

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 322

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO OFFICE APPOINTMENTS; AMENDING SECTIONS 27-109, 27-110 AND
2 31-1408, IDAHO CODE, TO REVISE PROVISIONS REGARDING APPOINTMENTS TO
3 CERTAIN OFFICES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
4 31-1409, IDAHO CODE, TO REVISE PROVISIONS REGARDING APPOINTMENTS TO
5 CERTAIN OFFICES; AMENDING SECTION 31-4304, IDAHO CODE, TO REVISE PRO-
6 VISIONS REGARDING APPOINTMENTS TO CERTAIN OFFICES AND TO MAKE TECHNICAL
7 CORRECTIONS; AMENDING SECTIONS 40-1303 AND 40-1304, IDAHO CODE, TO
8 REVISE PROVISIONS REGARDING APPOINTMENTS TO CERTAIN OFFICES; AMEND-
9 ING SECTION 40-1404, IDAHO CODE, TO REVISE PROVISIONS REGARDING AP-
10 POINTMENTS TO CERTAIN OFFICES AND TO MAKE TECHNICAL CORRECTIONS; AND
11 AMENDING SECTIONS 40-1512 AND 40-1705, IDAHO CODE, TO REVISE PROVISIONS
12 REGARDING APPOINTMENTS TO CERTAIN OFFICES.
13

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

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

17 27-109. CEMETERY MAINTENANCE BOARD -- APPOINTMENT OF COMMISSIONERS --
18 OATH. There shall be three (3) cemetery maintenance commissioners in each
19 district, who shall constitute the cemetery maintenance board. The first
20 cemetery maintenance commissioners of such cemetery maintenance district
21 shall be appointed by the ~~governor~~ board of county commissioners. If the
22 district is to be situated in two (2) or more counties, the boards of county
23 commissioners from those counties shall coordinate a joint public meeting
24 whereby the appointment shall be made by a majority of all county commis-
25 sioners present at the joint public meeting. Unless otherwise agreed to by
26 each board of county commissioners involved, the hearing shall be held in
27 the county with the largest area to be included within the district. The
28 certificate of ~~such~~ appointment shall be made in triplicate; one (1) cer-
29 tificate shall be filed in the office of the county recorder of the county;
30 one (1) with the clerk of the board of county commissioners, and one (1) with
31 the assessor and tax collector of the county. Every cemetery maintenance
32 commissioner shall take and subscribe the official oath, which oath shall be
33 filed in the office of the board of cemetery maintenance commissioners.

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

36 27-110. TERM OF OFFICE -- VACANCIES. At the meeting of the board of
37 county commissioners at which the cemetery maintenance district is declared
38 organized, as provided by section 27-108, Idaho Code, said board of county
39 commissioners shall divide the cemetery maintenance district into three
40 (3) subdivisions, as nearly equal in population, area and mileage as prac-

1 licable, to be known as cemetery maintenance commissioners subdistricts
 2 one ~~(1)~~, two ~~(2)~~ and three ~~(3)~~. Not more than one (1) of said commissioners
 3 shall be an elector of the same cemetery maintenance subdistrict. The first
 4 commissioners appointed by the ~~governor~~ board of county commissioners shall
 5 serve until the next cemetery maintenance district election, at which their
 6 successors shall be elected. Any vacancy occurring in the office of the
 7 cemetery maintenance commissioner, other than by the expiration of the term
 8 of office, shall be filled by the cemetery maintenance board.

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

11 31-1408. FIRE PROTECTION BOARD -- APPOINTMENT OF COMMISSIONERS --
 12 OATH. (1) There shall be three (3) fire protection commissioners in each
 13 district, who shall constitute the fire protection board. The first fire
 14 protection commissioners of such fire protection district shall be ap-
 15 pointed by the ~~governor~~ board of county commissioners. If the district is
 16 to be situated in two (2) or more counties, the boards of county commission-
 17 ers from those counties shall coordinate a joint public meeting whereby the
 18 appointment shall be made by a majority of all county commissioners present
 19 at the joint public meeting. Unless otherwise agreed to by each board of
 20 county commissioners involved, the hearing shall be held in the county with
 21 the largest area to be included within the district. The certificate of ~~such~~
 22 appointment shall be made in triplicate: one (1) certificate shall be filed
 23 in the office of the county recorder of the county, one (1) with the clerk
 24 of the board of county commissioners, and one (1) with the assessor and tax
 25 collector of the county. Every fire protection commissioner and appointed
 26 officer shall take and subscribe the official oath, which oath shall be filed
 27 in the office of the board of fire protection commissioners. If thirty-three
 28 percent (33%) of the property and/or population in the fire protection dis-
 29 trict is situated in two (2) or more counties, not more than two (2) of the
 30 fire protection district commissioners shall be from the same county, unless
 31 pursuant to section 31-1410A, Idaho Code, the board is comprised of five (5)
 32 members, in which event not more than three (3) of the commissioners shall be
 33 from the same county.

34 (2) The oath of office of fire protection commissioners and appointed
 35 officers shall be taken before the secretary or the president of the board of
 36 the fire district at the first regularly scheduled board meeting in January
 37 succeeding each election. Provided however, in the event of an inability
 38 to appear for the taking of the oath, a duly elected fire protection commis-
 39 sioner may be sworn in and may subscribe to the oath wherever he may be, pro-
 40 vided he appear before an officer duly authorized to administer oaths, and
 41 provided further, that any person who is in any branch of the armed forces of
 42 the United States of America, may appear before any person qualified to ad-
 43 minister oaths as prescribed in section 55-705, Idaho Code, and may take and
 44 subscribe the oath of office as provided for in section 59-401, Idaho Code,
 45 and the oath of office shall have the same force and effect as though it were
 46 taken before the secretary or the president of the fire district pursuant to
 47 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 said
10 commissioners shall be an elector of the same fire protection subdistrict.
11 The first commissioners appointed by the ~~governor~~ board of county commis-
12 sioners shall serve until the next fire protection district election, at
13 which their successors shall be elected. The term of office for fire protec-
14 tion commissioners shall commence on the second Monday of January succeeding
15 each general election. Commissioners appointed and elected must be electors
16 resident within the district for at least one (1) year.

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

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

37 31-4304. CREATION OF RECREATION DISTRICTS. A recreation district may
38 be created as follows:

39 (a) Any person or persons may file a petition for the formation of a
40 recreation district with the clerk. Such petition which may be in one (1)
41 or more papers shall clearly designate the boundaries of the proposed dis-
42 trict, shall state the name of the proposed district, shall state the maxi-
43 mum tax rate that would be imposed upon taxable property within the district
44 or planned unit development recreation districts, and shall be signed by not
45 less than twenty percent (20%) of the qualified electors resident within the
46 boundaries of the proposed district. The boundaries of the proposed dis-
47 trict shall include contiguous territory having market value for assessment
48 purposes of not less than five million dollars (\$5,000,000) at the last pre-

1 ceding county assessment and shall not include any area included within an
2 already existing recreation district. The petition shall be accompanied by
3 a map showing the boundaries of the proposed district.

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

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

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

43 (e) Immediately after such election, the judges at such election shall
44 forward the ballots and results of such election to the clerk. The county
45 commissioners shall canvass the vote within ten (10) days after such elec-
46 tion. If one-half (1/2) or more of the votes cast at such election are
47 against the formation of such district, the county commissioners shall enter
48 an order so finding and declaring that such district shall not be formed.
49 If more than one-half (1/2) of the votes cast at such election are in favor
50 of forming such district, the county commissioners shall enter an order so

1 finding, declaring such district duly organized under the name designated
 2 in such petition, and dividing such district into three (3) subdivisions,
 3 as nearly equal in population as possible, to be known as director's subdis-
 4 tricts one (1), two (2) and three (3). The county commissioners shall cause
 5 ~~one (1) a certified copy of such order to be filed in the office of the county~~
 6 ~~recorder of such county and shall cause one (1) certified copy of such order~~
 7 ~~to be transmitted to the governor.~~ Immediately upon the entry of such order,
 8 the organization of such district shall be complete.

9 ~~Upon receipt of a certified copy of the order of the county commis-~~
 10 ~~sioners, t~~The governor board of county commissioners shall appoint a quali-
 11 fied elector from each director's subdistrict who shall constitute the first
 12 board of such district. The appointees from director's subdistricts one (1)
 13 and two (2) shall serve until the first district election thereafter held at
 14 which their successors shall be elected and the appointee from director's
 15 subdistrict three (3) shall serve until the second district election there-
 16 after held at which such appointee's successor shall be elected. If the dis-
 17 trict is to be situated in two (2) or more counties, the boards of county
 18 commissioners from those counties shall coordinate a joint public meeting
 19 whereby the appointment shall be made by a majority of all county commis-
 20 sioners present at the joint public meeting. Unless otherwise agreed to by
 21 each board of county commissioners involved, the hearing shall be held in the
 22 county with the largest area to be included within the district. The cer-
 23 tificate of appointment shall be filed with the clerk with a copy forwarded
 24 to each appointee.

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

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

39 SECTION 6. That Section 40-1303, Idaho Code, be, and the same is hereby
 40 amended to read as follows:

41 40-1303. HIGHWAY COMMISSIONERS -- APPOINTMENT -- OATH. There shall be
 42 three (3) highway commissioners in each district. The first highway commis-
 43 sioners of the highway district organized under the provisions of this chap-
 44 ter shall be appointed by the ~~governor~~ board of county commissioners. If the
 45 district is to be situated in two (2) or more counties, the boards of county
 46 commissioners from those counties shall coordinate a joint public meeting
 47 whereby the appointment shall be made by a majority of all county commis-
 48 sioners present at the joint public meeting. Unless otherwise agreed to by
 49 each board of county commissioners involved, the hearing shall be held in the

1 county with the largest area to be included within the district. It shall
2 be the duty of the ~~governor~~ board of county commissioners, in the appoint-
3 ment of the original highway commissioners, where there had been in exist-
4 ence any highway district within the boundary of the newly created high-
5 way district, to appoint whenever practicable, existing highway commis-
6 sioners as they shall qualify by residence in the subdistricts of the newly cre-
7 ated highway district as highway district commissioners of the newly created
8 highway district. County commissioners, city mayors and city council mem-
9 bers shall not be eligible to hold office as highway district commissioners.
10 A copy of the certificate of each appointment shall be filed in the office of
11 the county recorder of each county in which the highway district is located
12 and with the clerk of the highway district. Every highway commissioner shall
13 take and subscribe the official oath, which oath shall be filed in the office
14 of the highway district commissioners.

15 SECTION 7. That Section 40-1304, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 40-1304. DIVISION OF DISTRICTS INTO SUBDISTRICTS -- VACANCY IN OFFICE
18 OF HIGHWAY COMMISSIONER. (1) At the meeting of the county commissioners at
19 which the highway district is declared organized, the commissioners shall
20 divide the highway district into three (3) subdistricts, as nearly equal in
21 population, area and mileage as practicable, to be known as highway commis-
22 sioners subdistricts one, two and three. Subdistricts may be revised or mod-
23 ified by the highway district commissioners as changes in conditions demand.
24 Not more than one (1) of the highway district commissioners shall be an elec-
25 tor of the same highway subdistrict. The first highway district commis-
26 sioners appointed by the ~~governor~~ board of county commissioners in accordance
27 with section 40-1303, Idaho Code, shall serve until the next highway dis-
28 trict election, at which their successors shall be elected. The highway com-
29 missioners shall take office on July 1 following their election.

30 (2) Any vacancy occurring in the office of highway commissioner, other
31 than by expiration of the term of office, shall be determined by the remain-
32 ing highway district commissioners using the criteria established in sec-
33 tion 59-901, Idaho Code. If it is determined that a vacancy has occurred,
34 the commissioners shall declare there is a vacancy and such vacancy shall be
35 filled by the highway district board and be for the balance of the term of the
36 person replaced. If the remaining highway district commissioners are unable
37 to agree on a person to fill the vacancy within ten (10) days after the va-
38 cancy occurs, the chairman of the county commissioners of the county with the
39 largest number of electors in the highway district shall then become a member
40 of the highway district board for the purpose of filling the vacancy only.
41 If a majority of the highway district board so constituted shall be unable to
42 agree upon a person to fill the vacancy within ten (10) days, or if two (2) or
43 more vacancies shall occur in the board of highway commissioners at one (1)
44 time, a special election to fill the vacancy shall be called and held in the
45 same manner provided by law for the holding of elections for highway commis-
46 sioners, except that the date of the election shall be as soon as possible,
47 and all duties imposed by law upon the highway district board in connection
48 with elections shall be performed by the county commissioners.

1 (3) When there are two (2) or more vacancies on the highway district
2 board at the same time, the chairman of the county commissioners along with
3 the additional county commissioners that the county commission chairman ap-
4 points, and with the remaining highway district commissioner, if applica-
5 ble, shall constitute a temporary board of highway district commissioners.
6 The temporary board of highway district commissioners shall perform the du-
7 ties required by law of a highway district board of commissioners until the
8 newly elected highway commissioners take office.

9 SECTION 8. That Section 40-1404, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 40-1404. APPOINTMENT OF FIRST HIGHWAY DISTRICT COMMISSIONERS IN CER-
12 TAIN COUNTYWIDE HIGHWAY DISTRICTS -- SUBDISTRICTS -- ELECTIONS, TERMS AND
13 SALARIES OF COMMISSIONERS. For counties with a population of two hundred
14 thousand (200,000) persons or less, if there is a majority affirmative vote
15 at the election, the county commissioners, at their next meeting shall orga-
16 nize the countywide highway district. The county shall be subdivided by the
17 county commissioners into three (3) subdistricts, designated subdistricts
18 number one, two and three, as nearly equal in population as practicable, and
19 one (1) highway commissioner shall represent each subdistrict and be a res-
20 ident of the subdistrict. The ~~governor~~ board of county commissioners shall
21 appoint the first countywide highway district commissioners. Where one (1)
22 or more highway districts have been in existence at the time of the creation
23 of the countywide highway district, the ~~governor~~ board of county commis-
24 sioners shall appoint, whenever practicable, at least one (1) of the former
25 highway district commissioners as they shall qualify by reason of residence
26 in the territorial limits of the subdistricts of the countywide highway
27 district as a commissioner of the countywide highway district. County com-
28 missioners and city council members shall not be eligible to hold office
29 as a countywide highway district commissioner. The originally appointed
30 commissioners shall serve until the next general election when two (2) mem-
31 bers shall be elected for two (2) years and one (1) member shall be elected
32 for a term of four (4) years, the commissioner from subdistrict number one
33 being elected for a term of four (4) years. The four (4) year term shall be
34 allotted thereafter in rotation to subdistricts number two, three and one. A
35 qualified voter of the countywide highway district shall be eligible to vote
36 for each of the countywide highway district commissioners, and the election
37 shall be conducted as provided by Idaho statutes relating to holding elec-
38 tions at the county level.

39 The highway commissioners shall take office on January 1 of the year im-
40 mediately following their election, and each may be compensated in accor-
41 dance with the provisions of section 40-1314, Idaho Code, or receive a salary
42 not to exceed six hundred dollars (\$600) per calendar month with the excep-
43 tion of the president of the highway commissioners who may receive a salary
44 not to exceed seven hundred dollars (\$700) per calendar month.

45 SECTION 9. That Section 40-1512, Idaho Code, be, and the same is hereby
46 amended to read as follows:

1 40-1512. SUBDIVISION OF DISTRICT -- APPOINTMENT OF HIGHWAY COMMIS-
2 SIONERS -- CONSOLIDATION, WHEN EFFECTIVE. At the joint meeting, as provided
3 by section 40-1511, Idaho Code, by a majority vote of all the commissioners
4 present, the territory consolidated in one (1) highway district shall be
5 divided into three (3) subdistricts, as provided by section 40-1304, Idaho
6 Code. Highway commissioners for the consolidated highway district shall be
7 appointed by the ~~governor~~ board of county commissioners, as provided for by
8 section 40-1303, Idaho Code.

9 SECTION 10. That Section 40-1705, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 40-1705. ORGANIZATION OF COUNTYWIDE HIGHWAY DISTRICTS -- HIGHWAY
12 DISTRICT COMMISSIONERS -- APPOINTMENT -- TERMS -- ELECTION. (1) Countywide
13 highway districts may be organized under the laws applicable to highway
14 districts and for county highway districts, new highway districts, consoli-
15 dated or enlarged highway districts, and the number of highway commissioners
16 to be elected shall be three (3). The formation of new districts shall be ef-
17 fected by the commissioners of the county so affected within sixty (60) days
18 of the reorganization election, and upon the determination that a county
19 highway system shall be reorganized as a countywide highway district, new
20 highway districts, consolidation, enlargement or other modification, the
21 original highway district commissioners shall, within seventy (70) days of
22 the election, be appointed by the ~~governor~~ board of county commissioners.
23 A new highway district shall be divided by the commissioners into three
24 (3) subdistricts as nearly equal in mileage, market value for assessment
25 purposes, and population as practicable under the circumstances, for the
26 purpose of determining each highway commissioner's district, and each com-
27 missioner for a highway district shall represent and be elected or appointed
28 from the district in which he resides.

29 (2) Upon appointment, qualification and acceptance of duties as high-
30 way commissioners, those originally appointed shall, by lot, determine two
31 (2) of the original appointed highway commissioners who shall serve for
32 terms of original appointment for two (2) years, or until the next regular
33 election for highway commissioners. The remaining highway commissioner
34 shall serve for a period of four (4) years, or until the next succeeding
35 election for highway commissioners. Thereafter, the highway commissioners
36 elected shall be elected for four (4) year terms as their terms expire, thus
37 providing a continuation in office of highway district commissioners, and
38 providing for the staggered election of the commissioners in subsequent
39 elections.

40 (3) Laws applicable to the election of highway commissioners shall ap-
41 ply to the conduct of highway district elections throughout the county, and
42 the election for highway commissioners shall be on a nonpartisan basis.

43 (4) Where a countywide highway district, new highway district, or con-
44 solidated or enlarged district results from an election under this chapter,
45 it shall be the duty of the ~~governor~~ board of county commissioners, in the
46 appointment of the original highway commissioners for the county, where
47 there shall have been in existence at the time of the creation of any highway
48 districts within the limits of the county to appoint whenever practicable,
49 the existing highway commissioners as they shall qualify by residence in the

1 territorial limits of the districts of the newly created highway district as
2 a highway commissioner of the newly created highway district system. County
3 commissioners, city mayors and city council members shall not be eligible to
4 hold office as a highway district commissioner.