

## CHAPTER 13

### **PUBLIC WORKS AND OTHER FUNCTIONS**

County functions covered in this chapter include highway administration, land surveys, construction and maintenance of county buildings, operation of airports, operation of parks, waterways and recreational facilities, emergency management, solid waste disposal, local improvement districts, and historical societies.

#### HIGHWAY ADMINISTRATION

Highways outside of cities in Idaho are a direct responsibility of the Idaho Transportation Department, county governments, and highway districts. Highways that are a part of the state highway system are constructed and maintained by the Idaho Transportation Department. Counties and highway districts have no responsibility for any highway on the state highway system unless they have contracted with the state to maintain, construct, or reconstruct such highways (§40-604; 40-615). County commissioners determine which roads are to be parts of the county highway system (§40-604). They are required to classify roads within the system according to improved or unimproved status prior to recommending them to the Idaho Transportation Board (§40-110(1) and §40-603). The state board must approve the classification of improved highways in order for such mileage to qualify for inclusion in the formula used to distribute highway distribution account revenue to counties (§40-603; 40-701; 40-701A; 40-709(2)(c) & (3)(c)).

In any county, where there is a petition filed for a an election to adopt a new method of administration of the secondary highways in the county, the procedure outlined in Section 40-1702, Idaho Code, shall be followed. The options for the administration of the county's secondary highways are as follows:

1. Establish a county-wide secondary highway system, exclusive of highways within cities, administered by the county commissioners (§40-1713(2)(a));
2. Establish a single county-wide highway district covering the entire county secondary highway system independent of the county commissioners (§40-1701(1)(b)).
3. For the division of the county into not more than four (4) highway districts generally exclusive of cities (§40-1713(2)(c)).
4. Establish a county-wide highway district to serve all city highways and county secondary highways independent of the administration of the county commissioners. (§40-1401). Ada County is the only county in which the county-wide highway district includes cities in the county
5. Continuation of the present method (§40-1701(1)(d)).

The single county-wide highway districts chapter (§40-1401 through 40-1415), pertains to any county. At the discretion of the board of county commissioners, or upon request by ten percent (10%) of the qualified electors residing in each of the county commissioners sub districts, a county may hold a special election asking the voters whether or not the county should have one county-wide highway district with jurisdiction over all city highways and county secondary highways (§40-1401). When the law was originally enacted, Ada County was the only county which met the census population qualification, and the voters of Ada County chose to have a single county-wide highway district. The population qualification has been removed and any county may have similar elections. If the voters approve the question, the county commissioners must organize a county-wide highway district, divide it into three sub districts and appoint a commissioner from each sub district. At the next and each subsequent general election, the highway commissioners must be elected on a nonpartisan ballot (§40-1404; 34-625; 34-905A). A commissioner takes office on January 1, of the year following his/her election (§40-1404).

Ada County formed a county-wide highway district known as Ada County Highway District (ACHD). ACHD is responsible for all city highways and county secondary highways. However, a city may grow, maintain, and remove trees, grass, and other plants along a right-of-way within the city and may place and remove parking meters and keep the revenue from them (§40-1406 and 40-1415 (8)). Any existing city highway systems and highway districts are dissolved and their funds, machinery, lands, buildings, and property are transferred to the county-wide highway district (§40-1410 (2)). The county-wide highway district commissioners are given all the powers and duties provided for highway commissioners in Chapter 14, Title 40, of the *Idaho Code* (40-1406). Highway-user funds previously paid to cities are to be paid to the county auditor for the benefit of the county-wide district (§40-712 (2)).

## **Highway District**

Highway districts are special districts possessing corporate powers which are independent of the county (§40-1301). Highway districts are governed by an elected three member board, with each highway commissioner elected for four-year terms of office (§40-1305).

The county commissioners have few powers relative to highway districts except the inclusion of their annual mileage certification in the tax levies against county property and the supervision of elections when there are boundary changes and consolidation of districts. However, the possibility of dissolution of districts by petitions (40-1802) and detachment (§40-1602) would leave the county with the road responsibility for that district or area, and the county highway problems.

## **Powers of the Board of County Commissioners**

The board of county commissioners has extensive power over highway administration in all but those counties covered entirely by highway and good road districts. The more important highway powers of the board of county commissioners include the power to:

1. Survey, view, lay out, record, open, and work any highway or public rights of way (provisions in Sections 40-202; 40-203A) necessary for public convenience (§40-

604(2)), and power to exercise general supervision over all the highways in the county road system, including their location, design, construction, reconstruction, repair, and maintenance (§40-604(1));

2. Appoint a county director of highways (§40-618);
3. Develop general policies regarding road matters. In counties having a county director of highways, these policies are carried out by the county director of highways (§40-604(1));
4. Make agreements with an incorporated city, another county, a highway district, the state, or the United States for the construction, reconstruction, or maintenance of the county highway system. The board of county commissioners may also contract to construct, reconstruct, or maintain the road system of another unit of government (§40-604(6));
5. Bid for equipment, Title 67, Chapter is the entire bid process for all political subdivisions of the state.
6. Contract, purchase, or otherwise acquire the right-of-way over private property for the use of county roads (§40-604(7)(8)). Power to use the county highway fund to pay for rights-of-way improvement (§40-604(10));
7. Abandon and vacate any highway or public right-of-way within their system (§40-604(4));
8. Designate county highways, or parts of them, as controlled access facilities and to regulate, restrict, or prohibit access to these highways (§40-604(5));
9. When the expenditure contemplated exceeds \$25000, but not \$100,000, the county shall obtain price or cost quotations from at least 3 responsible vendors. The county shall seek a minimum of 3 price quotations from vendors having a significant Idaho presence as defined in section 67-2349, Idaho Code.
10. Rename any highway within the county except those within the territorial limits of incorporated cities when the remaining will eradicate highways (§40-604(10));
11. Levy an ad valorem tax for the highway fund (§40-604(8));
12. Erect and maintain guide posts on the highways (§40-604(11)).

### **County Director of Highways**

The board of county commissioners may decide whether or not to appoint a county director of highways (§40-618). If they decide to do so the director of highways must be a person of known

qualifications in highway administration, construction and maintenance who can handle the technical and administrative phases of the work (40-618). The board of county commissioners fixes the salary of the county director of highways, and this salary is paid from the county highway fund (§40-618).

According to state law the county director of highways performs the following functions (§40-619):

1. Prepares and submits a tentative road budget to the board of county commissioners each year;
2. Divides the county into suitable road districts for highway construction and maintenance activities. The boundaries of the districts may be changed by the county commissioners at any time. These districts are not to be confused with highway districts which are not under the jurisdiction of the county commissioners.
3. Hires necessary assistants, subject to the approval of the board of county commissioners as to the salary or other compensation to be paid;
4. Purchases or leases necessary equipment for county road purposes and sells or replaces obsolete equipment, subject to the approval of the county commissioners as to the price, rental or cost of replacement;
5. Erects and maintains suitable signs, markers, signals, and other devices to control, guide and warn pedestrian and vehicular traffic; signs are to be in accordance with the Manual on Uniform Traffic Control Devices (§49-209);
6. Prepares surveys, maps, plans, specifications and estimates for the construction, reconstruction, and maintenance of county roads;
7. Forbids or limits the erection of unauthorized signs, billboards or structures on the right-of-way of any county road or highway, and removes and destroys any unauthorized signs;
8. Performs the acts authorized by the board of county commissioners for the improvement and maintenance of county roads.

### **County Highway Finance**

The board of county commissioners is authorized to levy up to the following amounts in areas of the county under county highway jurisdiction (§40-801):

1. Two tenths percent (0.2%) of market value for assessment purposes for the construction and maintenance of highways and bridges. The commissioners may levy this tax on incorporated as well as unincorporated areas within their jurisdiction. If they levy this tax on an incorporated area, fifty percent (50%) of the

proceeds must be apportioned back to that city;

2. A special levy of eighty-four thousandths percent (0.084%) of market value for assessment purposes may be levied for one or more of the following purposes:
  - a. Bridge maintenance and construction;
  - b. Matching state and federal highway funds;
  - c. Secondary highway construction;
  - d. Secondary highway maintenance and improvements;
  - e. Maintenance during an emergency.

Counties may also levy for bonds and warrants. See Appendix B for details.

No part of this levy shall be apportioned to any city. Highway districts are also authorized to levy similar amounts in areas under their jurisdiction.

In addition to the amount raised by taxes, county road systems receive a portion of the state highway distribution account (§40-701). County road systems may also receive revenue from reimbursements for road repair, receipts from road oiling and from the sale of rock and other materials. For specific information relating to the apportionment of funds, see Section 40-709.

After a highway or portion of highway has been built and certified, the highway district board may create a special taxing district. The board fixes the boundaries and designates the portion of the cost of the highway to be charged against the land in the special district. The order creating the special tax district must be open to the public (40-808).

County governments, highway districts, and cities under 5,000 population are eligible for federal matching funds for construction on their federal-aid roads. Approximately 7.34% percent of the cost of the project must be supplied by the local agency, complete plans must be prepared by a registered professional engineer, and the project must be constructed on a bid basis, administered by ITD, in order to take advantage of these federal funds. Some force account work might be eligible for matching funds if it is found to be cost effective. On certain railroad crossing improvements, the project can be funded by federal and state funds.

## LAND SURVEYS

Until 1963, the county surveyor was an elected county officer. The duties formerly delegated to the county surveyor now rest with the county commissioners, whose duty it is to select and retain the services of a professional land surveyor for all surveys, maps, and plats (§31-2707) and for the establishment of county boundaries (§31-2705). No survey of land, plat or subdivision is legal in Idaho unless made by or under the direct supervision of a professional land surveyor (§54-1229).

Survey stakes and monuments must be used in land surveys and must be plainly and permanently marked. The type of stakes and monuments is referenced in section 50-1303, Idaho Code.

## REGULATION OF PUBLIC WORKS

It is unlawful for counties to engage in the construction of any public works when the public health or safety is involved unless the plans, specifications and estimates have been prepared and the construction reviewed by a registered professional engineer (§54-1218). Public works contractors must be licensed according to state law (§54-1902), and either performance and payment bonds or the deposit of government obligations in lieu of such bonds is required of contractors (§54-1926 and 54-1901(2)(h)).

## CONSTRUCTION AND MAINTENANCE OF COUNTY BUILDINGS

The board of county commissioners is required to erect or to lease a courthouse, a jail, and such other public buildings as may be necessary (§31-1001). Contracts for construction must be let to the lowest bidder who will give security for the completion of the contract (§31-1001). The county commissioners may also raise money through bonds to defray the expenses of purchasing a site for a county building and constructing the building (§31-1002). Before issuing bonds, the commissioners must first submit the issue to the electorate in a special election; if two-thirds of the qualified electors voting at the election vote in favor of issuing the bonds, the bond issue is approved (§31-1003). In lieu of issuance of bonds, the board of county commissioners has the power to levy a tax, not to exceed six hundredths percent (.06%) of assessed market valuation, for the county building construction fund (§31-1008). However, this tax must also be approved by a vote of two-thirds of the qualified electors of the county voting in an election (§31-1008). Cities and counties are authorized to jointly acquire property and construct buildings (§31-1005).

The board of county commissioners is also responsible for the maintenance of county property and may employ janitors and custodians. The commissioners may sell unneeded county real or personal property to the highest bidder, however if the county is unable to sell it at public auction, the county may sell the property without further notice on terms the county deems necessary (§31-808). The county may also exchange property of equal value. The commissioners may also declare property as excess or in the commissioners discretion grant property to other political entities (§31-808). The commissioners may also lease county property for a term not exceeding five years, with several exceptions (§31-836). Hospitals and hospital equipment may be leased for not more than twenty years, and the county can enter into any lease or other transaction concerning property with the Idaho health facilities for not more than ninety-nine years. Any property may be leased for not more than ninety-nine years to any nonprofit organization which seeks to erect and maintain a park or stadium as a memorial to World War II veterans. Land may also be leased for not more than ninety-nine years to the Idaho Health Facilities Authority (§31-836(2)). Land may be leased for airports without any time limit (§21-401).

In all county, city, and school construction, the contractor must employ bona fide Idaho residents for 95 percent of the jobs available (§44-1001). If there are 50 or fewer persons employed, the contractor may employ up to 10 percent (10%) non-residents.

## AIRPORT ADMINISTRATION

Counties are authorized by law to acquire by purchase, lease or otherwise, lands not exceeding 1,280 acres in area for the purpose of constructing and maintaining aviation fields, airports, hangars and other air navigation facilities. These lands may lie partly or wholly within the unincorporated area of the county (§21-401 and 31-836). Counties may survey, plat, map, grade and ornament these lands. They may construct, operate, and maintain hangars, buildings, and equipment necessary or convenient to the maintenance and operation of the aviation field or airport (§21-401 and 31-836).

Counties may levy a tax of not more than four hundredths percent (.04%) of assessed market valuation for airport construction and maintenance (§21-404) and may also pay airport costs from the county general fund (§21-401). Counties may issue bonds for airport purposes other than maintenance and operation if authorized by a vote of two-thirds of the qualified electors of the county (§21-401).

State law permits any county to enter into cooperative agreements with contiguous counties for the construction and maintenance of airports (§21-405). Counties may also enter into contracts or agreements with cities to share the cost of airport construction and operation (§21-403 and 21-405).

A county may also make an agreement with the federal government for assistance and cooperation in airport construction and maintenance and may agree to transfer the airport to the federal government or to the state of Idaho if they will perpetually maintain it (§21-405).

## PARKS AND RECREATION

The board of county commissioners is granted the authority to purchase, lease or obtain by gift or grant any real or personal property to be used for a public park or public recreation (§63-805(4)(a)).

The board of county commissioners may improve the park and recreation property, operate a park or recreational area, and dedicate county land as a park (§31-806). The board of county commissioners may levy a tax of one hundredths percent (.01%) of assessed market valuation for the acquisition, maintenance and operation of public parks and public recreational facilities (§63-805(4)(a)). The revenues from this tax are to be placed in the county parks and recreation fund.

Idaho counties maintain outdoor recreation land and there several hundred boat launching facilities in the state. Many of the boat launching facilities and other waterway improvements have been financed with the portion of boat license fees deposited in the county vessel fund. The fund is also used to promote water safety and to provide law enforcement on navigable lakes and waterways (§67-7013(7)).

## EMERGENCY MANAGEMENT

Counties are required to maintain an emergency management agency or participate in an intergovernmental emergency management agency. The county and/or intergovernmental agency has jurisdiction over and serves the entire county in the work of disaster prevention, preparedness, response and recovery. The chairman of the board of county commissioners must inform the Department of Homeland Security of how the county is providing or securing disaster planning and emergency services, identify the person who heads the agency and furnish any other information the Bureau may require. Each county and/or intergovernmental agency must prepare and keep current a local or intergovernmental disaster emergency plan for its area. The county and/or intergovernmental agency must also prepare and distribute to all appropriate officials a clear and complete written statement of the emergency responsibilities of all local agencies and officials and of the emergency management chain of command. The sheriff of each county is the official responsible for coordination of all search and rescue operations within his jurisdiction. Sheriffs must prepare and keep current a plan of the search and rescue capability and resources available within their counties (§46-1009).

## SOLID WASTE DISPOSAL

Idaho law makes the counties responsible for operating solid waste disposal systems, and gives the board of county commissioners the authority to acquire, establish and maintain such systems (§31-4401 through 31-4403). In meeting these responsibilities, counties have authority to expend funds from current revenues, funds from the issuance of bonds and funds from county building funds (§31-4402). They may also utilize the provisions of Chapter 10, Title 31 of the *Idaho Code*, for the erection of public buildings. In addition, the commissioners may provide acquisition, operating, and maintenance funds from a tax levy of not more than four hundredths percent (.04%) of assessed market valuation from user fees, from current revenues, from moneys from any source or from service fees for solid waste collection (§31-4404).

The commissioners adopt rules and regulations by ordinance for the operation and maintenance of solid waste disposal systems. In addition to imposing criminal penalties for any violation of a county ordinance, the commissioners have authority to seek a court injunction stopping or preventing any violation of either state law or county ordinance relating to solid waste disposal (§31-4406). Solid waste disposal systems in existence or established in the future are within the jurisdiction of the county commissioners, unless such systems are operated by a city. Landowners may not dispose of solid waste on their own land without a written permit issued by the commissioners (§31-4408). The Waste Tire Law was rewritten in 2003. The ability and means to dispose of tires is no longer banned but allowed under specific circumstances (§39-6503). All solid waste disposal systems, including those operated by cities, must be located, maintained, and operated according to rules and regulations issued by the Department of Environmental Quality (§31-4405).

The 1990 Idaho Legislature provides for the establishment of "regional solid waste districts for the purpose of providing a regional solution to the problem of solid waste disposal needs" (31-4901 through 31-4921). In 1992 and 1993, counties were given the primary responsibility for the



development and operation of a solid waste management system (39-7401).

## LOCAL IMPROVEMENT DISTRICTS

Local improvement districts have been used extensively by Idaho cities. This method of taxing those properties which benefit from special improvements such as sewers, sidewalks and streets is also available to counties (§50-1702 and 50-1706). In addition, the Idaho Underground Conversion of Utilities Law provides that cities and counties may utilize local improvement districts to finance the underground conversion of utilities (§50-2503). Irrigation districts may also form local improvement districts; however, during the hearing process, the board of county commissioners acts as the review board. After evaluation of the project, the board of county commissioners may approve, modify or reject the proposal (§43-2507).

## HISTORICAL SOCIETIES

Idaho boards of county commissioners are authorized to expend such amounts as are necessary for the support of county or local historical societies which are incorporated as Idaho nonprofit corporations (§31-864). They may levy a tax of not more than twelve one hundredths percent (.012%) of assessed market valuation for this purpose (§31-864).

## HAZARDOUS MATERIALS

Under Title III, Emergency Planning and Community Right to Know, of the 1986 Superfund Amendments and Reauthorization Act (SARA), Idaho's State Emergency Response Commission (SERC) was established. Pursuant to SARA, Title III, the SERC designated Idaho's counties as Local Emergency Planning Committees (LEPC), acting either singularly or in conjunction with other counties. The boards of county commissioners have the responsibilities to appoint the members to the committee. The primary responsibilities of LEPC's are to (1) review and maintain existing plans and procedures; (2) provide an analysis and vulnerability data on extremely hazardous substances within the county; and (3) assess the county's capability to respond to an hazardous materials emergency. These requirements are covered under the county's Emergency Operation Plan (EOP) for all-hazard preparedness and response capability at the local level.

In 1991, the Idaho Legislature enacted the Hazardous Substance Emergency Response Act. This act, (§39-7101) provided for the counties and cities to appoint by ordinance or resolution, Local Emergency Response Authorities (§39-7105) to respond to hazardous substance incidents within their jurisdictions. An important function of the Local Emergency Response Authority is the initiation of the submission to the SERC of claims for reimbursement to the county. These claims are for the costs incurred as a result of their response to the hazardous substance incident.

## NOTES