**SOIL & WATER  
CONSERVATION  
COMMISSION**

H. Norman Wright  
Chairman

Cathy Roemer  
Vice Chairman

Erik Olson  
Secretary

Gerald Trebesch  
Commissioner

Wendy Pratt  
Commissioner

Teri Murrison  
Administrator

**MEMO**

**TO: CHAIRMAN WRIGHT AND COMMISSIONERS ROEMER,  
TREBESCH, AND OLSON**  
**FROM: TERI MURRISON, ADMINISTRATOR**  
**DATE: FEBRUARY 5, 2020**  
**RE: ADMINISTRATOR'S REPORT**

**Activities**

Prior to your next meeting, I will have engaged in the following activities:

- Presided over Idaho Environmental Forum Board meetings, 2020 Legislative Forecast, and attended INL Forum
- Attended meeting on Ag Land Preservation with Merrill Beyeler
- Made FY 2021 Recommended Budget presentation to JFAC, attend Feb. 14<sup>th</sup> budget setting
- Prepared FY 2019 Performance Measure hearing presentation (delayed hearing – to be scheduled)
- Attended Senate Ag Committee Rules presentation, responded to questions, Rule approved, schedule confirmation for Commissioner Pratt on Feb. 18<sup>th</sup>
- Attended Food Producers' meeting, FFA Luncheon, met with John Robison on collaborative processes in Forest Stewardship project
- Attend University of Idaho Rinker Rock Creek Ranch Research presentation

**Update on State Level Memorandum of Agreement (MOA) and Conservation Cooperator Acknowledgement with NRCS and Districts**

Curtis Elke may attend your meeting to give an update on progress.

**Payment of 2020 National Association of State Conservation Agencies (NASCA) Dues**

As you know, NASCA represents us at the national level much the same as the National Association of Conservation Districts serves districts. NASCA is our voice in the national partnership with NRCS and has been helpful in assisting state agencies and those they serve.

Shana Joy, of the Washington Commission, has assumed my duties as Pacific Director of NASCA. As a general member, I will no longer attend the annual Board retreat in May, but plan to attend the annual conference in September which will be held in Spokane this year. Subsequent to Board discussion at a prior meeting, I am working to coordinate a Tri-State Conservation Agency Summit either right before or after the NASCA conference. Board members will be able to attend one day of NASCA in addition to the Summit. Details will follow as available.

Attached is Executive Director Mike Brown’s letter and invoice requesting payment of Idaho’s 2019 NASCA dues for your consideration. We have budgeted for their payment.

**Comment provided on the Environmental and Historic Report for the abandonment of approximately 0.64 mile of rail line on the Old Butte Main Line at Idaho Falls, Bonneville County**

We received a letter from Robert A. Wimbish, attorney for Eastern Idaho Railroad, L.L.C. regarding Docket No. AB-1252 (Sub-No. 1X) Eastern Idaho Railroad, L.L.C. – Abandonment Exemption – In Bonneville County, Idaho. He asked that we assist with identifying any potential effects to Prime Agricultural Land or natural resource conservation activities. Brian Reed, Commission WQRC, consulted with the East and West Side Districts staff and the NRCS. He was told by all three that no Prime Agricultural land or natural resource conservation activities will be impacted by the proposed abandonment. I have so advised Mr. Wimbish. Should anyone care to review the documents, they are available by request.

**2020 Legislative Session Update**

To date, staff has made presentations before JFAC (the FY 2021 Governor’s Recommended Budget), and the Senate Agricultural Affairs Committee (the Omnibus Rules, approved unanimously). A hearing has not been scheduled before the House Agricultural Affairs Committee (for the Omnibus Rules).

The Chairman of House Ag requested a presentation on FY 2019’s Performance Measures to be held on January 20<sup>th</sup>, but LATER canceled it. That hearing will be rescheduled when it’s convenient to the Committee.

There is some confusion about whether or not staff will make an additional annual report to House Ag (typically the content of our annual report is the same as what is to be presented in the performance measurements hearing). If we are requested to make an additional presentation, we will show the video on our Sagebrush Landscape Restoration efforts.

By statute, the Commission is only required to report annually to the Senate and House Ag Committees, however, we typically also present before three other committees to inform the maximum number of legislators on our programs. This year, due to the press of business for Rule considerations, it may not be possible (or advisable) to ask to appear before the other committees. We’ll check with the Committees and be sensitive to time constraints.

Finally, our JFAC budget setting hearing will take place on the morning of February 17<sup>th</sup>. Staff will give an update on the outcome at your meeting.

**FY 2020 Commission Meeting Schedule** The following is the current Meeting Schedule for FY 2020. As always, we will make changes in the schedule as the Board directs.

<b>Date &amp; Time</b>	<b>Meeting, Location</b>	<b>Meeting Type</b>
April 9, 2020, 10 am – 3 pm, MT	Regular meeting, 322 E. Front Street, Suite 560, Boise	In person

May 14, 2020, 10 am – 3 pm, MT	Regular meeting, 322 E. Front Street, Suite 560, Boise	In person
June 11, 2020, 10 am – 3 pm, MT and TBD (Joint Meeting with IASCD Board)	Regular meeting, 322 E. Front Street, Suite 560, Boise Special Joint Board Meeting with IASCD, location and time TBD	In person  In person

**REQUESTED ACTION:** Approve payment of 2020 NASCA Dues

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ITEM #4d

January 6, 2020

Teri Murrison  
State of Idaho  
Soil and Water Conservation Commission  
PO Box 83720  
Boise, ID 83702

RECEIVED  
JAN 09 2020  
IDAHO SOIL & WATER  
CONSERVATION COMMISSION

Dear Teri Murrison,

NASCA members realize a tremendous value as a result of their participation with the organization. Through exposure to their counterparts from all over the country, the NASCA network facilitates information exchange between all of our members. Using membership dues, our association is able to provide tools and resources utilizing this network, enhancing every state's capacity to deliver conservation effectively and efficiently. This benefit alone is a valuable return on investment for member state agencies.

NASCA asks that you support the organization in two ways: the first is financially by paying 2020 NASCA dues; and secondly by actively participating in the organization. NASCA provides a number of services to its membership, and each of these is enhanced when more members get involved. A few examples are explained in detail at [nascanet.org/about-us/benefits](http://nascanet.org/about-us/benefits). Please feel free to contact me on my mobile (302)270-8624 or at [mike-brown@nascanet.org](mailto:mike-brown@nascanet.org) at any time to discuss current NASCA activities and what issues are most critical to your state. I believe NASCA best serves its members when we are engaged in those conservation issues of key concern to our membership, so your feedback is critical to our success.

Thank you again for supporting NASCA. I look forward to another prosperous year in 2020 and working closely with as many of our member states as possible!

Sincerely,



Mike Brown  
NASCA Executive Director



RECEIVED

JAN 09 2020

SOIL & WATER  
CONSERVATION COMMISSION

# INVOICE

Bill to:	Invoice #	Date
State of Idaho Soil and Water Conservation Commission PO Box 83720 Boise, ID 83702	2020-112	2020-01-06

Description	Amount
NASCA Annual Membership Services 2020	\$3,000

**Thank You!**

Partial Payments are welcome

NASCA's Tax ID#: 52-1316337

Checks Payable to NASCA

Please send member contact updates to the address below or email to Mike Brown  
[nascanet.org/nasca-contact-updates/](http://nascanet.org/nasca-contact-updates/)

Contact:

Mike Brown

[mike-brown@nascanet.org](mailto:mike-brown@nascanet.org)

(302) 270-8624

P.O. Box 211

Hartly, DE 19953

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**SOIL & WATER  
CONSERVATION  
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Teri Murrison  
Administrator

**MEMO**

**TO: CHAIRMAN WRIGHT AND COMMISSIONERS ROEMER, TREBESCH, OLSON AND PRATT**  
**FROM: CORRINE DALZELL, RULES REVIEW OFFICER**  
**DATE: FEBRUARY 7, 2020**  
**RE: RCRDP RULEMAKING UPDATE, DOCKET # 60-0501-1901**

On January 21, 2020, I presented our docket to the Senate Agricultural Affairs Committee. The committee voted to pass our docket. (Minutes not yet available.) To date, we have not been scheduled to present to the House Agricultural Affairs Committee.

On January 31, I received the attached memorandum from DFM that lays out the process of preparing Administrative Rules for Post – *Sine Die*. A copy of the memo is attached.

As directed by DFM, we are presenting the attached Notice of Omnibus Rulemaking – Adoption of Temporary Rule for your authorization. The deadline to submit this notice to DFM is February 21, 2020.

**REQUESTED ACTION:**

Motion should be made as follows: “Pursuant to Section 67-5226, Idaho Code, the Governor has found that temporary adoption of this rule is appropriate to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens.

These rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws.

The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

The Governor has also found that the fee(s) or charge(s) being imposed or increased is/are justified and necessary to avoid immediate danger to the agency/department/board/commission’s budget, to the state budget, to necessary state functions and services, and to avoid immediate danger of a potential violation of Idaho’s constitutional requirement that it balance its budget.

Therefore, we are adopting this temporary rule to be effective upon *sine die* of the 2020 session of the Idaho Legislature. The approval is conditional and will only become effective if the rules are not otherwise approved or rejected by the Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act, including sections 67-5291 and 67-5292, Idaho Code.”

**ATTACHMENTS:**

- DFM Memorandum dated 01/31/2020
- Notice of Omnibus Rulemaking – Adoption of Temporary Rule



State of Idaho  
DIVISION OF FINANCIAL MANAGEMENT  
Executive Office of the Governor

January 31, 2020

**MEMORANDUM**

TO: Executive Branch Agency/Department Heads  
Rules Review Officers

FROM: Alex J. Adams 

SUBJECT: Preparing Administrative Rules for Post-*Sine Die*

In order to ensure the continuity of administrative rules following the adjournment of the 2020 Legislative session, this memo outlines the process that agencies will need to complete prior to **February 21<sup>st</sup>**. While each agency must take these steps now, these temporary rules are conditional and will only become effective at *sine die* if the pending rules are not otherwise approved or rejected by the Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act, including sections 67-5291 and 67-5292, Idaho Code.

1. Agencies must submit a completed Notice of Adoption of Temporary Rule form to DFM by February 21.
  - A template Notice is enclosed for both fee and non-fee rules.
  - Rules should be adopted as submitted to the 2020 Legislature with the following conditions:
    - a. If your agency had an omnibus docket and separate rulemaking actions, they will be combined by DFM into a **single** omnibus docket.
  - No ARRF will be required.
  - Please submit completed Notices to Adam Latham ([Adam.Latham@dfm.idaho.gov](mailto:Adam.Latham@dfm.idaho.gov))
2. If rulemaking authority is vested in a board or commission – not agency staff – the board or commission must convene to properly authorize the Notice. This is required by law. Please work closely with your attorney to ensure the Notice is properly authorized.
  - The meeting must be scheduled in a timeframe to submit a completed Notice to DFM prior to the February 21 deadline.
  - The motion should be made as follows:

“Pursuant to Section 67-5226, Idaho Code, the Governor has found that temporary adoption of this rule is appropriate to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens.

These rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws.

The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

**(Include if a fee rule)** The Governor has also found that the fee(s) or charge(s) being imposed or increased is/are justified and necessary to avoid immediate danger to the agency/department/board/commission’s budget, to the state budget, to necessary state functions and services, and to avoid immediate danger of a potential violation of Idaho’s constitutional requirement that it balance its budget.

Therefore, we are adopting this temporary rule to be effective upon *sine die* of the 2020 session of the Idaho Legislature. The approval is conditional and will only become effective if the rules are not otherwise approved or rejected by the Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act, including sections 67-5291 and 67-5292, Idaho Code.”

3. DFM will publish those notices of temporary rulemaking at or shortly after *sine die* with the rules having an effective date as of *sine die*.
4. For these temporary rules only, agencies do not have to accept written comments pursuant to 67-5222(a) as its requirement and deadline applies to “publication of the notice of *proposed* rulemaking in the bulletin” (emphasis added). Of course, these are the same rules that each agency accepted public comments on and held over 150 public hearings on during the summer and fall of 2019.
5. Each agency must keep all records of this rulemaking process for at least two (2) years pursuant to Idaho Code § 67-5225. Please ensure the record is thorough and complete.

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# IDAPA 60 – IDAHO STATE SOIL AND WATER CONSERVATION COMMISSION

DOCKET NO. 60-0000-2000F

## NOTICE OF OMNIBUS RULEMAKING - ADOPTION OF TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the temporary rule(s) being adopted through this omnibus rulemaking is upon the adjournment date of the second regular session of the 65<sup>th</sup> Idaho State Legislature (sine die).

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 22-2718, 22-2727 and 22-2730, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This temporary rule adopts the following chapter(s) under IDAPA 60:

- \*60.05.01, *Rules of the Idaho State Soil and Water Conservation Commission (\*New Chapter)*

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These temporary rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee(s) or charge(s) being imposed or increased is justified and necessary to avoid immediate danger and the fee(s) is described herein:

This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Rule 60.05.01.102.05 states, “[t]he applicant is required to cover all costs incurred for loan closure, title insurance, and recording fees.”

The following is a specific description of the fees or charges: Rule 60.05.01.103 states that the Commission may require additional title insurance to protect against intervening materialman’s liens should the borrower choose to begin installing practices prior to the loan being approved and the conditions of approval being met.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Corrine Dalzell, Rules Review Officer, (208) 332-1792.

DATED this 14<sup>th</sup> day of February, 2020.

Corrine Dalzell  
Rules Review Officer  
Idaho Soil & Water Conservation Commission  
322 E. Front St., Suite 560  
P.O. Box 83720  
Boise, ID 83720-0083  
Phone: (208) 332-1792  
Fax: (208) 332-1799

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**PUBLIC RECORDS LAW**

IDAHO CODE § § 74-101 THROUGH 74-126

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1

**WHEN DOES IT APPLY?**

Applies to all state or local public agencies  
 A Public Record includes, but is not limited to any writing that: (1) contains information relating to the conduct or administration of the public's business and (2) is prepared, owned, used, or retained by any state or local agency.

- A writing includes typewritten or handwritten documents, pictures, maps, tapes, magnetic or punched cards and computer media
- Includes handwritten notes taken during commission meetings
- Includes emails and text messages
- Includes documents maintained on personal devices

Rule of thumb: unless expressly exempted it is likely subject to a public records request.

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2

**RIGHT TO EXAMINE**

Every person has a right to examine and take a copy of any public record of the state at all reasonable times.

Custodian of record: person having custody and control of the records in question. [Must designate at least one].

- Cannot refuse access to records by contracting with nongovernment entity to perform duties
- Duty to protect integrity of records and prevent alteration.

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**DISCLOSURE EXEMPTIONS**

- Personnel Records: shall not be disclosed without the employees written consent except: employment history, classification, pay grade and step, longevity, gross salary and salary history, bonus packages, severance, ssn, driver's license #, status, workplace and employing agency.
- Records of personal debt filed with a public agency pursuant to law.
- Trade secrets, production records, financing record, mortgage portfolio loan documents, or similar business records of a private concern.
- Records otherwise exempt under federal or state law (Section 1619)
- Disclosing/selling list of persons for purpose of mailing and telephone list prohibited (§1,000 civil penalty for bad faith violation)

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4

**SECTION 1619 OF THE FARM BILL  
7 U.S.C. § 8791**

- Prohibits the USDA and cooperators from disclosing:
  - "information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself in order to participate in programs of the Department" or
  - geospatial information maintained by the USDA about agricultural land or operations based on the above information.
- Payment information and name and address of recipient are not confidential and are subject to disclosure.
- May release statistical information that does not identify individual owner or producer or the specific data gathering site.
- If information is received by the Commission from NRCS or from agricultural producer/owner in order to participate in a program involving NRCS or the Department of Agriculture then 1619 applies.

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**PROCEDURE WHEN RECEIVING  
REQUEST**

- Once Request comes in ISWCC has **three (3)** working days to grant or deny request.
  - May be extended to ten 10 days if records are difficult to locate upon notice to requester
  - If fail to respond, request is deemed denied
- If request denied in whole or part, person legally responsible for administering public agency shall notify requester in writing stating:
  - Statutory authority for the denial and a period for appeal
  - State that the attorney for the agency reviewed the request or that the agency had to opportunity to consult with an attorney and chose not to.
- ISWCC is required to and does have a public records policy.
  - All requests should be made on the provided form and to the Public Records Coordinator.
  - If you receive a request **DO NOT ANSWER IT**, please refer it to the Coordinator.

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**COURT ACTION/PENALTIES**

Denial may be appealed within 180 days from date of mailing the notice of denial

- Agency must keep all documents subject to appeal until decision rendered or as otherwise provided by statute, whichever is longer.
- If a court finds the request or the denial to be frivolous, it may award costs and attorney fees to the prevailing party.

**Additional Penalties**

- If court finds denial was made deliberately and in bad faith may assess civil penalty against official not to exceed \$1,000
- Immune from liability if official acted in good faith

**In short: ask attorney to review request before denying it.**

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**HOW LONG DO I HAVE TO KEEP RECORDS?**

- Refer to ISWCC Record Retention Policy/Schedule
- Common Records
  - Correspondence (includes emails) - After Completion +3 years
  - Working papers (drafts, notes) - As long as administratively valuable
  - GIS with research value and cartographic records - permanent
  - Contract files - After Completion + 3 years
  - Crop Production and Acreage Records - As long as administratively valuable or 3 years
  - Reports and Studies to be reported to outside agency or public
    - Final Report – permanent
    - working papers, background documentation and drafts - After Completion +3 years.

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**SECURING DOCUMENTS**

- ISWCC and employees have a duty to keep certain information secure (Section 1619 Information, Personal Identifying Information)
- Records containing such information need to be securely stored and transmitted (not on Personal Devices)
- Access to such records should be restricted to necessary employees.
- File Name/Identification-useful to include an indication of confidentiality to help avoid inadvertent disclosure

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**OPEN MEETINGS LAW**

IDAHO CODE §§ 74-201 THROUGH 74-208

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**WHEN DO OPEN MEETING LAWS APPLY?**

All meetings of a governing body of a public agency.

- "governing body": members of a public agency, with two or more members, with authority to make decisions for or recommendations to a public agency regarding any matter.
- "Public agency" includes any state board, commission, department or agency created by statute except the judiciary.
- "meeting": convening of a governing body to make a decision or to deliberate toward a decision on any matter.

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**IS THIS A MEETING?**

Is there a quorum (a majority of the Commission)?

- Should not try to evade public meeting requirements by holding smaller meetings or using a "go-between."

Is the Board making a decision or deliberating?

- Decision: any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required
- Deliberation: the receipt or exchange of information or opinion relating to a decision.
  - Does not include informal or impromptu discussions of a general nature.
  - If unsolicited information is received by the governing body identity and description of information should be disclosed at the public meeting if it is to be considered in rendering a decision.

Meeting can be formal, informal, or social  
If in doubt, hold a public meeting

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**TYPES OF MEETINGS**

- Regular Meeting: convening of a governing body of a public agency on the date fixed by law or rule to conduct the business of the agency.
- Special Meeting: convening of the governing body of a public agency pursuant to a special call for the conduct of business as specified in the call.

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**NOTICE REQUIREMENTS**

Regular Meeting: 5 calendar days' meeting notice, 48 hour agenda notice.

Special Meeting/Executive Session Only: 24 hours' meeting and agenda notice unless emergency.

Notice and Agenda must be posted in prominent place at principal office of the public agency and electronically if entity maintains an online presence through "a website or a social media platform."

Meeting notice must state the meeting date, time, place, and name of agency

Agenda

- Sets forth the purpose of the meeting and the items of business.
- Must make a good faith effort to include all items known to be probable items of discussion.
- Items requiring a vote must be labeled "Action Items."

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**AMENDING AGENDA**

- May be amended by posting amended agenda at least 48 hours before regular meeting or 24 hours before special meeting
- May be amended at meeting upon (1) motion stating the reason for amendment and good faith reason the agenda item was not included in the original agenda, (2) vote adopting the amendment, and (3) record of motion and vote in meeting minutes.
- Final Action may not be taken on item added at meeting unless "an emergency is declared" and reflected in minutes.
  - An emergency is a situation involving injury or damage to person or property or when notice requirements would make such notice impracticable or increase likelihood or severity of injury.

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### OPEN MEETING REQUIREMENTS

- Must be open to the public and all persons shall be permitted to attend.
  - May adopt reasonable rules and regulations to ensure orderly conduct at meeting.
  - Cannot make it practically impossible for the public to be present.
  - Not required to allow public comment.
- No decision may be made by secret ballot.
- Meeting shall not be held at any public place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced.
- Teleconference allowed if:
- At least one member of governing body or the chief administrative officer is physically present at the meeting location.
  - Communication among members of governing body audible to public attending meeting in person and to other members.

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### EXECUTIVE (CLOSED) SESSION

- Procedure
- Motion stating specific statutory subsection authorizing executive session and a roll call vote with 2/3 majority recorded in the minutes.
- Under Idaho Code § 74-206, Executive Session may be held for:
- Hiring, evaluation, dismissal or disciplining of specific employee;
  - Acquire interest in real property not owned by public agency;
  - Consider records exempt from public disclosure;
  - Preliminary trade negotiations involving trade or commerce where governing body is in competition with governing bodies in other states or nations;
  - Communicate with legal counsel to discuss pending litigation or imminent litigation;
  - Communicate with risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed; or
  - Labor negotiations
- Violation to discuss non-identified subjects in executive session.  
ALL FINAL DECISIONS MUST BE MADE OUTSIDE OF EXECUTIVE SESSION

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### MINUTES

- Written minutes must be taken at all open meetings
- Full transcript or recording is not required
- Minutes at a minimum must include:
  - All members of governing body present;
  - All motions, resolutions, orders, or ordinances proposed and their disposition;
  - Results of all votes, and upon request of member, the vote of each member by name; and
  - If executive session held, reference to statutory subsection authorizing executive session and enough detail to identify the purpose and topic of executive session.

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### VIOLATIONS/CURE

If meeting is not in compliance, any action taken is null and void.  
Citizen suit allowed to enforce the Act.

Civil Penalty

- Members of governing body are subject to civil penalty up to \$250.
- Member who knowingly violates the law and has a previous violation within 12 months is subject to civil penalty up to \$2,500.

Cure

- Agency self-recognizes violation or within 14 days of receipt of notice of alleged violation publically acknowledges violation and intent to cure.
- Within 14 days of acknowledgement agency declares all action at meeting in violation of act void.
- Cure bars imposition of civil penalties.

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BOARD TRAINING -  
ETHICS IN GOVERNMENT

**ETHICS IN GOVERNMENT**

CONFLICTS OF INTEREST & SOLICITATION

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**FOUR STATUTES GOVERN**

Ethics in Government Act (Idaho Code § § 74-401 through 74-406)

Bribery and Corrupt Influence Act (Idaho Code § § 18-1351 through 18-1362)

Prohibition Against Contracts with Officers Act (Idaho Code § § 74-501 through 74-511)

Public Integrity in Elections Act (Idaho Code § § 74-601 through 74-606)

\*These provide the MINIMUM requirements\*

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**ETHICS IN GOVERNMENT ACT**

Applies to "public officials"—includes elected, appointed, and employed public officials

Requires disclosure of conflicts of interest

Civil Liability for intentional violations (Fine up to \$500)

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**ETHICS IN GOVERNMENT ACT**

**Conflict of Interest**

Any official action or any decision or recommendation by a person acting in official capacity, where the effect would be the private pecuniary (economic) benefit of the person, member of household, or a business with which person or member of household is associated.

- Household=spouse, dependent children, others legally obligated to support.
- Association with business=director, owner, partner, employee, or holder of stock worth \$5,000 or more.

The following are not conflicts:

- Interest/membership in particular business is a prerequisite to the holding of office.
- Action would affect to the same degree all persons engaged in the same industry, class, profession, or occupation.

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**ETHICS IN GOVERNMENT ACT**

**Procedure for Conflicts of Interest**

- Do not take any official action or make a formal decision or recommendation if official has a conflict and fails to disclose it.
- Seek legal advice if official believes that there is a real or potential conflict.
- If advised there is a real or potential conflict prepare written statement describing conflict and deliver it to appointing authority [Governor].
- Official may then act on the advice of attorney.
- After disclosure, official may request to be excused from debate/vote on issue, but it is not required.

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**BRIBERY AND CORRUPT INFLUENCE ACT**

Applies to all "public servants" – including "any officer or employee of government" and any person participating as an advisor, consultant or otherwise in performing a governmental function.

Criminal liability for violations

- At minimum, misdemeanor offense with up to \$1,000 Fine and/or 1 year in jail
- May result in forfeiture of office

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**BRIBERY AND CORRUPT INFLUENCE ACT**

Bribery

It is a felony offense to solicit, accept or agree to accept:

- A pecuniary (economic) benefit to self or household member as consideration for a decision, opinion, recommendation, vote or other exercise of discretion as a public servant
- Any benefit as consideration for a violation of legal duty as a public servant.
  - Benefit broadly defined as anything regarded by the beneficiary as gain or advantage.

It is a misdemeanor offense to solicit, accept or agree to accept a pecuniary (economic) benefit for self or household member for a past official action.

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**BRIBERY AND CORRUPT INFLUENCE ACT**

Gifts

It is a misdemeanor offense to solicit, accept or agree to accept:

- any pecuniary benefit for self or household member from interested or likely interested persons in connection with government contracts or economic transactions.
- Any compensation for advice in preparing or promoting a contract or other transaction or proposal that would likely involve exercise of official discretion.
- pecuniary benefit for self or household member for exercising official duties.
  - Does not include trivial benefits that do not exceed \$50.00 that are incidental to personal, professional or business contacts and involve no substantial risk of undermining official impartiality

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**BRIBERY AND CORRUPT INFLUENCE ACT**

Using Position for Personal Gain

It is a misdemeanor offense to:

- Use public funds or property to obtain pecuniary benefit for self or household member
- Use or disclose confidential information [not subject to public disclosure] gained by reason of official position with intent to gain pecuniary benefit for self or household member or to harm the government entity served.
- Be interested [self or relative within second degree] in any contract made by him or herself in official capacity or by the board in which he or she is a member.
  - Exception: If less than 3 suppliers of good or service in 15 mile radius may contract with self or relative if (1) competitive bid and submits the low bid (2) neither public servant or relative prepares contract or bid and public servant does not vote on or approve contract, (3) public servant makes a full disclosure in writing of interest; (4) neither public servant or relative violated any provision of lacho law.
- Conspire with a vendor to influence award of a contract
- Appoint a relative or vote for appointment of a relative to position or to employment when it is paid out of public funds.

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**BRIBERY AND CORRUPT INFLUENCE ACT**

Improper Influence

It is an offense for another to threaten a public servant with harm with the purpose of influencing decision or to privately address a public servant with the purpose to influence the outcome on the basis of unlawful consideration.

If you believe this has happened contact legal counsel.

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**PROHIBITIONS AGAINST CONTRACTS WITH OFFICERS ACT**

Applies to members of the legislature and state, county, city and district officers.

Prohibits officers from being interested in any contract, purchasers at any sale, or vendors at any purchase made by the board in which they are members.

Criminal Liability

- Violation is a misdemeanor offense
- Fine up to 1,000 and/or up to one year in jail

Contracts made in violation of Act are voidable [except by violating officer]

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**PROHIBITIONS AGAINST CONTRACTS WITH OFFICERS ACT**

Not a violation if:

- Interest is remote [landlord/tenant, employee or agent if wages are fixed, holds less than 1% of shares];
- Interest is fully disclosed to the board prior to formation of contract and noted in minutes; and
- Contract is approved in good faith by board without including vote of interested officer.

If officer attempts to influence board, contract is void.

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**PUBLIC INTEGRITY IN ELECTIONS ACT**

- Prohibits public entities, public officials, and public employees from making expenditures from public funds or using public property or resources to advocate for or against a candidate or ballot measure.
  - Advocate means to campaign for or against. It does not include providing factual information about a ballot measure.
  - Expenditure includes: purchase, payment, donation, distribution, loan, advance or other gift of money or something valuable or a legally enforceable promise or contract to make any of the above.
  - Property or resource means goods, services, equipment, software, facilities or intangible property.

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**PUBLIC INTEGRITY IN ELECTIONS ACT**

Common Issues:

- Are you "off the clock?"
- Are you on paid travel?
- Are you using state owned devices (phones, tablets, computers)?

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