

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 126

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO APPOINTMENT OF OFFICERS; AMENDING SECTION 27-109, IDAHO CODE,  
2 TO PROVIDE THAT THE BOARD OF COUNTY COMMISSIONERS SHALL MAKE CERTAIN  
3 APPOINTMENTS TO A CEMETERY MAINTENANCE BOARD, TO PROVIDE FOR CERTAIN  
4 APPOINTMENTS TO A CEMETERY MAINTENANCE BOARD WHEN THE CEMETERY MAINTENANCE  
5 DISTRICT IS LOCATED IN MORE THAN ONE COUNTY, AND TO MAKE TECHNICAL  
6 CORRECTIONS; AMENDING SECTION 27-110, IDAHO CODE, TO REVISE TERMINOLOGY  
7 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 31-1408,  
8 IDAHO CODE, TO PROVIDE THAT THE BOARD OF COUNTY COMMISSIONERS SHALL  
9 MAKE CERTAIN APPOINTMENTS TO A FIRE PROTECTION BOARD AND TO PROVIDE  
10 FOR CERTAIN APPOINTMENTS TO A FIRE PROTECTION BOARD WHEN THE FIRE PROTECTION  
11 DISTRICT IS LOCATED IN MORE THAN ONE COUNTY; AMENDING SECTION  
12 31-1409, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 31-4304,  
13 IDAHO CODE, TO PROVIDE THAT THE BOARD OF COUNTY COMMISSIONERS SHALL MAKE  
14 CERTAIN APPOINTMENTS TO THE BOARD OF A RECREATION DISTRICT AND TO MAKE  
15 TECHNICAL CORRECTIONS; AND AMENDING SECTION 31-4319, IDAHO CODE, TO  
16 REVISE TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION.  
17

18 Be It Enacted by the Legislature of the State of Idaho:

19 SECTION 1. That Section 27-109, Idaho Code, be, and the same is hereby  
20 amended to read as follows:

21 27-109. CEMETERY MAINTENANCE BOARD -- APPOINTMENT OF COMMISSIONERS --  
22 OATH. There shall be three (3) cemetery maintenance commissioners in each  
23 district, who shall constitute the cemetery maintenance board. The first  
24 cemetery maintenance commissioners of such cemetery maintenance district  
25 shall be appointed by the ~~governor~~ board of county commissioners. If the  
26 district is to be situated in two (2) or more counties, the boards of county  
27 commissioners for those counties shall coordinate a joint public meeting  
28 whereby the appointment shall be made by a majority of all county commission-  
29 ers present at the joint public meeting. Unless otherwise agreed to by each  
30 board of county commissioners involved, the hearing shall be in the county  
31 with the largest area to be included within the district. The certificate of  
32 such appointment shall be made in triplicate: one (1) certificate shall be  
33 filed in the office of the county recorder of the county, one (1) with the  
34 clerk of the board of county commissioners, and one (1) with the assessor and  
35 tax collector of the county. Every cemetery maintenance commissioner shall  
36 take and subscribe the official oath, which oath shall be filed in the office  
37 of the board of cemetery maintenance commissioners.

38 SECTION 2. That Section 27-110, Idaho Code, be, and the same is hereby  
39 amended to read as follows:

1           27-110. TERM OF OFFICE -- VACANCIES. At the meeting of the board of  
2 county commissioners at which the cemetery maintenance district is declared  
3 organized, as provided by section 27-108, Idaho Code, said board of county  
4 commissioners shall divide the cemetery maintenance district into three (3)  
5 subdivisions, as nearly equal in population, area and mileage as practica-  
6 ble, to be known as cemetery maintenance commissioners subdistricts one ~~(1)~~,  
7 two ~~(2)~~ and three ~~(3)~~. Not more than one (1) of said commissioners shall be  
8 an elector of the same cemetery maintenance subdistrict. The first commis-  
9 sioners appointed by the ~~governor~~ board of county commissioners shall serve  
10 until the next cemetery maintenance district election, at which their suc-  
11 cessors shall be elected. Any vacancy occurring in the office of the ceme-  
12 tery maintenance commissioner, other than by the expiration of the term of  
13 office, shall be filled by the cemetery maintenance board.

14           SECTION 3. That Section 31-1408, Idaho Code, be, and the same is hereby  
15 amended to read as follows:

16           31-1408. FIRE PROTECTION BOARD -- APPOINTMENT OF COMMISSIONERS --  
17 OATH. (1) There shall be three (3) fire protection commissioners in each  
18 district, who shall constitute the fire protection board. The first fire  
19 protection commissioners of such fire protection district shall be ap-  
20 pointed by the ~~governor~~ board of county commissioners. If the district is  
21 to be situated in two (2) or more counties, the boards of county commission-  
22 ers from those counties shall coordinate a joint public meeting whereby the  
23 appointment shall be made by a majority of all county commissioners present  
24 at the joint public meeting. Unless otherwise agreed to by each board of  
25 county commissioners involved, the hearing shall be held in the county with  
26 the largest area to be included in the district. The certificate of such  
27 appointment shall be made in triplicate: one (1) certificate shall be filed  
28 in the office of the county recorder of the county, one (1) with the clerk  
29 of the board of county commissioners, and one (1) with the assessor and tax  
30 collector of the county. Every fire protection commissioner and appointed  
31 officer shall take and subscribe the official oath, which oath shall be filed  
32 in the office of the board of fire protection commissioners. If thirty-three  
33 percent (33%) of the area or population in the fire protection district is  
34 situated in two (2) or more counties, not more than two (2) of the appointed  
35 fire protection district commissioners shall be from the same county.

36           (2) The oath of office of fire protection commissioners and appointed  
37 officers shall be taken before the secretary or the president of the board  
38 of the fire protection district at the first regularly scheduled board meet-  
39 ing in January succeeding each election. Provided however, in the event of  
40 an inability to appear for the taking of the oath, a duly elected fire pro-  
41 tection commissioner may be sworn in and may subscribe to the oath wherever  
42 he may be, provided he appear before an officer duly authorized to administer  
43 oaths, and provided further that any person who is in any branch of the armed  
44 forces of the United States of America may appear before any person qualified  
45 to administer oaths as prescribed in section 55-705, Idaho Code, and may take  
46 and subscribe the oath of office as provided for in section 59-401, Idaho  
47 Code, and the oath of office shall have the same force and effect as though it  
48 were taken before the secretary or the president of the fire protection dis-  
49 trict pursuant to this subsection.

1 SECTION 4. That Section 31-1409, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 31-1409. RESIDENCE QUALIFICATIONS OF COMMISSIONERS -- TERM OF OF-  
4 FICE -- VACANCIES. (1) At the meeting of the board of county commissioners  
5 at which the fire protection district is declared organized, as provided  
6 by section 31-1407, Idaho Code, the county commissioners shall divide the  
7 fire protection district into three (3) subdivisions, as nearly equal in  
8 population, area and mileage as practicable, to be known as fire protection  
9 commissioners subdistricts one, two and three. Not more than one (1) of  
10 the fire protection district commissioners shall be a resident of the same  
11 fire protection subdistrict, except that any commissioner appointed by the  
12 ~~governor~~ board of county commissioners under section 31-1408, Idaho Code,  
13 shall not be disqualified from the completion of the initial term for which  
14 the commissioner was appointed because of the subdistrict in which the com-  
15 missioner resides. The first commissioners appointed by the ~~governor~~ board  
16 of county commissioners shall serve until the next fire protection district  
17 election, at which time their successors shall be elected. The term of of-  
18 fice for fire protection commissioners shall commence on the second Monday  
19 of January succeeding each general election. Commissioners appointed and  
20 elected must be electors residing within the fire protection district for at  
21 least one (1) year immediately preceding their election.

22 (2) Any fire protection commissioner vacancy occurring, other than by  
23 the expiration of the term of office, shall be filled by the fire protec-  
24 tion board. If a duly elected or appointed fire protection commissioner re-  
25 signs, withdraws, becomes disqualified, refuses or becomes otherwise unable  
26 to perform the duties of office for longer than ninety (90) days, the board,  
27 on satisfactory proof of the vacancy, shall declare the office vacant. The  
28 board shall fill any vacancies within sixty (60) days of learning of the va-  
29 cancy. When a vacancy occurs, the board shall direct the secretary to cause  
30 a notice of the vacancy to be published in at least one (1) issue of a newspa-  
31 per of general circulation within the district. The notice shall include the  
32 date and time of the meeting when the board will vote to fill the vacancy, and  
33 the deadline for qualified elector residents interested in being appointed  
34 to the position to submit a written request for appointment to the board.  
35 Should the board fail to agree on an individual to fill the vacancy, it shall  
36 select the individual by a coin toss to be conducted at a fire protection  
37 board meeting. Candidates for the vacancy shall be invited by the board to  
38 attend the meeting and observe the coin toss. The candidate who wins the coin  
39 toss shall be appointed to fill the vacancy.

40 SECTION 5. That Section 31-4304, Idaho Code, be, and the same is hereby  
41 amended to read as follows:

42 31-4304. CREATION OF RECREATION DISTRICTS. A recreation district may  
43 be created as follows:

44 (a) Any person or persons may file a petition for the formation of a  
45 recreation district with the clerk. Such petition which may be in one (1)  
46 or more papers shall clearly designate the boundaries of the proposed dis-  
47 trict, shall state the name of the proposed district, shall state the maxi-  
48 mum tax rate that would be imposed upon taxable property within the district

1 or planned unit development recreation districts, and shall be signed by not  
2 less than twenty percent (20%) of the qualified electors resident within the  
3 boundaries of the proposed district. The boundaries of the proposed dis-  
4 trict shall include contiguous territory having market value for assessment  
5 purposes of not less than five million dollars (\$5,000,000) at the last pre-  
6 ceding county assessment and shall not include any area included within an  
7 already existing recreation district. The petition shall be accompanied by  
8 a map showing the boundaries of the proposed district.

9 (b) The clerk shall, within ten (10) days after the filing of such peti-  
10 tion and map, estimate the cost of advertising and holding the election pro-  
11 vided in this section and notify in writing the person or any one of the per-  
12 sons filing such petition as to the amount of such estimate. Such person or  
13 persons shall within twenty (20) days after receipt of such written notice  
14 deposit such estimated amount with the clerk in cash, or such petition shall  
15 be deemed withdrawn. If the deposit is made and the district is formed, the  
16 person or persons so depositing such sum shall be reimbursed from the first  
17 moneys collected by the district from the taxes authorized to be levied by  
18 this chapter.

19 (c) Within thirty (30) days after the filing of such petition together  
20 with such map and the making of such cash deposit, the county commission-  
21 ers shall determine whether or not the same substantially comply with the  
22 requirements of this section. If the county commissioners find that there  
23 has not been substantial compliance with such requirements, they shall enter  
24 an order to the effect specifying the particular deficiencies, dismissing  
25 such petition and refunding such cash deposit. If the county commissioners  
26 find that there has been substantial compliance with such requirements, the  
27 county commissioners shall forthwith enter an order to that effect and call-  
28 ing an election, subject to the provisions of section 34-106, Idaho Code,  
29 upon the formation of such proposed district as provided in this section.

30 (d) If the county commissioners order an election as provided in this  
31 section, such election shall be conducted in accordance with the general  
32 election laws of the state, including the provisions of chapter 14, title 34,  
33 Idaho Code. The county commissioners shall establish election precincts,  
34 design and print elector's oaths, ballots and other necessary supplies, ap-  
35 point election personnel and by rule and regulation provide for the conduct  
36 and tally of such election. Each qualified elector who is a resident of the  
37 proposed district shall be entitled to vote in such election. The clerk  
38 shall give notice of such election which notice shall clearly designate the  
39 boundaries of such proposed district, shall state the name of the proposed  
40 district as designated in the petition, shall state the date of such elec-  
41 tion and the hours on such date which the polls will be open for receipt of  
42 ballots, shall set forth the qualifications of electors, and shall state  
43 that a map showing the boundaries of such district is on file in the office of  
44 the clerk. Such notice shall be published for the first time, not less than  
45 twelve (12) days prior to the election, and the second publication shall be  
46 made not less than five (5) days prior to such election in a newspaper pub-  
47 lished within the county.

48 (e) Immediately after such election, the judges at such election shall  
49 forward the ballots and results of such election to the clerk. The county  
50 commissioners shall canvass the vote within ten (10) days after such elec-

1 tion. If one-half (1/2) or more of the votes cast at such election are  
 2 against the formation of such district, the county commissioners shall enter  
 3 an order so finding and declaring that such district shall not be formed.  
 4 If more than one-half (1/2) of the votes cast at such election are in favor  
 5 of forming such district, the county commissioners shall enter an order so  
 6 finding, declaring such district duly organized under the name designated  
 7 in such petition, and dividing such district into three (3) subdivisions,  
 8 as nearly equal in population as possible, to be known as director's subdis-  
 9 tricts one ~~(1)~~, two ~~(2)~~ and three ~~(3)~~. The county commissioners shall cause  
 10 one (1) certified copy of such order to be filed in the office of the county  
 11 recorder of such county ~~and shall cause one (1) certified copy of such order~~  
 12 ~~to be transmitted to the governor~~. Immediately upon the entry of such order,  
 13 the organization of such district shall be complete.

14 (f) Upon receipt of a certified copy of the order of the county commis-  
 15 sioners, the ~~governor~~ board of county commissioners shall appoint a quali-  
 16 fied elector from each director's subdistrict who shall constitute the first  
 17 board of such district. The appointees from director's subdistricts one ~~(1)~~  
 18 and two ~~(2)~~ shall serve until the first district election thereafter held at  
 19 which their successors shall be elected and the appointee from director's  
 20 subdistrict three ~~(3)~~ shall serve until the second district election there-  
 21 after held at which such appointee's successor shall be elected. The cer-  
 22 tificate of appointment shall be filed with the clerk with a copy forwarded  
 23 to each appointee.

24 (g) When the boundaries of the proposed district lie in two (2) or more  
 25 counties, the county commissioners of each county shall act separately in  
 26 the election and organization of that part of the proposed district con-  
 27 tained in their county but the county commissioners of each such county  
 28 shall meet together before calling such election, subject to the provisions  
 29 of section 34-106, Idaho Code, and provide for uniform proceedings in each  
 30 county and fix the boundaries of each director's subdistrict in case such  
 31 election shall carry.

32 (h) After such election, the validity of the proceedings hereunder  
 33 shall not be affected by any defect in the petition or in the number or  
 34 qualification of the signers thereof, and in no event shall any action be  
 35 commenced or maintained or defense made affecting the validity of the organ-  
 36 ization of such district after six (6) months have expired from the date of  
 37 entering the order declaring the formation of such district.

38 SECTION 6. That Section 31-4319, Idaho Code, be, and the same is hereby  
 39 amended to read as follows:

40 31-4319. ANNEXATION OF ADDITIONAL TERRITORY. After the organization  
 41 of a district, additional territory adjoining the district and not included  
 42 within an already existing recreation district, whether located in one (1)  
 43 or several counties, may be annexed to and included within such district  
 44 by the affirmative vote of a majority of the qualified electors of such  
 45 additional territory voting on the question at an election held therefor,  
 46 subject to the provisions of section 34-106, Idaho Code, but such additional  
 47 territory shall not be annexed to and included within such district unless  
 48 such annexation and inclusion ~~is~~ are first approved by resolution of the  
 49 board of such district prior to the elections on the question of annexation.

1 The same procedure with such modifications in the form of petition, notices,  
2 ballots, etc., as may be necessary shall be adopted as provided in section  
3 31-4304, Idaho Code, except that no change shall be made in director's sub-  
4 districts until the next regular director's election and no appointment of  
5 any director shall be made by the ~~governor~~ board of county commissioners.