

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 349

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO HERD DISTRICTS; AMENDING SECTION 25-2401, IDAHO CODE, TO REMOVE
2 PROVISIONS REGARDING APPLICABILITY; AMENDING SECTION 25-2402, IDAHO
3 CODE, TO PROVIDE THAT THE OWNER OF CERTAIN LIVESTOCK SHALL NOT BE LIABLE
4 FOR DAMAGE DONE BY SUCH LIVESTOCK EXCEPT UNDER CERTAIN CIRCUMSTANCES
5 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 25-2405, IDAHO
6 CODE, TO REVISE PROVISIONS REGARDING CERTAIN FENCES; AND DECLARING AN
7 EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
8

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

10 SECTION 1. That Section 25-2401, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 25-2401. COMMISSIONERS MAY CREATE HERD DISTRICTS. (1) The board of
13 county commissioners of each county in the state shall have power to cre-
14 ate, modify or eliminate herd districts within such county as hereinafter
15 provided; and when such district is so created, modified or eliminated, the
16 provisions of this chapter shall apply and be enforceable therein. On and
17 after January 1, 1990, no county shall regulate or otherwise control the
18 running at large of horses, mules, asses, cattle, sheep or goats within the
19 unincorporated areas of the county unless such regulation or control is pro-
20 vided by the creation of a herd district pursuant to the provisions of this
21 chapter, except as provided by subsection (2) of this section. ~~The provi-~~
22 ~~sions of this chapter shall not apply to any herd district or herd ordinance~~
23 ~~in full force and effect prior to January 1, 1990, but shall apply to any~~
24 ~~modification thereof.~~

25 (2) A panel of five (5) members may be created in a county, the members
26 of which shall be appointed as follows: two (2) members by appointment of
27 the board of county commissioners; two (2) members by appointment of a local,
28 county or state livestock association or associations; and the fifth member,
29 by concurrent appointment of the first four (4) appointees. Only if a major-
30 ity of said panel, after a public hearing held with notice as prescribed by
31 law, concludes that the creation, modification or elimination of a herd dis-
32 trict is insufficient to control or otherwise regulate the movement of live-
33 stock in an area, the board of county commissioners shall have power to es-
34 tablish such control by ordinance, provided that the cost of construction
35 and maintenance of any fencing or cattle guards required by said ordinance
36 shall be paid by the county current expense fund. Notwithstanding any pro-
37 vision of law to the contrary, a county shall have the authority to levy an
38 annual property tax of not to exceed two hundredths percent (.02%) of market
39 value for assessment purposes on taxable real property within the county,
40 and the revenues derived therefrom shall not be used for any other purpose.

1 SECTION 2. That Section 25-2402, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 25-2402. PETITION AND REQUIREMENTS FOR DISTRICT. (1) A majority of
4 the owners of taxable real property, including corporations, in any area
5 or district described by metes and bounds and who are also domiciled and
6 resident in the state of Idaho, may petition the board of county commission-
7 ers in writing to create, modify or eliminate a herd district in such area;
8 provided, that in the case of a petition for the purpose of eliminating an ex-
9 isting district or any portion thereof, said area must be contiguous to open
10 range. Such petition shall describe the boundaries of the said proposed herd
11 district, and shall designate what animals of the species of horses, mules,
12 asses, cattle, swine, sheep and goats it is desired to prohibit from running
13 at large, also prohibiting said animals from being herded upon the public
14 highways in such district; and shall designate that the herd district shall
15 not apply to nor cover livestock, excepting swine, which shall roam, drift or
16 stray from open range into the district unless the district shall be ~~inclosed~~
17 enclosed by lawful fences and cattle guards as needed in roads penetrating
18 the district so as to prevent livestock, excepting swine, from roaming,
19 drifting or straying from open range into the district; and may designate the
20 period of the year during which it is desired to prohibit such animals from
21 running at large, or being herded on the highways. Such petition may also
22 state the conditions and location(s), if any, for the construction of legal
23 fences and cattle guards which may be required to prohibit the running at
24 large of livestock within the interior of the proposed district; provided,
25 that if such petition does not address the issue of interior fencing and
26 cattle guards, the board of county commissioners shall have the power to es-
27 tablish such internal fencing requirements upon their approval of a proposed
28 district. Provided, any herd district heretofore established shall retain
29 its identity, geographic definition, and remain in full force and effect,
30 until vacated or modified hereafter as provided by section 25-2404, Idaho
31 Code.

32 (2) Notwithstanding any other provision of law to the contrary, no
33 establishment of a herd district shall:

34 (a) Contain any lands owned by the United States of America or the state
35 of Idaho, upon which the grazing of livestock has historically been per-
36 mitted.

37 (b) Result in the state, a county, a city or a highway district being
38 held liable for personal injury, wrongful death or property damage re-
39 sulting from livestock within the public right-of-way.

40 (c) Prohibit trailing or driving of livestock from one location to an-
41 other on public roads or recognized livestock trails.

42 (d) On or after July 1, 2023, regardless of the date of the establish-
43 ment of any herd district, be the basis for civil liability of the owner
44 of livestock, excepting swine, for damage from depredations or tres-
45 passes of such livestock that roam, drift, or stray from open range into
46 the herd district unless such district is enclosed by lawful fences and
47 cattle guards or gates as needed in roads penetrating the district so
48 as to prevent livestock from roaming, drifting, or straying from open
49 range into the district.

1 (3) Open range means all ~~uninclosed~~ unenclosed lands outside cities and
2 villages upon which by custom, license or otherwise, livestock, excepting
3 swine, are grazed or permitted to roam.

4 (4) The owners of taxable real property within the herd district shall:

5 (a) Pay the costs, including on private land, of constructing and main-
6 taining legal fences as required on the district's border with open
7 range so as to prevent livestock, excepting swine, from roaming, drift-
8 ing or straying from open range into the district.

9 (b) Pay the costs, including on private land, of constructing and
10 maintaining cattle guards as required on the district's border with
11 open range so as to prevent livestock, excepting swine, from roaming,
12 drifting or straying from open range into the district; except that the
13 costs of maintaining a cattle guard located on a public right-of-way
14 shall thereafter be paid by the state, county, city or highway district
15 responsible for maintaining said right-of-way.

16 (c) Pay seventy-five percent (75%) of the costs, including on private
17 land, of constructing legal fences required, at the time of the creation
18 or modification of the district only, to control livestock within the
19 interior of the district; provided that (i) the costs of maintaining
20 such fences shall thereafter be paid by the owner(s) of the land on which
21 the fencing is constructed as prescribed by chapter 1, title 35, Idaho
22 Code, and that (ii) the costs of constructing and maintaining fences on
23 livestock operations which come into existence after the creation or
24 modification of the district shall be paid by owner(s) of the land on
25 which the fencing is constructed as prescribed by chapter 1, title 35,
26 Idaho Code.

27 (d) Pay seventy-five percent (75%) of the costs, including on pri-
28 vate land, of constructing legal cattle guards required, at the time
29 of the creation or modification of the district only, to control live-
30 stock within the interior of the district; provided that (i) the costs
31 of maintaining a cattle guard located on a public right-of-way shall
32 thereafter be paid by the state, county, city or highway district re-
33 sponsible for maintaining the public right-of-way on which the cattle
34 guard is located, or, in the case of a cattle guard located on private
35 land, by the owner(s) of the land on which the cattle guard is con-
36 structed as prescribed by chapter 1, title 35, Idaho Code, and that (ii)
37 the costs of constructing and maintaining cattle guards on livestock
38 operations which come into existence after the creation or modification
39 of the district shall be paid by the owner(s) of the land on which the
40 cattle guard is constructed as prescribed by chapter 1, title 35, Idaho
41 Code.

42 (e) In the case of a new herd district created contiguous to an existing
43 herd district, there shall be no obligation to maintain a legal fence
44 or cattle guards on the border between the new district and the existing
45 district, except to the extent that said fence or cattle guards, or any
46 portion thereof, may be required to control movement of livestock on the
47 interior of the district. In the case of a modification of an existing
48 herd district which alters its borders with open range, there shall be
49 no obligation to maintain a legal fence or cattle guards on its previous
50 border with open range, except to the extent that said fence or cattle

1 guards, or any portion thereof, may be required to control movement of
2 livestock on the interior of the district.

3 (5) In the case of interior fencing and cattle guards as described in
4 subsections (4) (c) and (d), the owner(s) of private land on which such fenc-
5 ing or cattle guards are constructed shall pay twenty-five percent (25%) of
6 the total cost of their construction, provided that the share of that total
7 cost to be paid by each individual landowner shall be as prescribed by chap-
8 ter 1, title 35, Idaho Code.

9 (6) Notwithstanding any provision of law to the contrary, a county
10 shall have the authority to and shall levy an annual property tax not to ex-
11 ceed six hundredths percent (.06%) of market value for assessment purposes
12 on taxable real property within the district for the costs of constructing
13 and maintaining the legal fencing and cattle guards required by the creation
14 or modification of such a herd district; provided that a herd district cre-
15 ated on or after January 1, 1990, shall have no force and effect unless and
16 until such a levy is approved, and provided that the revenues derived there-
17 from may not be used for any other purpose. In the case of a new herd district
18 contiguous to an existing herd district, said levy shall apply, for purposes
19 of constructing legal fences and cattle guards required by the new district,
20 only to owners of taxable real property residing within the new district; but
21 for purposes of maintaining thereafter fences as required on the district's
22 border with open range, shall apply to owners of taxable real property re-
23 siding within both the new district and the existing district to which it is
24 contiguous.

25 SECTION 3. That Section 25-2405, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 25-2405. FENCES ON AGRICULTURAL LANDS ADJACENT TO PUBLIC DOMAIN --
28 CATTLE GUARDS. The board of county commissioners ~~may~~ shall provide as a
29 condition in any order creating a herd district which may hereafter be made
30 that any agricultural lands in the proximity of public domain where cattle,
31 horses, or mules are grazed, shall be ~~inclosed~~ enclosed by a lawful fence
32 and that any road extending from agricultural area to such public domain
33 shall contain cattle guards or gates at such places and of such nature as the
34 board shall prescribe. The board of county commissioners may make its herd
35 district orders inapplicable to cattle, horses, or mules straying from such
36 public domain or along roads leading to such public domain until such agri-
37 cultural lands are ~~inclosed~~ enclosed by lawful fence and such cattle guards
38 or gates are installed.

39 SECTION 4. An emergency existing therefor, which emergency is hereby
40 declared to exist, this act shall be in full force and effect on and after
41 July 1, 2023.