

TITLE 70
WATERCOURSES AND PORT DISTRICTS

CHAPTER 16

PORT DISTRICTS -- FURTHER POWERS AND PROCEDURES -- HARBOR IMPROVEMENT PLANS

70-1601. ADOPTION OF HARBOR IMPROVEMENT AND PORT DEVELOPMENT PLAN. It shall be the duty of the port commission of any port district, before creating any improvements hereunder, to adopt a comprehensive plan of harbor improvement and port development for such port district after a public hearing thereon, notice of which shall be given by publication in a daily newspaper of general circulation in such port district by one (1) publication at least ten (10) days prior to the date of hearing, and no expenditure for the carrying on of any harbor improvement or port development shall be made by said commission other than necessary salaries, including engineers, clerical and office expenses of such port district, and the cost of engineering, surveying, preparation and collection of data necessary for the making and adoption of a general plan of harbor improvement and port development for such port district, unless and until such comprehensive plan of harbor improvement and port development has been so officially adopted by the port commission.

Recognizing that it will be necessary that port districts engage in long range planning, and that it will normally be necessary to alter such plan from time to time, such plan need only be in general terms.

[70-1601, added 1969, ch. 55, sec. 59, p. 144.]

70-1602. IMPROVEMENTS TO FOLLOW PLAN ADOPTED. When such general plan shall have been adopted as provided in section 70-1601, [Idaho Code,] improvements to be made by the commission shall be made substantially in accordance therewith unless and until such general plan shall have been officially amended, modified or changed by the port commission.

[70-1602, added 1969, ch. 55, sec. 60, p. 144.]

70-1603. AMENDMENT, MODIFICATION OF CHANGE OF PLAN. The plan may be amended, modified or changed by the port commission at any time after a public hearing thereon, notice of which shall be published in a newspaper of general circulation in such port district by one (1) publication at least ten (10) days prior to the date of the hearing, and such plan as amended, modified or changed shall be and remain the district's plan of harbor improvement and port development, until the same shall again be amended, modified or changed by the port commission in the same manner.

[70-1603, added 1969, ch. 55, sec. 61, p. 144.]

70-1604. PLANS HERETOFORE ADOPTED -- SAVING CLAUSE. All plans adopted by any port commission prior to the effective date of this act are validated and shall be and continue in full force and effect, as though lawfully adopted under the provisions of this act.

[70-1604, added 1969, ch. 55, sec. 62, p. 144.]

70-1605. OWNERSHIP OF IMPROVEMENTS. Except as to lands acquired or improved for industrial development, no improvements shall be acquired or constructed by the port district, unless such improvements shall, when completed, be the property of such port district, or the county in which such

improvement is located, the state of Idaho, the United States of America or a sister state of the United States of America or some municipal or public corporation or political subdivision thereof, or shall be jointly owned by any two (2) or more thereof. The funds of such port district may be expended in the acquirement or construction of any harbor or port improvement embraced in such plan adopted as in this act provided, in conjunction with any such entity. In amplification and not in limitation of the foregoing, port districts may, in the exercise of all lawful port district powers, and for all lawful port district purposes, contract with, enter into joint leases and contracts of all types, enter into compacts, joint venture, incur indebtedness jointly, and in all lawful manner deal with other port districts and/or municipal corporations and/or political subdivisions of this state and/or of sister states, and/or of the United States of America. The power hereby granted shall include, but not be limited to the power to jointly own and operate port properties and/or facilities in one or more port districts, whether within or without the state of Idaho.

[70-1605, added 1969, ch. 55, sec. 63, p. 144.]

70-1606. ENGINEERING STUDIES, INVESTIGATIONS, AND SURVEYS -- PROMOTION OF PORT -- RULES AND REGULATIONS FOR EXPENDITURES -- VOUCHERS. All port districts are authorized and empowered, either alone or jointly with the state of Idaho, sister states, the United States of America, or any municipal or public corporation or political subdivision thereof or with other operators of terminal or transportation facilities, to initiate and carry on the necessary engineering studies, investigations and surveys required for the proper development, improvement and utilization of all port properties, utilities and facilities, and to assemble and analyze the data thus obtained, and to make such expenditures as are necessary for such purpose, and for the proper promotion, advertising, improvement and development of the port. Port district expenditures for industrial development, port promotion, or promotional hosting shall be pursuant to specific and separate budget items as approved by the port commission as a part of its annual budget, as the same may be amended or supplemented under the provisions of this act. The port commission shall adopt written rules and regulations governing the expenditure of port funds for promotional purposes and/or port hosting by port employees and agents. Such rules and regulations shall identify the employees and agents authorized to make such expenditures and shall state the objectives of such expenditures. Port commissioners shall not seek reimbursement for any such expenditures personally made by any such commissioner, unless specific authorization for such expenditure was approved by the port commission in advance of such expenditure. Reimbursement for all such expenditures shall be upon port voucher properly identified and approved by the port commission and audited in the same manner as are other port vouchers.

[70-1606, added 1969, ch. 55, sec. 64, p. 144.]

70-1607. REGULATIONS FOR USE OF PORT PROPERTIES AND FACILITIES -- ADOPTION, AMENDMENT, AND REPEAL -- VIOLATIONS MAY BE MISDEMEANORS. A port district may formulate all needful regulations for the use by tenants, agents, servants, licensees, invitees, suppliers, passengers, customers, shippers, business visitors and members of the general public, of any properties or facilities owned or operated by it, and request the adoption, amendment or repeal of such regulations as part of the ordinances of the city in which such

properties or facilities are situated, or as a part of the resolutions of the county, if such properties or facilities be situated outside any city. The port commission shall make such request by resolution after holding a public hearing on the proposed regulations, notice of which shall be published in a legal newspaper of general circulation in the port district by one (1) publication at least ten (10) days prior to such hearing. In such notice the proposed regulation may be stated in general terms. Such regulations must conform to and be consistent with federal and state law. As to properties or facilities situated within a city, such regulations must conform to and be consistent with the ordinances of the city. As to properties or facilities situated outside any city, such regulations must conform to and be consistent with county ordinances or resolutions. Upon receiving such request, the governing body of the city or county as the case may be, may adopt such regulations as part of its ordinances or resolutions or amend or repeal such regulations in accordance with the terms of the request. Such regulations may be amended or repealed in the same manner as they are adopted. Such regulations shall be compiled and shall be a matter of public record. When any such regulation shall so specify, any violation thereof shall constitute a misdemeanor which shall be redressed in the same manner as other municipal police regulations, and it shall be the duty of all law enforcement officers to enforce such regulations accordingly.

[70-1607, added 1969, ch. 55, sec. 65, p. 144.]

70-1608. JURISDICTION OF OTHER PUBLIC BODIES. No municipal corporation, political subdivision or other public body or agency of this state shall have jurisdiction over port operations, port facilities, port-owned property, port services or other matters under port district regulation or operation. Notwithstanding the above provisions, the general police regulations, building codes, fire codes, health and sanitation regulations, fuel storage regulations, including the inspection and control provisions thereof, and any and all other such regulatory codes that are in force within the limits of any city or county shall, except where the subject matter is subject to state or federal regulations, be applicable to such operations, facilities, property, services or other matters under port district regulation or operation when any such are situated or conducted within the limits of any city or county.

[70-1608, added 1969, ch. 55, sec. 66, p. 144.]

70-1609. COUNTIES -- TAX-TITLE LANDS. Any county acquiring title to any lands within the area encompassed by any port district plan of harbor improvement or port development, and/or in any industrial development district created under this act, after the period of redemption thereof shall have expired, may, in lieu of public auction thereof, upon the request of the port commission, either grant such lands to the port district without remuneration or sell the lands to the port district for the amount of such delinquent taxes, together with any penalties and interest to which the county is entitled under the taxation laws of this state, as the county commissioners shall determine. Nothing in this section shall prevent such county commissioners from granting or selling such lands to any other municipality or public body that may make application therefor.

[70-1609, added 1969, ch. 55, sec. 67, p. 144.]

70-1610. SALE OF PROPERTY NO LONGER NEEDED. A port district may sell and convey any of its property when the port commission has declared the property to be no longer needed for district purposes, but no real property which is a part of a comprehensive plan of harbor improvement of port development, or modification thereof, shall be disposed of without a public hearing upon the question of such disposition, after notice given in the same manner and for the same time as is notice for the adoption of the comprehensive plan.

[70-1610, added 1969, ch. 55, sec. 68, p. 144.]

70-1611. EXCHANGE OF PROPERTY. The port commission may exchange any property owned by the port district, for other property of equivalent value and/or may make such exchange of property and pay or receive any difference in value in cash or upon such terms as the port commission shall approve, and in determining such values may appoint an appraiser or appraisers to appraise such properties involved in any such transaction.

[70-1611, added 1969, ch. 55, sec. 69, p. 144.]

70-1612. PURCHASING PROCEDURES -- CONTRACTS. (1) Except as otherwise provided in this section and in section 70-1613, Idaho Code, procurement by port districts shall comply with the provisions of chapter 28, title 67, Idaho Code. In addition to the standards established thereby, a port district may also call for bids on work or material based upon plans and specifications submitted by the bidder.

(2) Should emergency repairs to, or replacements of any equipment or other property owned or operated by any port district, become necessary in order to keep the port from ceasing operations, the port commission may, upon passing a resolution declaring such emergency, cause such repairs or replacements to be made without the necessity of compliance with subsection (1) of this section.

(3) The provisions of subsection (1) of this section shall not apply to the purchase or acquisition of used personal property.

[70-1612, added 1969, ch. 55, sec. 70, p. 144; am. 1980, ch. 211, sec. 1, p. 481; am. 1986, ch. 118, sec. 1, p. 312; am. 1987, ch. 83, sec. 1, p. 157; am. 2005, ch. 213, sec. 41, p. 683.]

70-1613. NOTICE -- AWARD OF CONTRACT -- BOND. Upon following the procedural steps established by chapter 28, title 67, Idaho Code, for receipt of bids, as modified by provisions of this title, the port commission shall proceed to canvass the bids, and at the proper time thereafter may let the contract upon the bid which the commission determines to be the best responsible bid, whether or not the same be the lowest bid, upon the plans and specifications on file, or the best responsible bid of a bidder submitting his own plans and specifications. If, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all such bid proposal deposits shall be returned to the bidders; but, if the contract is let, then all bid proposal deposits shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract is entered into for the purchase of such material or doing of such work. A bond shall be given to the port district by the successful bidder for the performance of the contract and otherwise conditioned as required by law, with surety satisfactory to the commission, in an amount to be fixed by the commission, but not in any event less than twenty-five percent (25%) of the contract price. If said bidder fails to enter into the contract

in accordance with his bid and furnish such bond within ten (10) days from the date on which he is notified that he is the successful bidder, the check or money order and the amount thereof shall be forfeited to the port district, or the port district shall recover the amount of the surety bid bond. In the alternative, a port district may, by passage of a resolution by the board of commissioners, elect to exclusively follow the provisions of chapter 28, title 67, Idaho Code, concerning procurement.

[70-1613, added 1969, ch. 55, sec. 71, p. 144; am. 2005, ch. 213, sec. 42, p. 683.]

70-1614. LEASES AND CONTRACTS WITHOUT NOTICE OR BOND. Port districts may enter into leases and contracts of every kind and nature with the United States of America or any of its departments or instrumentalities, the state of Idaho, or of sister states, or any of their departments or instrumentalities or with any municipal, quasi-municipal or public corporation thereof without notice and without requiring such bodies to provide bond to secure the performance thereof.

[70-1614, added 1969, ch. 55, sec. 72, p. 144.]

70-1615. GIFTS -- IMPROVEMENT AND USE. Port commissioners of any port district are hereby authorized to accept for and on behalf of said port district, gifts of real and personal property, to improve the same, and to use the same for all proper port purposes.

[70-1615, added 1969, ch. 55, sec. 73, p. 144.]

70-1616. LEASE OF PROPERTY -- PERFORMANCE BOND OR OTHER FINANCIAL GUARANTY. A port district may lease all real and personal property owned or controlled by it, and/or improvements thereon, upon such terms as the port commission deems proper; provided, that no lease shall be for a period longer than fifty (50) years, and each lease of real property shall be secured by a bond, with surety satisfactory to the port commission, or by such other rental insurance or financial guaranty as may be deemed sufficient by the port commission, conditioned to perform the terms of such lease, including the payment in lieu of taxes provided for in this act; provided further, that where the property is held by the district under lease from the United States government or any agency, instrumentality or political subdivision thereof, the port commission may sublease said property, with option for extensions, up to the total term and extensions thereof permitted by such United States lease, but in any event not to exceed ninety (90) years; provided further, that in a lease, the term of which exceeds five (5) years, and when at the option of the port commission it is so stipulated in the lease, the commission shall accept, with surety satisfactory to it, a bond or other such rental insurance or financial guaranty satisfactory to the port commission, conditioned to perform the terms of the lease for some part of the term, in no event less than five (5) years unless the remainder of the unexpired term is less than five (5) years, in which case for the full remainder and in every such case the commission shall require of the lessee, another or other like bond or other rental insurance or financial guaranty to be delivered within two (2) years, and not less than one (1) year prior to the expiration of the period covered by the existing bond, covering an additional part of the term in accordance with the foregoing provisions in respect to the original bond, and so on until the end of the term so that there will always be in force a bond or other rental insurance or financial guaranty securing the performance of

the lease, and the penalty in each bond or other rental insurance or financial guaranty shall be not less than the rental for one-half (1/2) the period covered thereby, but no bond or other rental insurance or financial guaranty shall be construed to secure the furnishing of any other bond or other rental insurance or financial guaranty.

[70-1616, added 1969, ch. 55, sec. 74, p. 144; am. 2001, ch. 165, sec. 1, p. 575.]

70-1617. STATE-OWNED LANDS WITHIN PORT AREA -- DEVELOPMENT -- LEASE. The port commissioners shall have full power and authority to improve, use for all port purposes and/or let lands belonging to the state of Idaho within the area encompassed by the port district's plan of harbor improvement and port development, and/or its plan for industrial development in the same manner and under the same procedure as herein provided for the improvement, use and/or letting of land belonging to the port district provided that such real property is not then being utilized by the state or any legal subdivision or agency thereof, in which case the said rights shall not accrue to the port district until the said real property becomes surplus to such entity; provided further, in case of such leasing, the port commission shall determine which portion of the resulting rental is allocable to the land belonging to the state, and which is allocable to improvements placed, or to be placed, thereon, and that portion allocable to the land shall be paid by the port, as received, to the state treasurer; provided further, should the state question the allocation as made by the port commission, then the matter shall be determined by appraisal, the state and the port district each choosing disinterested appraisers, and the two (2) so chosen choosing a third; the decision of a majority of the appraisers concerning such allocation of rental shall be determinative of the matter, unless the same be modified or changed by the district court of the judicial district in which is situate the city for which the port is named, after hearing upon petition of either body, and after such notice as such court shall direct; provided further, that all bonds given to secure the payment of rentals, and the performance of any such lease, shall be payable jointly to the port district and the state of Idaho as their interest appears, based upon such allocation. Payment by a lessee of the amount of each periodic rental payment set by the port commission upon such property shall discharge such lessee and/or the lessee's sureties pro tanto from any further liability as to each such rental payment made, and the allocation thereof between such port district and the state shall impose no liability or obligation upon such lessee and/or surety, nor shall any dispute or litigation as to such allocation in any way cause an increase in or otherwise affect the payment to be made by such lessee during the leasehold period.

[70-1617, added 1969, ch. 55, sec. 75, p. 144.]

70-1618. STATE-OWNED LANDS -- ACQUISITION BY PORT DISTRICTS. Port districts shall have the right to acquire all state-owned real property, whether now owned or hereafter acquired in any manner, including lands reclaimed from the beds of navigable streams as a result of diking or other public improvements, when such real property is within the area encompassed by the port district's plan of harbor improvement and port development and/or its plan of industrial development, provided that such real property is not then being utilized by the state or any political subdivision or agency thereof, in which case the rights shall not accrue to the port

district until the real property becomes surplus to such entity. A port commission desiring to acquire such real property shall so notify the state board of land commissioners, which shall thereupon, after appraisal thereof if deemed necessary, for adequate and valuable consideration, convey such real property to such port district by negotiated or exchange sale, and the provisions of this act, as to such lands, shall be in lieu of the provisions of title 58, Idaho Code.

Provided that sections 70-1617 and 70-1618[, Idaho Code,] shall not apply to any state lands upriver of any highway bridge not having a lift or draw span.

[70-1618, added 1969, ch. 55, sec. 76, p. 178.]

70-1619. LEASE OF PROPERTY -- PAYMENT IN LIEU OF TAXES. If a port commission shall propose to lease any facility owned by the port which would be subject to ad valorem taxes of this state and/or its political subdivisions, if owned by a nonexempt taxpayer, to any legal entity which is not entitled to such tax exemption under the laws of this state, or if any such nonexempt taxpayer shall, at its expense, construct any facility upon land owned by and leased from any such port district, in either event such port district shall first cause such facility to be valued by the assessor of the county in which the facility is situate. The assessor shall value such facility in the same manner as though it were being valued for the purpose of assessment of ad valorem taxes by the county. The assessor shall certify to the commission the amount of such valuation. The tax collector of such county shall, at the request of the commission, certify the amount of ad valorem taxes which would have been paid by a nonexempt taxpayer upon such valuation in the next preceding tax year, which sum is herein referred to as the "lieu tax."

The commission shall add to any payments to be made by any lessee under such lease, the amount of the lieu tax, to be paid annually to the port in addition to all other sums due under such lease. The amount of the lieu tax payment shall remain the same during the original term of such lease.

The proceeds of the lieu tax payment shall be remitted by the commission, forthwith upon their receipt, to the county tax collector, who shall disburse such proceeds to all taxing bodies and/or agencies receiving general ad valorem tax proceeds in any such year, on the same basis as other ad valorem taxes are disbursed.

Upon any extension of the lease, whether by reason of an option contained in such original lease or otherwise, and upon any re-leasing of such land or facility, the facility shall be again valued and certified by such assessor and the new valuation and lieu tax payment determined by the commission in the same manner, and any such extension or re-leasing shall be subject to the annual payment by the lessee of the new lieu tax figure.

All such leases shall be so written that failure of the lessee to pay all such lieu tax moneys prior to the 20th day of December in each year of such lease shall constitute a breach thereof.

The port district shall not be liable for the payment of any such sums if not made by its lessees.

The provisions of this section shall not apply to the letting, leasing or rental by port districts of any structures upon port-owned property, for the purpose of use as a dwelling unit or dwelling units, or for casual or interim use not related to the port district plan of harbor improvement and port development and/or its plan for industrial development, nor to any lease for a term of one (1) year or less.

[70-1619, added 1969, ch. 55, sec. 77, p. 144; am. 1974, ch. 121, sec. 1, p. 1296.]

70-1620. BY-PRODUCT AND WASTE MATERIAL DISPOSITION. If the conduct of any port district function shall result in the production of any fill, waste, or by-product material which would otherwise have belonged to this state, specifically including, but not limited to, sand and gravel from the beds of navigable bodies of water and/or non-navigable bodies of water belonging to this state, the port district may use or sell the same, without regard to any other or conflicting provision of law relating to the ownership, regulation or disposition thereof, and for its lawful purposes, port districts shall have the right to remove sand, gravel and other material and by-products from the beds of navigable bodies of water belonging to the state and/or of non-navigable bodies of water belonging to the state whether now or hereafter submerged or dried up, without the necessity of paying compensation therefor.

[70-1620, added 1969, ch. 55, sec. 78, p. 144.]