

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 37
WATERSHED IMPROVEMENT DISTRICTS

42-3701. SHORT TITLE. This act may be known and cited as the Watershed Improvement District Law.

[42-3701, added 1957, ch. 226, sec. 1, p. 508.]

42-3702. LEGISLATIVE DETERMINATIONS AND DECLARATION OF POLICY. It is hereby recognized that the protection of life and property from floods, the prevention of damage to lands therefrom, and the orderly development, wise use, conservation and protection of the water resources of the state by the considered and proper use thereof, is of paramount importance to the welfare and prosperity of the people of the state.

To realize these objectives it is hereby declared to be the policy of the state to provide for the prevention of flood damage and the conservation[,] development, utilization and disposal of water in the watersheds of this state and thereby to protect and promote the health, safety and general welfare of the people of this state.

[42-3702, added 1957, ch. 226, sec. 2, p. 508.]

42-3703. 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. "District" or "watershed improvement district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with the provisions of this act for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

2. "Director" means one (1) of the members of the governing body of a district elected or appointed in accordance with the provisions of this act.

3. "Commission" or "state soil and water conservation commission" means the agency created in section 22-2718, Idaho Code.

4. "Petition" means a petition filed under the provisions of section 42-3705, Idaho Code, for the creation of a district.

5. "Nominating petition" means a petition filed under the provisions of section 42-3706, Idaho Code, to nominate a candidate for the office of director of a watershed improvement district.

6. "State" means the state of Idaho.

7. "Landowner" includes any person, firm or corporation who shall hold title to any lands lying within a district organized under the provisions of this act. A contract purchaser who is occupying the land shall be construed as a landowner.

8. "Qualified elector" means any natural person residing within the boundaries of the state of Idaho, owning land within the boundaries of the district, and qualified under the laws of this state to vote in an election by the people.

[42-3703, added 1957, ch. 226, sec. 3, p. 508; am. 1973, ch. 93, sec. 1, p. 161; am. 2010, ch. 279, sec. 28, p. 751.]

42-3704. DEFINITION OF WATERSHED IMPROVEMENT DISTRICTS. Watershed improvement districts may be established in this state pursuant to this act,

and when so established shall be governmental subdivisions of this state and public bodies corporate and politic.

Such watershed improvement districts may be organized within one or more counties of this state and the boundaries of such district may transcend county boundaries. In no instance shall a district involve more than 250,000 acres of private lands.

[42-3704, added 1957, ch. 226, sec. 4, p. 508; am. 1972, ch. 195, sec. 1, p. 483; am. 1989, ch. 295, sec. 1, p. 724.]

42-3705. CREATION OF WATERSHED IMPROVEMENT DISTRICTS. Any fifteen (15) owners of land lying within the limits of the territory proposed to be organized into a watershed improvement district may file a petition with the state soil and water conservation commission asking that a watershed improvement district be organized to function in the territory described in the petition. In the event that there are less than fifteen (15) persons owning land lying within the limits of the territory proposed to be organized into a district, then and in that case such petition will be deemed sufficient if it contains the signatures of two-thirds (2/3) of the owners of land and representing two-thirds (2/3) of the acreage of land lying within the limits of the said territory. Such petition shall set forth:

1. A description of the territory proposed to be organized as a watershed improvement district, which description shall be deemed sufficient if generally accurate.

2. That there is need, in the interest of the public health, safety, and general welfare for a watershed improvement district to function in the territory described in the petition.

3. The proposed name of said district.

4. A request that the state soil and water conservation commission duly define the boundaries for such district; that an election be held within the territory so defined on the question of the creation of a watershed improvement district in such territory.

After such petition has been filed with the state soil and water conservation commission it shall be the duty of the commission to define by metes and bounds or by legal subdivisions the boundaries of such proposed district, and to hold an election, subject to the provisions of section 34-106, Idaho Code, within the proposed district upon the proposition of the creation of the district, and to cause notice of such election to be given. The question shall be submitted by ballots upon which the words "For creation of a watershed improvement district of the lands below described and lying in the county(ies) of, and" and "Against creation of a watershed improvement district of the lands below described and lying in the county(ies) of, and" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the state soil and water conservation commission.

All qualified electors who own land within the proposed district shall be eligible to vote in the election.

The state soil and water conservation commission shall pay all expenses of, and supervise the conduct of, such election. The commission shall conduct the election as provided in chapter 14, title 34, Idaho Code. No informality in the conduct of such election or in any matter relating thereto shall invalidate said election or the result thereof if notice thereof shall

have been given substantially as herein provided, and said election shall have been fairly conducted.

If the election shall result in a majority of votes being cast in favor of the creation of such proposed district the state soil and water conservation commission shall proceed with the organization of the district in the manner hereinafter provided, to wit:

1. The state soil and water conservation commission shall appoint one (1) director to act with the two (2) directors elected as hereinafter provided, which said directors shall be the governing body of the district.

2. The state soil and water conservation commission shall present to the secretary of state a certificate stating:

(a) That a petition for the creation of said district was filed with the state soil and water conservation commission.

(b) The name and residence of the directors appointed by said commission.

(c) The name which is proposed for said district.

(d) That an election on such petition was held, and that the majority of votes cast in said election favored the formation of the district.

The secretary of state shall receive, file and record said certificate of the state soil and water conservation commission, and when said certificate shall be filed and recorded the district shall constitute a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the said directors a certificate of the due organization of the said district.

[42-3705, added 1957, ch. 226, sec. 5, p. 508; am. 1995, ch. 118, sec. 72, p. 487; am. 2010, ch. 279, sec. 29, p. 751.]

42-3706. ELECTION OF DISTRICT DIRECTORS. After the date of issuance of the secretary of state of a certificate of organization of a watershed improvement district nominating petitions may be filed with the state soil and water conservation commission to nominate candidates for directors of such district. The state soil and water conservation commission shall give notice of an election to be held, subject to the provisions of section 34-106, Idaho Code, for the election of two (2) directors for the district. The names of all nominees on behalf of whom such nominating petitions have been filed in the manner provided in section 34-1404, Idaho Code, shall appear arranged in the alphabetical order of the surnames upon ballots with a square before each name, and direction to insert an X mark in the square before any two (2) names to designate the voter's preference. All qualified electors who own land or reside within the proposed district shall be eligible to vote in said election. The two (2) candidates who shall receive the largest number respectively of the votes cast in such election shall be elected for such district. The state soil and water conservation commission shall pay all the expenses of such election, supervise the conduct thereof, and publish the results thereof in accordance with the provisions of chapter 14, title 34, Idaho Code. All elections in existing districts following the first election shall be conducted by the district directors of the district involved who shall give notice of such elections and who shall bear the cost thereof.

In any election for director, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that the number of qualified candidates who have been nominated for director positions is equal to the number of directors to be elected, it shall not be necessary for the candidates to stand for election, and the board of directors shall declare such

candidates elected as directors, and the secretary of the district shall immediately make and deliver to such persons certificates of election.

[42-3706, added 1957, ch. 226, sec. 6, p. 508; am. 1995, ch. 118, sec. 73, p. 489; am. 2010, ch. 279, sec. 30, p. 753.]

42-3707. APPOINTMENT, QUALIFICATIONS AND TENURE OF DIRECTORS. The governing body of the district shall consist of three (3) directors elected or appointed as provided hereinabove. The director appointed by the commission shall be an owner of land within the district and shall be a person who by training and experience is qualified to perform the specialized service which will be required in the performance of his duties hereunder. The term of office of each director shall be four (4) years, except that the director first appointed by the state soil and water conservation commission shall be designated to serve for a term of two (2) years from the date of his appointment. A director shall hold office until his successor has been elected or appointed, and has qualified. Vacancies shall be filled for an unexpired term by a majority of the directors duly qualified and acting at the time the vacancy shall arise. A majority of the directors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A director shall receive no compensation for his service, but shall be entitled to expenses, including traveling expenses necessarily incurred in the discharge of his duties.

The directors may employ a secretary, technical experts, and such other employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The directors may employ their own counsel and legal staff. The directors may delegate to their chairman, to one (1) or more directors, or to agents or employees such powers and duties as they may deem proper and necessary. The directors shall furnish to the state soil and water conservation commission, upon request, copies of such documents or other information concerning the directors' activities as said commission may require in the performance of its duties under this chapter. The directors shall provide for the keeping of a record of all proceedings, resolutions, regulations and orders issued or adopted; shall provide for an annual audit of its accounts, and shall provide for the execution of surety bonds by any employee or officer who shall be entrusted with funds or property of the district.

[42-3707, added 1957, ch. 226, sec. 7, p. 508; am. 2010, ch. 279, sec. 31, p. 753.]

42-3708. POWERS OF DIRECTORS. The directors of a watershed improvement district shall have power:

1. To levy and cause to be collected assessments on real property within the district in an amount not to exceed six hundredths of one per cent (.06%) of the market value for assessment purposes on all taxable property within the district, for the purpose of general administration and operation and maintenance of the district and in addition thereto to separately levy and cause to be collected assessments on real property within the district in an amount not to exceed twenty hundredths of one per cent (.20%) of the market value for assessment purposes on all taxable property within the district for construction of structural works of improvement. Before a levy can be made for any purpose, an election, subject to the provisions of section 34-106, Idaho Code, as herein provided must be held, and the provisions as outlined under sections 42-3712, 42-3713 and 42-3714, Idaho Code, must

be complied with, and assessments can only be levied against lands to be directly benefited.

2. To conduct surveys, investigations and research relating to floodwater, sediment damage and the conservation, utilization, and disposal of water in the district, and the structural works of improvement needed.

3. 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 sell, lease, or otherwise dispose of any of its property or interest therein in furtherance of the purposes and provisions of this chapter.

4. To develop comprehensive plans for the prevention of floodwater and sediment damage and the conservation, development, utilization, and disposal of water within the district, which plans shall specify the acts, procedures, performances and avoidances which are necessary for effectuation of such plans.

5. To construct, operate and maintain structural works of improvement for the prevention of floodwater and sediment damages, and 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.

6. To have the right of eminent domain with the power to cause to be condemned and appropriated for the use of the district in the construction, operation, maintenance and upkeep of its structures, waterways, dikes, dams, basins, or any other use necessary in the carrying out of the provisions of this chapter upon the payment of just compensation therefor.

7. To borrow money and to issue negotiable coupon bonds, which bonds shall bear interest, and which bonds shall be due and payable not later than thirty (30) years from the date of issuance, or at such earlier date as may be determined by the directors. The form and terms of said bonds, including their payment and redemption prior to maturity, shall be determined by the directors. Such bonds as may be issued shall be payable solely out of and from the assessments levied upon and a lien upon the lands within the district as provided in this chapter. Such bonds may be issued by the directors only upon the holding of an election within the district as provided by law and upon such election resulting in two-thirds (2/3) of the property owners, and representing at least fifty-one per cent (51%) of the land to be benefited, casting their ballots in favor thereof.

8. To enter into contracts or agreements with the United States or any of its officers, agents, or subdivisions, or the state of Idaho 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.

9. To bear its allocated share of the cost of any project resulting from any contract or agreement entered into as provided in subsection 8. of this section.

10. To take over, administer and maintain pursuant to any agreement or contract entered into in accordance with the provisions of subsection 8. of this section any watershed improvement project within its boundaries 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.

11. 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.

12. 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 powers, and to promulgate, amend and repeal rules not consistent with the provisions of this chapter.

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

[42-3708, added 1957, ch. 226, sec. 8, p. 508; am. 1970, ch. 133, sec. 8, p. 309; am. 1980, ch. 136, sec. 5, p. 298; am. 1995, ch. 82, sec. 19, p. 231; am. 1995, ch. 118, sec. 74, p. 489; am. 1996, ch. 322, sec. 40, p. 1070.]

42-3709. SUBMISSION OF PROPOSED PROJECT TO DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES. Before any contract shall be let or work begun upon any improvement or project within the district the cost of which cannot be exclusively financed by funds on hand, grants in aid, or gifts to the district, or before any contract may be entered into by the district with any other government agency or body which will obligate the district to contribute financially beyond the extent of the funds of the district then on hand, it shall be the duty of the directors to file with the director of the department of water resources a statement of the proposed improvement or project describing in detail such improvement or project, its scope, geographical location, estimated cost, economic feasibility, the tracts of land considered benefited by such improvement or project, and the proposed method of financing the costs of such improvement or project. The statement shall be accompanied by a general print of the area within the district showing thereon the area which will be affected by such improvement or project, and the plans and specifications for the said improvement or project.

[42-3709, added 1957, ch. 226, sec. 9, p. 508.]

42-3710. HEARING ON PROPOSED PROJECTS. Not sooner than sixty (60) days after the submission of the plans for any project to the director of the department of water resources as set forth in section 42-3709, [Idaho Code,] and before any contract shall be let or work begun upon any improvement or project within the district the cost of which cannot be exclusively financed by funds on hand, grants in aid, or gifts to the district, or before any contract may be entered into by the district with any governmental agency or body which will obligate the district to contribute financially beyond the extent of funds of the district then on hand, it shall be the duty of the directors to set a time and place within the district for a public hearing upon said proposal, and the directors shall cause a notice thereof to be published in a newspaper of general circulation within the district not less than three (3) times, at least ten (10) days before the date set for the hearing, and in addition thereto shall post a copy of said notice in at least one (1) public place within the district.

At the time and place fixed for such hearing any owner of land situated within the district, or any other interested person, may appear and be heard as to his objections to the said proposal.

Following the said public hearing the directors shall, by resolution, either affirm the proposal with or without modification or amendments, or disapprove the proposal stating therein their findings as to the economic feasibility of the proposed improvement or project, the probable cost of said improvement or project, the benefits to be derived therefrom, and whether or not the benefits accruing to lands within the district would exceed the cost of such improvement or project, whether the benefits will be conferred upon all lands within the district or upon only certain lands in the district, in which latter case the lands to be benefited shall be described as to boundaries, ownership, and approximate acreage, and the proposed method of financing such improvement or project.

[42-3710, added 1957, ch. 226, sec. 10, p. 508.]

42-3711. APPOINTMENT OF APPRAISERS AND APPRAISAL OF BENEFITED PROPERTY. If the directors, by resolution, determine that the proposed improvement or project should be constructed and that the costs of said improvement or project should be paid by special assessment against the lands benefited by said improvement or project, the directors shall appoint three (3) disinterested residents of the state to act as appraisers. Said appraisers shall inspect the plans and specifications of the said improvement or project and examine all lands likely to be benefited by such project. The appraisers shall make and file with the directors a detailed report showing all tracts of land within the district found to be benefited, together with the acreage thereof, and the name of the record owner, the amount each tract will be benefited, and the amount of assessment to be levied against each such tract.

[42-3711, added 1957, ch. 226, sec. 11, p. 508.]

42-3712. HEARING ON REPORT OF APPRAISERS. Upon receiving the report of the appraisers the directors shall fix a time and place within the district for hearing any complaint that may be made regarding the benefits appraised to any tract of land or the assessment proposed to be levied against any tract of land. A notice of such hearing shall be given as provided in section 42-3710[, Idaho Code].

At the time and place fixed for such hearing the directors shall consider the report of the appraisers and consider and hear any objections filed or voiced thereto.

The directors, by resolution, shall then reject the report of the appraisers or accept the same and ratify it with or without modification or amendments.

[42-3712, added 1957, ch. 226, sec. 12, p. 508.]

42-3713. APPEAL FROM APPROVAL OF PROJECT OR DETERMINATION OF BENEFITS OR ASSESSMENTS. Any owner of land or person having an interest therein upon which an assessment is proposed to be levied may, within ninety (90) days, take an appeal from the resolution of the directors accepting or ratifying the report of the appraisers, or from the resolution of the directors determining that the proposed improvement or project should be constructed by filing a petition with the district court of the county within which the property is located. Such petition shall set forth objections to the resolution of the directors determining that such project or improvement should be constructed, or to the resolution affirming the report of the appraisers. The said court may require the party to frame the issues, and shall set a

time for a hearing. Upon demand of any petitioner the court shall impanel a jury to determine such issues of fact as may be framed. The report of the appraisers as confirmed by the directors shall be prima facie evidence of the facts therein determined, and the petitioner shall have the burden of proof as to such issues. After hearing the cause, either with or without a jury, the court shall make and enter findings, judgment and order confirming the resolution of the directors, with or without amendments or modifications, or may declare the same void in whole.

[42-3713, added 1957, ch. 226, sec. 13, p. 508.]

42-3714. ASSESSMENTS ENTERED AS TAX LIENS IN INSTALMENTS. Upon the entering of the resolution and no appeal therefrom being filed within the time allowed for such appeal the directors shall transmit to the county auditor a list of all tracts of land so benefited, together with the amount of the assessment upon each tract, and the name of the owner or owners of each said tract. The county auditor shall immediately enter the same upon the tax rolls of the county against the designated lands, together with the amounts of said assessments. Said assessments shall be subject to the same interest and penalties in case of delinquency as in the case of general taxes, and shall be collected in the same manner as in the case of general taxes, and the lands sold for the collection of said assessment shall be subject to the same right of redemption as lands sold for the collection of general taxes; provided, that the said assessments shall not become due and payable except at such time or times and in such amounts as may be designated by the directors, which designation shall be made to the county auditor by the directors by serving written notice upon the county auditor designating the time and the amount of the assessment, and the amount so designated shall be added by the auditor to the general taxes of the owner or owners of said lands and collected therewith, and providing further, that no one yearly call for assessment by said directors shall be in an amount to exceed ten per cent (10%) of the actual amount necessary to defray the costs of the construction of the said improvement or project. The assessments so levied shall constitute liens against the designated tracts of land.

[42-3714, added 1957, ch. 226, sec. 14, p. 508.]

42-3715. LANDS OF STATE AND ITS SUBDIVISION. In case of lands belonging to the state, county, school district, or other public corporations are benefited by any improvement or project instituted under the provisions of this act, all benefits shall be assessed against said lands and the same shall be paid by the proper authorities at the same time as the assessments are called and paid in the case of private persons.

[42-3715, added 1957, ch. 226, sec. 15, p. 508.]

42-3716. ADDITIONAL ASSESSMENTS FOR MAINTENANCE. Additional assessments for the proper maintenance and/or operation of any improvement or project constructed within the district pursuant to this act may be levied against lands benefited by the improvement or project at the ratio or proportion established in the original assessment. Such additional [additional] assessments shall be made subject to the same hearing, determinations, confirmance and right of appeal set forth in sections 42-3712, 42-3713 and 42-3714[, Idaho Code].

[42-3716, added 1957, ch. 226, sec. 16, p. 508.]

42-3717. DISCONTINUANCE -- DISSOLUTION OF DISTRICTS. (1) At any time after three (3) years after the organization of a district under the provisions of this chapter any twenty-five (25) qualified electors or owners of land lying within the boundaries of such district or, if less than twenty-five (25) owners of land or qualified electors reside within the boundaries of such district it would be deemed sufficient if two-thirds (2/3) of the resident group, may file a petition with the state soil and water conservation commission requesting that the operations of the district be terminated and the existence of the district discontinued. After such petition has been received by the state soil and water conservation commission it shall give notice of the holding of an election, subject to the provisions of section 34-106, Idaho Code, which the said commission shall supervise and govern the conduct in accordance with the provisions of chapter 14, title 34, Idaho Code. The question to be submitted by ballots upon which the words "For terminating the existence of the (name of the watershed improvement district to be here inserted)" and "Against terminating the existence of the (name of the watershed improvement district to be inserted here)" shall appear with a square before each proposition, and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All qualified electors who own land or reside within the proposed district shall be eligible to vote in said election. No informality in the conduct of such election or in any matters relating thereto shall invalidate said election or the result thereof if notice thereof shall have been given as herein provided, and said election shall have been fairly conducted.

The state soil and water conservation commission shall certify the result of such election to the directors of the district. If the state soil and water conservation commission shall certify that a majority of the votes cast in said election favor the discontinuance of the existence of the district, the directors of the district shall forthwith proceed to terminate the affairs of the district. Any moneys remaining in the treasury of said district following the winding up of the affairs of the district shall be paid by the directors into the state treasury. The directors shall file an application duly verified with the secretary of state for the discontinuance of such district which shall recite that the affairs of the district have been wound up, and shall set forth a full accounting of the winding up of the affairs of said district. The secretary of state shall issue to the directors a certificate of dissolution, and shall record said certificate in his office.

The state soil and water conservation commission shall not entertain petitions for the discontinuance of any district nor conduct elections upon such petitions more often than once in three (3) years.

(2) Provided however, any district that fails or has ceased to function for two (2) or more years may be dissolved by the board or boards of county commissioners of the county or counties in which it is located. The county commissioners may initiate such action upon their own volition, or the action may be initiated by petition.

[42-3717, added 1957, ch. 226, sec. 17, p. 508; am. 1995, ch. 118, sec. 75, p. 491; am. 2010, ch. 279, sec. 32, p. 754; am. 2016, ch. 295, sec. 1, p. 826.]