

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 126, As Amended in the Senate

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. If the county commissioners cannot
30 agree on the appointment of a commissioner, all the interested persons who
31 received the highest and equal number of votes shall have their names placed
32 in a container. The county commissioner with the most continuous length of
33 service shall draw one (1) name from the container. The person whose name is
34 drawn shall then be appointed to fill the vacancy. The certificate of such
35 appointment shall be made in triplicate; one (1) certificate shall be filed
36 in the office of the county recorder of the county, one (1) with the clerk
37 of the board of county commissioners, and one (1) with the assessor and tax
38 collector of the county. Every cemetery maintenance commissioner shall take
39 and subscribe the official oath, which oath shall be filed in the office of
40 the board of cemetery maintenance commissioners.

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

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

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

18 31-1408. FIRE PROTECTION BOARD -- APPOINTMENT OF COMMISSIONERS --
19 OATH. (1) There shall be three (3) fire protection commissioners in each
20 district, who shall constitute the fire protection board. The first fire
21 protection commissioners of such fire protection district shall be ap-
22 pointed by the ~~governor~~ board of county commissioners. If the district is
23 to be situated in two (2) or more counties, the boards of county commission-
24 ers from those counties shall coordinate a joint public meeting whereby the
25 appointment shall be made by a majority of all county commissioners present
26 at the joint public meeting. If the county commissioners cannot agree on
27 the appointment of a commissioner, all the interested persons who received
28 the highest and equal number of votes shall have their names placed in a
29 container. The county commissioner with the most continuous length of ser-
30 vice shall draw one (1) name from the container. The person whose name is
31 drawn shall then be appointed to fill the vacancy. The certificate of such
32 appointment shall be made in triplicate: one (1) certificate shall be filed
33 in the office of the county recorder of the county, one (1) with the clerk
34 of the board of county commissioners, and one (1) with the assessor and tax
35 collector of the county. Every fire protection commissioner and appointed
36 officer shall take and subscribe the official oath, which oath shall be filed
37 in the office of the board of fire protection commissioners. If thirty-three
38 percent (33%) of the area or population in the fire protection district is
39 situated in two (2) or more counties, not more than two (2) of the appointed
40 fire protection district commissioners shall be from the same county.

41 (2) The oath of office of fire protection commissioners and appointed
42 officers shall be taken before the secretary or the president of the board
43 of the fire protection district at the first regularly scheduled board meet-
44 ing in January succeeding each election. Provided however, in the event of
45 an inability to appear for the taking of the oath, a duly elected fire pro-
46 tection commissioner may be sworn in and may subscribe to the oath wherever
47 he may be, provided he appear before an officer duly authorized to administer
48 oaths, and provided further that any person who is in any branch of the armed

1 forces of the United States of America may appear before any person qualified
 2 to administer oaths as prescribed in section 55-705, Idaho Code, and may take
 3 and subscribe the oath of office as provided for in section 59-401, Idaho
 4 Code, and the oath of office shall have the same force and effect as though it
 5 were taken before the secretary or the president of the fire protection dis-
 6 trict pursuant to this subsection.

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

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

28 (2) Any fire protection commissioner vacancy occurring, other than by
 29 the expiration of the term of office, shall be filled by the fire protec-
 30 tion board. If a duly elected or appointed fire protection commissioner re-
 31 signs, withdraws, becomes disqualified, refuses or becomes otherwise unable
 32 to perform the duties of office for longer than ninety (90) days, the board,
 33 on satisfactory proof of the vacancy, shall declare the office vacant. The
 34 board shall fill any vacancies within sixty (60) days of learning of the va-
 35 cancy. When a vacancy occurs, the board shall direct the secretary to cause
 36 a notice of the vacancy to be published in at least one (1) issue of a newspa-
 37 per of general circulation within the district. The notice shall include the
 38 date and time of the meeting when the board will vote to fill the vacancy, and
 39 the deadline for qualified elector residents interested in being appointed
 40 to the position to submit a written request for appointment to the board.
 41 Should the board fail to agree on an individual to fill the vacancy, it shall
 42 select the individual by a coin toss to be conducted at a fire protection
 43 board meeting. Candidates for the vacancy shall be invited by the board to
 44 attend the meeting and observe the coin toss. The candidate who wins the coin
 45 toss shall be appointed to fill the vacancy in the following manner. If the
 46 county commissioners cannot agree on the appointment of a commissioner, all
 47 the interested persons who received the highest and equal number of votes
 48 shall have their names placed in a container. The county commissioner with
 49 the most continuous length of service shall draw one (1) name from the con-

1 tainer. The person whose name is drawn shall then be appointed to fill the
2 vacancy.

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

5 31-4304. CREATION OF RECREATION DISTRICTS. A recreation district may
6 be created as follows:

7 (a) Any person or persons may file a petition for the formation of a
8 recreation district with the clerk. Such petition which may be in one (1)
9 or more papers shall clearly designate the boundaries of the proposed dis-
10 trict, shall state the name of the proposed district, shall state the maxi-
11 mum tax rate that would be imposed upon taxable property within the district
12 or planned unit development recreation districts, and shall be signed by not
13 less than twenty percent (20%) of the qualified electors resident within the
14 boundaries of the proposed district. The boundaries of the proposed dis-
15 trict shall include contiguous territory having market value for assessment
16 purposes of not less than five million dollars (\$5,000,000) at the last pre-
17 ceding county assessment and shall not include any area included within an
18 already existing recreation district. The petition shall be accompanied by
19 a map showing the boundaries of the proposed district.

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

30 (c) Within thirty (30) days after the filing of such petition together
31 with such map and the making of such cash deposit, the county commission-
32 ers shall determine whether or not the same substantially comply with the
33 requirements of this section. If the county commissioners find that there
34 has not been substantial compliance with such requirements, they shall enter
35 an order to the effect specifying the particular deficiencies, dismissing
36 such petition and refunding such cash deposit. If the county commissioners
37 find that there has been substantial compliance with such requirements, the
38 county commissioners shall forthwith enter an order to that effect and call-
39 ing an election, subject to the provisions of section 34-106, Idaho Code,
40 upon the formation of such proposed district as provided in this section.

41 (d) If the county commissioners order an election as provided in this
42 section, such election shall be conducted in accordance with the general
43 election laws of the state, including the provisions of chapter 14, title 34,
44 Idaho Code. The county commissioners shall establish election precincts,
45 design and print elector's oaths, ballots and other necessary supplies, ap-
46 point election personnel and by rule and regulation provide for the conduct
47 and tally of such election. Each qualified elector who is a resident of the
48 proposed district shall be entitled to vote in such election. The clerk
49 shall give notice of such election which notice shall clearly designate the

1 boundaries of such proposed district, shall state the name of the proposed
2 district as designated in the petition, shall state the date of such elec-
3 tion and the hours on such date which the polls will be open for receipt of
4 ballots, shall set forth the qualifications of electors, and shall state
5 that a map showing the boundaries of such district is on file in the office of
6 the clerk. Such notice shall be published for the first time, not less than
7 twelve (12) days prior to the election, and the second publication shall be
8 made not less than five (5) days prior to such election in a newspaper pub-
9 lished within the county.

10 (e) Immediately after such election, the judges at such election shall
11 forward the ballots and results of such election to the clerk. The county
12 commissioners shall canvass the vote within ten (10) days after such elec-
13 tion. If one-half (1/2) or more of the votes cast at such election are
14 against the formation of such district, the county commissioners shall enter
15 an order so finding and declaring that such district shall not be formed.
16 If more than one-half (1/2) of the votes cast at such election are in favor
17 of forming such district, the county commissioners shall enter an order so
18 finding, declaring such district duly organized under the name designated
19 in such petition, and dividing such district into three (3) subdivisions,
20 as nearly equal in population as possible, to be known as director's subdis-
21 tricts one ~~(1)~~, two ~~(2)~~ and three ~~(3)~~. The county commissioners shall cause
22 one (1) certified copy of such order to be filed in the office of the county
23 recorder of such county ~~and shall cause one (1) certified copy of such order~~
24 ~~to be transmitted to the governor~~. Immediately upon the entry of such order,
25 the organization of such district shall be complete.

26 (f) Upon receipt of a certified copy of the order of the county commis-
27 sioners, the ~~governor~~ board of county commissioners shall appoint a quali-
28 fied elector from each director's subdistrict who shall constitute the first
29 board of such district. The appointees from director's subdistricts one ~~(1)~~
30 and two ~~(2)~~ shall serve until the first district election thereafter held at
31 which their successors shall be elected and the appointee from director's
32 subdistrict three ~~(3)~~ shall serve until the second district election there-
33 after held at which such appointee's successor shall be elected. The cer-
34 tificate of appointment shall be filed with the clerk with a copy forwarded
35 to each appointee.

36 (g) When the boundaries of the proposed district lie in two (2) or more
37 counties, the county commissioners of each county shall act separately in
38 the election and organization of that part of the proposed district con-
39 tained in their county but the county commissioners of each such county
40 shall meet together before calling such election, subject to the provisions
41 of section 34-106, Idaho Code, and provide for uniform proceedings in each
42 county and fix the boundaries of each director's subdistrict in case such
43 election shall carry.

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

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

3 31-4319. ANNEXATION OF ADDITIONAL TERRITORY. After the organization
4 of a district, additional territory adjoining the district and not included
5 within an already existing recreation district, whether located in one (1)
6 or several counties, may be annexed to and included within such district
7 by the affirmative vote of a majority of the qualified electors of such
8 additional territory voting on the question at an election held therefor,
9 subject to the provisions of section 34-106, Idaho Code, but such additional
10 territory shall not be annexed to and included within such district unless
11 such annexation and inclusion ~~is~~ are first approved by resolution of the
12 board of such district prior to the elections on the question of annexation.
13 The same procedure with such modifications in the form of petition, notices,
14 ballots, etc., as may be necessary shall be adopted as provided in section
15 31-4304, Idaho Code, except that no change shall be made in director's sub-
16 districts until the next regular director's election and no appointment of
17 any director shall be made by the ~~governor~~ board of county commissioners.