

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 31
FLOOD CONTROL DISTRICTS

42-3101. SHORT TITLE. This act may be known and cited as the "Flood Control District Act."

[42-3101, added 1971, ch. 300, sec. 1, p. 1219.]

42-3102. POLICY OF STATE. It is hereby recognized by the legislature that the protection of life and property from floods is of great importance to this state. It is therefore declared to be the policy of the state to provide for the prevention of flood damage in a manner consistent with the conservation and wise development of our water resources and thereby to protect and promote the health, safety and general welfare of the people of this state.

[42-3102, added 1971, ch. 300, sec. 2, p. 1219.]

42-3103. DEFINITIONS. Whenever used or referred to in this act, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(1) "Board" or "board of commissioners" means the board of commissioners of the flood control district.

(2) "Commissioner" means a member of the board of commissioners of the flood control district.

(3) "Debris removal" means to remove from the channels and banks of streams any artificial debris, plants and other materials that obstruct or are likely to obstruct the flow of water therein and thereby cause flooding or interfere with the lawful diversion and beneficial use of water.

(4) "Department" means the department of water resources, state of Idaho.

(5) "Director" means the director of the department of water resources, state of Idaho.

(6) "District" means any flood control district organized by authority of this act or prior acts of the Idaho legislature.

(7) "Flood" or "flooding" means the inundation of normally dry land areas with water caused by the overflow or rise of rivers, streams or lakes, and other surface watercourses, or the unusual and rapid accumulation or runoff of surface waters from any source.

(8) "Flooding emergency" means a circumstance in which the board has determined that the district is required to take immediate action to protect life or property from injury or damage resulting from existing or imminent flooding.

(9) "Flood fight" means the activities and operations authorized by the board in response to a flooding emergency.

(10) "State" means the state of Idaho.

(11) "Structural works of improvement" means any undertaking for flood prevention, including structural and land treatment measures, and for the conservation, development, utilization and disposal of water, as provided for in the act of the congress of the United States known as the Watershed Protection and Flood Prevention Act (U.S.C., tit. 16, sections 1001-1008) and acts amendatory thereto.

[41-3103, added 1971, ch. 300, sec. 3, p. 1219; am. 2014, ch. 72, sec. 1, p. 183.]

42-3104. DISTRICTS -- COMPOSITION -- DESIGNATED BY NUMBER. Flood control districts, composed of any portion of a county, or any county or counties requiring flood control, may be established pursuant to this act and when so established shall be governmental subdivisions of this state and public bodies, corporate and politic. Districts shall be assigned a number by the department and shall have all of the powers and duties conferred by law upon such districts.

[42-3104, added 1971, ch. 300, sec. 4, p. 1219.]

42-3105. PETITION TO ESTABLISH DISTRICT -- CONTENTS. A petition, signed by one-third (1/3) or more of the qualified voters residing within the territory of the proposed district may be filed with the director of the department of water resources asking that a district be organized in the territory described in the petition. Such petition shall set forth:

1. The object of the organization of the district.
2. The temporary boundaries of the proposed district.
3. That the establishment of said district, and the proposed method or system of flood control is a proper and advantageous method of accomplishing the relief sought or the benefits to be secured.
4. That the establishment of said district and the reservoirs, dams, levees, dikes, power plants, plans of irrigation and drainage improving, enlarging, widening, deepening, or straightening existing watercourses or rivers or the removal of natural obstructions therefrom or any other thing to be done will be conducive to the public health and welfare or will increase the public revenue.

[42-3105, added 1971, ch. 300, sec. 5, p. 1219.]

42-3106. DIVISION OF DISTRICT -- MAPS AND SURVEYS. The director shall examine said petition and, if it is found to be in accordance with the requirements here set forth, shall, without delay, proceed and examine all matters named and referred to in said petition and make such surveys of the territory to be effected by the proposed district, as will enable him to fully determine whether the same is necessary, practicable or feasible and shall prepare a report of his findings. For the purpose of making his findings, the director may advise and consult with any local governmental subdivision, including the officers and agents of any irrigation district, drainage district, canal company, or any individual water user who is not a member of any such company, who or which may be interested in, or affected by, the proposed district.

The director shall prepare a map of the proposed district and shall divide the proposed district into not less than three (3), nor more than nine (9) divisions so as to provide adequate representation to all of the interests within said district.

[41-3106, added 1971, ch. 300, sec. 6, p. 1219.]

42-3107. PUBLICATION OF NOTICE -- CONTENTS. Within a reasonable time after the filing of the petition the director shall give and publish notice that the party whose name first appears on said petition, and others, have filed a petition for organization of a district, giving the general boundaries of said district, the general outline of work, plans or improvements

contemplated, and shall further state the time and place where said petition will be considered by him, and any proponents and opponents desiring to be heard shall be heard at such time and place. Such notice shall be published three (3) weeks, at three (3) consecutive weekly issues, before the date upon which said hearing will be heard, in a newspaper of general circulation within each county in which any of the lands proposed to be included within the district are located.

[42-3107, added 1971, ch. 300, sec. 7, p. 1219.]

42-3108. HEARING ON PETITION -- FINDINGS AND ORDER OF DIRECTOR -- RECORDING. The director shall, at the hearing herein provided, permit any person or corporation interested in the formation of the proposed district, or any of its objects or purposes, to appear and make objections to the organization of the district. The petition shall be prima facie evidence of proponents of the formulation of the district, although such petitioners may withdraw their names at said hearings, or as is otherwise provided by law. The director shall make his findings upon facts alleged in the petition and any objections presented at such hearing, and any other facts necessary for the determination of the practicability and feasibility of said district.

If the director shall recommend that said district be organized, he shall make and enter an order and record the same in the office of the county recorder of each county wherein the lands of the said district thereof are located. The order shall set forth facts as found by him upon the hearing of the petition. Upon entering and recording the order, in the manner provided, the district shall be considered as organized.

Whenever the director shall recommend against the organization of the district at the hearing, but shall recommend the formulation of a district materially different from that prayed for in the petition filed with him, there shall be no further proceedings thereon, unless the director be requested so to do by one-third (1/3) of the qualified voters therein in the same manner as provided herein for the filing of the original petition, and upon the filing of such petition the director shall be required to comply with this act as if such petition had been filed with him in the first instance.

If the director shall recommend that said district not be organized at such hearing, nothing further shall be done unless a new petition shall be filed in the manner herein provided.

[42-3108, added 1971, ch. 300, sec. 8, p. 1219.]

42-3109. BOARD MEMBERS -- APPOINTMENT -- BOND OF COMMISSIONERS -- OATH -- REMOVAL. The order of the director organizing said district shall name the members of the board without regard to political affiliation. Each division of the district shall be represented by one (1) commissioner who shall be a qualified voter within the division which he represents, and a resident and qualified elector of the county in which he resides.

The members of the board of the district, appointed as aforesaid, shall be entitled to enter upon the duties of their office upon qualification as county officers are required to qualify, and upon each commissioner giving a bond to the state for the benefit of said district for the faithful performance of his duties as such commissioner in the sum of five thousand dollars (\$5,000) with one (1) or more sureties, or a surety bond, the premium for which shall be a lawful expenditure of the district, either of which shall be approved by the judge of the district court wherein the commissioner

resides; provided, the judge of the district court, upon application and proper showing by the board may enter an order reducing the amount of the bond to such sum as may appear to him to be reasonable and adequate under the showing made. The commissioners shall take the oath of office and file their bonds within fifteen (15) days after they are appointed and they shall hold office until their successors are duly appointed and qualified as in this act provided. The bonds of the commissioners shall be filed with the clerk of the district court of the county in which the office of the district is located and kept in trust by said clerk of the district court.

Immediately after their appointment and the filing and approval of their bonds the commissioners shall organize themselves into a board, as in this act provided, and shall by lot determine the terms of their office, which shall be one (1), two (2) and three (3) years, respectively. Annually thereafter the director shall appoint the commissioner, or commissioners, to succeed those whose terms of office are expiring. Such appointments shall be for three (3) years, provided that each division of the district shall be represented by one (1) commissioner who shall be a qualified voter within the division which he represents, and a resident and qualified elector of the county in which he resides.

The director may remove a commissioner for neglect of duty, misconduct or malfeasance or inability to perform the duties of a commissioner, or if the commissioner is no longer a resident of the division from which appointed. The director may appoint a successor for the unexpired term.

[42-3109, added 1971, ch. 300, sec. 9, p. 1219; am. 2018, ch. 193, sec. 1, p. 429.]

42-3110. ORGANIZATION OF BOARD -- APPROVAL BY COURT. The board, duly organized by order of the director shall within a reasonable time after their appointment, qualification and organization, file, in the district court of the county in which their office is located, a petition praying that all of the proceedings prior thereto may be examined and approved by the court.

The petition shall set forth in detail the proceedings taken prior to the entry of the order organizing the district, and the subsequent appointment and organization of the board. Upon the filing of the petition the court may require such notice to be given of the hearing on said petition as in his discretion he deems necessary and proper. At the hearing the court shall require that evidenciary [evidentiary] proof be presented of all of such proceedings taken pursuant to the rules of evidence.

In the event that the court finds that all proceedings were in conformity with this act, and that all procedures were followed, and that said district was organized in conformity with this act, then the court shall make its findings of fact, conclusions of law and order confirming these proceedings.

The order of the court entered upon the hearing of any petition shall be conclusive as the regularity of the proceedings unless appealed from within thirty (30) days after the entry of such order, provided that upon such appeal no bond shall be required, except for costs of the appeal, and no stay shall be allowed pending the appeal.

[42-3110, added 1971, ch. 300, sec. 10, p. 1219.]

42-3111. COMMISSIONERS -- ANNUAL APPOINTMENT -- OFFICERS' ELECTION -- DUTIES. Annually on the same day the district was organized the director shall appoint a commissioner or commissioners whose term expires. Each

commissioner thereafter who may be appointed shall qualify by taking the oath and filing a bond which shall be approved in the same manner as provided in section 42-3109[, Idaho Code,] of this act.

Upon the initial organization and annually thereafter on the same date, the board shall organize, by the election of one (1) of their number chairman, and one (1) of their number vice chairman. They shall elect, or appoint a secretary, who may, or may not, be a member of the board. They shall elect, or appoint a treasurer, who may, or may not, be a member of the board.

The chairman shall preside at all meetings, sign all claims, except his own, which shall be signed by the vice chairman, sign all warrants in payment of claims, after the submission of such claims and thus approved by the board, and such other duties as shall be required of him by law, or prescribed by the board.

The vice chairman, in the absence of the chairman, shall have the same powers and duties as the chairman.

The secretary of the board shall have the duties as are prescribed by the board. He shall attend all meetings of the board, shall keep a record of the proceedings, and shall enter in said record all matters required by law, or by the board, so to be entered; and said record shall be open to inspection by any person at all reasonable times. In the absence of the secretary, the board shall appoint some person, who, as acting secretary, shall keep the record of the proceedings of the board and certify the same to the secretary, and the board. Whenever in the discretion of the board, it is deemed advisable to do so, the secretary may be placed under surety (fidelity) bond, in the manner and in the amount which shall be prescribed by the board.

The treasurer appointed, or elected, by the board shall have such duties as the board may prescribe. He shall be placed under a surety (fidelity) bond issued by a surety company authorized to do business in the state, in such an amount as the board from time to time may determine. The treasurer shall keep a complete and accurate record of all of the financial affairs of the district and shall deposit all moneys of the district in the designated depository ordered by the board, and shall comply with the public depository law as now appearing, or as it may be amended.

[42-3111, added 1971, ch. 300, sec. 11, p. 1219.]

42-3112. VACANCIES ON BOARD -- APPOINTMENT BY DIRECTOR. If vacancies occur in said board through death, resignation, or failure to qualify of one (1) or more of the commissioners, such vacancy shall be filled by appointment by the director and said appointee shall be from the same division of the district as the commissioner whom he is replacing, and shall serve for the unexpired term, or until his successor is appointed and qualified.

[42-3112, added 1971, ch. 300, sec. 12, p. 1219.]

42-3113. MEETINGS OF BOARD -- REGULAR -- SPECIAL. The board shall designate the official location of their office, which shall be within said district.

Regular meetings of the board shall be held monthly on a uniform day of a uniform week as shall be determined by the board except that by and with the prior approval of the director monthly meetings may be suspended and meetings may be held quarterly. Such regular meetings shall be held at a time and place to be fixed by the board. The board shall send a certified true copy of their order fixing the official location of their office, and the time and

place of their regular meetings to the department of water resources and to any agency of the United States with whom the district is cooperating.

Special meetings and adjourned meetings of the board may be called by the chairman, vice-chairman or secretary, or any quorum of the board, and may be held at any time. If the time and place of such special meeting shall not have been determined at a meeting of the board with all members being present, then notice of the time and place of such special, or adjourned meeting, shall be given each member of the board not less than three (3) days before such special meeting is to be convened; unless such notice is waived in writing, signed by all of the members of the board present and voting at such special or adjourned meeting, and the signed waiver made a part of the minutes of such meeting.

A quorum for the transaction of business of the board shall consist of a majority of the members of the board. Unless otherwise provided by law, all questions shall be determined by a majority of the vote cast. The chairman may vote in all cases, and, in the event he elects not to vote and in the case of a tie, then he must cast the deciding vote.

All meetings, regular, special and adjourned, of the board, are declared to be public meetings open to the public. Nothing herein contained shall be construed to prevent any board from holding executive sessions from which the public may be excluded; provided that no rules, regulations, or any other official action, of any kind or character, shall be adopted at such executive sessions.

[42-3113, added 1971, ch. 300, sec. 13, p. 1219.]

42-3114. COMPENSATION OF COMMISSIONERS. The commissioners of the district shall fix the compensation they shall each receive for their services, not to exceed the sum of one hundred dollars (\$100) per day, and shall fix the reimbursement they shall each receive for their travel and their necessary expenses for each day they shall be away from their place of residence and engaged in the business of their office, subject to the limits provided in section 67-2008, Idaho Code. The commissioners shall present an itemized account under oath on forms prescribed by the board.

[42-3114, added 1971, ch. 300, sec. 14, p. 1219; am. 1978, ch. 244, sec. 1, p. 535; am. 2014, ch. 72, sec. 2, p. 184.]

42-3115. COMMISSIONERS -- POWERS AND DUTIES. The board of commissioners of flood control districts shall have the following powers and duties:

(1) To annually fix and determine the amount of money required to be raised by taxation to supply funds for costs of construction, costs of operation and maintenance of the work and equipment of the district, and to levy and cause to be collected assessments on real property within the district in an amount not to exceed six hundredths of one percent (.06%) of the market value for assessment purposes on all taxable property within the district, provided however that a higher levy may be approved and ratified by the qualified voters at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose in the same manner as provided for the approval and ratification of contracts, in section 42-3117, Idaho Code, and said levy shall be certified by the board to the board of county commissioners of the county, or counties, in which said district is located, with directions that at the time and in the manner required by law for levying taxes for county purposes, such board, or boards, of county commissioners shall levy such tax upon the market value for assessment purposes of the

real property within the boundaries of the district. Such certification of levies shall be prepared and forwarded by the board of the flood control district to the board, or boards, of county commissioners on or before September 1 of each year.

Such levies shall be levied and collected in the manner provided by law, and the moneys collected shall be turned over to the treasurer or treasurers, of the county, or counties, in which said district is located.

Said moneys shall be public funds and subject to the provisions of the public depository laws of the state.

(2) To employ such personnel as may be necessary to carry out the purposes and objects of this chapter, with the full power to bind said district for the compensation of such personnel.

(3) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of its power and to promulgate, amend and repeal rules not consistent with the provisions of this chapter.

(4) To manage and conduct the business and affairs of the district, both within and without the district.

(5) To enter into contracts for the purposes of this chapter, provided however, that the board shall purchase goods and services in accordance with the provisions of chapter 28, title 67, Idaho Code. However, where it is determined by order of the board that there is an existing flooding emergency, or that the district is in a flood fight, the requirement for sealed competitive bids shall not apply.

(6) To prescribe the duties of officers, agents and employees as may be required.

(7) To establish the fiscal year of the district and to keep records of all business transactions of the district.

(8) To prepare a statement of the financial condition of the district at the end of each fiscal year in a form to be prescribed by the director or by the legislative services office, to publish in at least one (1) issue of some newspaper published, or in general circulation in the county, or counties, in which such district is located and to file a certified copy of such financial report with the director and the legislative services office on or before February 2 of each year.

(9) To have an audit of the financial affairs of the district as required in section 67-450B, Idaho Code. A certified copy of said audit shall be filed with the director on or before February 2 following the audit.

(10) To obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, and improve any properties acquired; to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; to lease any of its property or interest therein in furtherance of the purposes and provisions of this chapter, provided that no contract or agreement for the acquisition, purchase or repair of personal property involving expenditure in excess of one thousand dollars (\$1,000), shall be entered into without first advertising for sealed competitive bids as herein provided.

(11) To have the power of eminent domain for the use of the district in the construction, operation, maintenance and upkeep of its structures, wa-

terways, dikes, dams, basins, or any other use necessary in the carrying out of the provisions of this chapter.

(12) To convey rights-of-way and easements for highways, public roads, public utilities, and for other purposes over district property, as shall be determined by the board to be in the best interests of the district.

(13) To convey, by deed, bill of sale, or other appropriate instrument, all of the estate and interest of the district in any real or personal property. Prior to such sale or conveyance, the board shall have the property appraised by three (3) disinterested residents of the district, which appraisal shall be entered in the minutes of the board. The property may be sold at public auction or at a private sale by sealed competitive bids, as the board shall determine, to the highest cash bidder, provided that in no case shall any property of a district be sold for less than its appraised value. All sales by sealed competitive bids shall be advertised as herein provided.

(14) To conduct the following activities and operations for the prevention of floodwater and sediment damages, and the conservation, development, utilization and disposal of water, whether within or outside the boundaries of the district:

(a) To construct, operate and maintain structural works of improvement;

(b) To use natural streams and to improve the same for use as a flood control structure;

(c) To declare a flooding emergency and fight floods. Provided however, that the extent of any stream channel alteration shall be limited to that amount of work deemed necessary by the board to safeguard life or property, including growing crops during the period of emergency;

(d) To repair and stabilize stream banks;

(e) To remove debris. If the district determines that there is no reasonable means of transporting and disposing of debris outside the mean high water mark of the channel, the district may deposit the debris along the stream banks outside the mean high water mark, and may thereafter dispose of combustible materials removed from the stream by burning in conformance with any applicable permitting requirements of the state of Idaho or local governments, and after reasonable notice to nearby landowners; and

(f) To conduct flood control operations to prevent flooding from the release of water from a canal, ditch or drain upon the request of the owner thereof.

(15) To enter into contracts or agreements with the United States or any of its officers, agents, or subdivisions, or with the state or any of its officers, agents or political subdivisions, and to cooperate with such governments, persons or agencies in effectuating, promoting and accomplishing the purposes of this chapter, provided that the district has sufficient moneys on hand, or in their budget for the year in which said contract is entered into, to defray the expenditure of funds called for in such contract without the creation of any indebtedness.

Whenever any such contract shall, by its terms, require the expenditure of funds by the district in excess of the moneys on hand or the funds to be realized from its budget for the year in which said contract is entered into, then such contract may not be entered into by the district until ratified by two-thirds (2/3) of the qualified voters voting at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose, according to the provisions of this chapter.

(16) To bear its allocated share of the cost of any project resulting from any contract or agreement entered into as provided herein.

(17) To take over, administer and maintain pursuant to any agreement or contract entered into in accordance with the provisions of this chapter any flood control project within or without the boundaries of the district undertaken in cooperation with the United States or any of its agencies, or with the state of Idaho or any of its agencies, or any combinations thereof.

(18) To accept donations, gifts and contributions in money, services, or materials, or otherwise, from the United States or any of its agencies, or the state of Idaho or any of its agencies or any combinations thereof, and to expend such moneys, services, or materials in carrying on its operations.

(19) To exercise all other powers necessary, convenient or incidental to carrying out the purposes and provisions of the chapter.

[42-3115, added 1971, ch. 300, sec. 15, p. 1219; am. 1979, ch. 175, sec. 1, p. 523; am. 1985, ch. 79, sec. 1, p. 152; am. 1993, ch. 258, sec. 1, p. 887; am. 1993, ch. 327, sec. 21, p. 1212; am. 1993, ch. 387, sec. 12, p. 1428; am. 1995, ch. 82, sec. 18, p. 228; am. 1995, ch. 118, sec. 60, p. 475; am. 1996, ch. 159, sec. 17, p. 520; am. 2005, ch. 213, sec. 9, p. 643; am. 2014, ch. 72, sec. 3, p. 184.]

42-3116. DIRECTOR'S APPROVAL -- WHEN REQUIRED. (1) In the event that the district's activities and operations will alter a stream channel within the meaning of section 42-3802, Idaho Code, the district shall obtain the director's prior approval pursuant to chapter 38, title 42, Idaho Code.

(2) The district's conduct of a flood fight in response to a flooding emergency declared by the board shall not require a stream channel alteration permit, provided the district complies with the emergency waiver procedures consistent with section 42-3808, Idaho Code, and rules promulgated by the Idaho water resource board.

[42-3116, added 2014, ch. 72, sec. 4, p. 186.]

42-3117. CONTRACTS SUBMITTED TO VOTERS -- NOTICE -- ELECTION. Whenever any contract with the United States or any agency thereof or, the state, is proposed to be entered into by any district which would create indebtedness in excess of the moneys on hand or the funds to be realized from their budget for the year in which said contract is entered into, the board shall first submit the question to the qualified voters of the district at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose.

Notice of such election must be given as provided in section 34-1406, Idaho Code. The notice must specify the date of the holding of the election, the qualification of the voters, the nature of the contract set forth in general terms, and by reference shall give notice as to where a copy of such contract, proposed to be entered into, may be viewed by the qualified voters, one (1) of which places shall be with each of the commissioners of the district and such other places as the board may determine by their order. Said notice shall further set forth the amount of the contract, the amount of the funds, if any, which will be received from the United States, and/or the state, the amount that the district will be obligating itself to pay, the duration of construction and obligation of such contract, the estimate of the mill levy required for operation, maintenance and administrative expenses of the district, whether such obligation may be met, within the limitations imposed by the levy authorized by this chapter, or whether, in addition to

voting upon the contract it will be necessary to vote upon an increase in the authorized levy.

The notice shall further state the hours between which the polls will be open, the definite place or places of holding the election, which shall be fixed by the board by its order, which order will require at least one (1) polling place in every division of the district, and the question to be voted upon.

The ballot shall contain the question to be voted upon and shall contain the words "Contract-Yes" and "Contract-No," or other words equivalent.

In the event such contract requires the district to call for a levy beyond the limitations imposed in section 42-3115, Idaho Code, then the ballot shall contain the question to be voted upon and shall contain the words "Contract and Levy-Yes" and "Contract and Levy-No" or other words equivalent.

In this election, the polling places shall be presided over by a board of election which shall be appointed by the board which shall consist of two (2) judges and a clerk, who shall be qualified voters of the division and the district. Before entering upon their duties each member of the board of election shall take an oath, which shall be administered by any qualified district voter before they shall perform their duties as such member of the board of election.

In such election the ballots used by the voters shall be kept in a sealed container until the polls are closed at the time specified in the notice of election and then shall be counted in open view.

It is intended that no informalities in the conduct of such election shall invalidate the same if the election shall have been otherwise fairly held.

The returns of such election shall be canvassed by the board which shall constitute the board of canvassers. All ballot boxes shall be returned to the board immediately upon the close of the polls and the counting of the ballots, and the ballots shall be canvassed not more than ten (10) days thereafter.

If upon the canvass of the votes it appears that the contract was approved by two-thirds (2/3) of the qualified voters voting at the election, then the contract will be considered to be approved.

[42-3117, added 1971, ch. 300, sec. 17, p. 1219; am. 1995, ch. 118, sec. 61, p. 477.]

42-3118. ELECTORS -- QUALIFICATIONS. No person shall be entitled to vote at an election for the purpose of raising the authorized maximum levy or the ratification of contracts by a flood control district, or for any other purpose in connection with said district, unless at the time of the election he is:

1. An elector within the meaning of article 6, section 2, of the Constitution of the state of Idaho; and
2. A resident within the district for a period of thirty (30) or more days next preceding the election.

[42-3118, added 1971, ch. 300, sec. 18, p. 1219; am. 1982, ch. 254, sec. 10, p. 652.]

42-3119. TITLE TO AND SALE OF WATERS -- DISPOSITION OF AGGREGATE. (1) The commissioners of any flood control district may in the manner provided by law obtain title to any unappropriated waters which said district has developed, conserved, or stored and said commissioners may sell, dispose, or

use said waters within or without the said district in any manner which the commissioners shall decide is of the greatest advantage to the district. The powers herein granted to the commissioners shall not be denied them by reason of contrary provisions of any other statute, except that the district may not obtain title to any waters previously appropriated.

(2) If in the operation of the works of the flood control district or in the removal of natural obstructions from the beds of navigable lakes, rivers, and streams between the ordinary high water marks, the district acquires rock, sand or gravel aggregates, the district may dispose of such aggregate not needed for district purposes through commercial sales or by donation to public agencies. District purposes as used in this section shall include construction or reconstruction of dikes, levees, and related access facilities. If sold through commercial sales or used for nonflood control related improvements on private land, the fees required by chapter 7, title 47, Idaho Code, shall apply and shall be paid to the state board of land commissioners. If the aggregate is donated to any public agency for use by that public agency, no fees shall be imposed or collected.

(3) As used in this section, public agency means a state agency, county, municipality, or highway district.

[42-3119, added 1971, ch. 300, sec. 19, p. 1219; am. 1986, ch. 142, sec. 1, p. 399.]

42-3120. ENLARGEMENT OF DISTRICT -- PETITION. An existing district may be enlarged in the same manner as a district may be originally organized pursuant to the provisions of this act, except that a petition for the enlargement of an existing district shall be signed by at least one-third (1/3) of the qualified voters in the area of the proposed extension to this existing district, as shall be determined by the voters who voted in the last general election next preceding the filing of the petition for enlargement; and shall bear the indorsement of the board of the existing district certifying that the proposed enlargement is desirable.

[42-3120, added 1971, ch. 300, sec. 20, p. 1219.]

42-3121. CONSOLIDATION OF DISTRICTS. If the boards of commissioners of any two (2) or more flood control districts which are contiguous deem it for the best interests of their respective district that the same be consolidated into a single district, such boards may petition the director of the department of water resources, state of Idaho, for an order consolidating the said districts.

[42-3121, added 1971, ch. 300, sec. 21, p. 1219.]

42-3122. PETITION FOR CONSOLIDATION -- INVESTIGATION -- NOTICE OF HEARING. Upon receiving a petition for the consolidation of two (2) or more flood control districts, the director shall investigate the condition of such districts, and all questions affecting such proposed consolidation, and within a reasonable time shall give and publish a notice of the proposed consolidation, which notice shall state a time and place where said petition will be considered by him, and any proponents of objections desiring to be heard shall be heard at such time and place. Such notice shall be published two (2) weeks in three (3) consecutive weekly issues before the date upon which the same is to be heard, in a newspaper of general circulation within each county in which any of the lands within the said proposed consolidation district are located.

[42-3122, added 1971, ch. 300, sec. 22, p. 1219.]

42-3123. DIRECTOR'S FINDINGS ON PETITION AND HEARING. The director shall, at the hearing herein provided, permit any person or corporation interested in the proposed consolidation or in any of its objects or purposes, to appear and make objection to the consolidation of said district.

The director shall make his findings upon facts alleged in the petition and any objections presented at such hearing and any facts based on his own investigation and any other facts necessary for the determination of the practicability and feasibility and desirability of said consolidation.

[42-3123, added 1971, ch. 300, sec. 23, p. 1219.]

42-3124. DECISION BY DIRECTOR -- COURT CONFIRMATION OF CONSOLIDATION REQUIRED. The director shall recommend for or against the consolidation, basing his decision on his findings of facts and stating his reasons. If the director shall recommend that the districts be not consolidated, nothing further shall be done, unless a new petition shall be filed in the manner herein provided. If the director shall recommend that the districts be consolidated, he may make and enter an order consolidating the districts and record said order in the office of the county recorder of each county wherein the lands in said consolidated district are located. The order shall also divide the consolidated district into not less than three (3) nor more than nine (9) divisions, and shall name the commissioners appointed by him for the consolidated district. The consolidated district shall be known and described by the name and number of the largest district of those consolidated. In the case of the consolidation of two (2) or more districts which are contiguous and already existing and concerning each of which the confirmation of proceedings has already been obtained, procedure the same in all respects as herein specified for the creation of an original flood control district shall be followed by the board of the consolidated district for the purpose of procuring a like order, or orders, of the district court touching such consolidation.

[42-3124, added 1971, ch. 300, sec. 24, p. 1219.]

42-3125. DIRECTOR MAY SUBMIT CONSOLIDATION TO ELECTION. The director may upon receiving a petition for consolidation of two (2) or more flood control districts, order an election to be held, subject to the provisions of section 34-106, Idaho Code, in each district. If two-thirds (2/3) of the qualified voters in each district, voting at the election, shall vote in favor of consolidation, the director shall make and enter an order consolidating the districts as in the preceding section. If fewer than two-thirds (2/3) of the qualified voters in any district voting at the election shall vote in favor of the consolidation, nothing further shall be done, unless a new petition shall be filed in the manner herein provided.

[42-3125, added 1971, ch. 300, sec. 25, p. 1219; am. 1995, ch. 118, sec. 62, p. 478.]

42-3126. DISSOLUTION OF DISTRICT. A district may be dissolved by the district court for the county in which the office of a district was last located, on complaint or petition of parties holding and owning:

1. Fifty per cent (50%) or more of the issued, outstanding, unpaid bonds of such district; or

2. Fifty per cent (50%) or more of all land located within the boundaries of such district; or

3. Claims, warrants, liens or other legal obligations of such district in an amount equal to not less than thirty per cent (30%) of the issued, outstanding and unpaid bonds of such district; or

4. Upon the complaint of the director of the department of water resources.

It must be made to appear to the satisfaction of the court, by such complaint or petition, that any one (1) or more of the following conditions exist in or as to said district:

1. That the district has been abandoned, or for two (2) or more years last past has ceased to function, and there is little or no possibility that it will ever function in the future.

2. That no useful purpose exists for the further continuance of the organization of the district.

3. That there are not sufficient qualified voters of such district to hold a legal election.

[42-3126, added 1971, ch. 300, sec. 26, p. 1219.]

42-3127. EXCLUSION OF A DIVISION. The qualified electors residing in a division of a flood control district may petition the director of the department of water resources requesting to be excluded from a district. Said petition must be signed by one-third (1/3) or more of the qualified electors residing within the territory of the division and the petition must:

(1) Show that the division either plans to join another existing district or form a new district.

(2) Describe the impacts on the remainder of the district after the division is excluded.

(3) Describe the benefits to the division that will result from its exclusion from the original district.

(4) Be in proper form as required by section 42-3105, Idaho Code, to proceed with the formation of a new district or be in proper form as required by section 42-3120, Idaho Code, to proceed with the addition of the division to an already existing district.

(5) Present an equitable division of assets and liabilities between the division and the remaining district.

Upon receipt, the director shall examine the petition, and if in proper form and if it appears that an equitable distribution of assets and liabilities can be made, the director shall proceed with the publication of notice, as described in section 42-3107, Idaho Code. The director shall, at the hearing, permit any person or corporation interested in the exclusion of the division to appear and present testimony and evidence in support of or against exclusion of the division. The director shall base his findings upon allegations in the petition, testimony and evidence presented at the hearing and any other facts necessary for the determination of the practicability and feasibility of exclusion of the division.

If the director shall recommend that a division should be excluded, he shall make and enter his findings in the form of a petition to the district court for the county in which the largest portion of the division is located. The district court may then order the exclusion of a division.

If the director shall determine that a division should not be excluded, nothing further shall be done, unless a new petition is filed in a similar manner as described above.

At such time as the division is excluded by the district court, the new district or enlargement of an existing district shall be ordered by the director in accordance with section 42-3108, Idaho Code.

The director may redivide the district from which the division was excluded in order to meet the requirements of section 42-3106, Idaho Code.

[42-3127, added 1984, ch. 240, sec. 1, p. 586.]

42-3128. EXCLUSION OF A DIVISION -- DISBURSEMENT OF ASSETS AND LIABILITIES. The distribution of assets and liabilities made necessary by the exclusion of a division from a flood control district pursuant to section 42-3127, Idaho Code, shall be established by decree of the district court. In order to establish the distribution of assets and liabilities between the remaining district and the excluded division, the court may consider the director's findings and recommendations, county tax records and district records.

[42-3128, added 1984, ch. 240, sec. 2, p. 587.]