

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.