

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 44
LEVEE DISTRICT ACT

42-4401. SHORT TITLE. The provisions of this chapter may be known and cited as the "Levee District Act."

[42-4401, added 1990, ch. 396, sec. 1, p. 1108.]

42-4402. POLICY OF STATE. It is hereby recognized by the legislature that the protection of life and property from the containment of water stored for irrigation, the storage of winter flows and excess waters for irrigation purposes, and flood waters are of great importance to this state. It is therefore declared to be the policy of the state to provide for the storage and containment of irrigation water and 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.

[42-4402, added 1990, ch. 396, sec. 1, p. 1108.]

42-4403. DEFINITIONS. As used in this chapter:

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

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

(3) "District" means any levee district organized under the provisions of this chapter.

(4) "Levee" means a retaining structure alongside a natural lake which has a length that is two hundred (200) times or more greater than its greatest height measured from the lowest elevation of the toe to the maximum crest elevation of the retaining structure.

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

[42-4403, added 1990, ch. 396, sec. 1, p. 1108.]

42-4404. CORPORATE POWERS OF LEVEE DISTRICTS. Any portion of a county requiring the maintenance, operation, or construction of a levee to contain irrigation water or to prevent flooding, may be organized into a levee district, and when so organized such district and the board of commissioners hereinafter provided for shall have and possess the power herein conferred by law upon such district and board of commissioners, and said district shall be known and designated as levee district no. of the county of, of the state of Idaho, and shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, and shall have perpetual succession and shall adopt and use a seal. The commissioners hereinafter provided for and their successors in office shall, from the time of the organization of such levee district, have the power and it shall be their duty, to manage and conduct the business and affairs of the district, and make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required, and prescribe their duties, and perform such other acts as herein provided, or that may hereafter be provided by law.

[42-4404, added 1990, ch. 396, sec. 1, p. 1109.]

42-4405. PETITION FOR ORGANIZATION. For the purpose of the formation of a levee district a petition shall be presented to the clerk of the district court of the county in which the greater portion of the lands of the proposed levee district are located. The petition must be signed by at least one-fourth (1/4) of the taxpayers of the district who pay a general tax on real property which is owned by them within the proposed district. The petition shall set forth:

- (1) The name of the proposed district;
 - (2) The object of the organization of the proposed levee district;
 - (3) A designation of the temporary boundaries of the district;
 - (4) The approximate number of acres of land in the proposed district therein;
 - (5) A description of the levee to be maintained, operated or constructed;
 - (6) The general location of the levee;
 - (7) A statement that the establishment of the district and the proposed maintenance, operation or construction of the levee will be conducive to the public health, convenience and welfare, or increase the public revenue, or that the establishment of said district and the maintenance, operation, or construction of the levee is a proper and advantageous method of accomplishing the relief sought; and
 - (8) A prayer for organization of the district.
- [42-4405, added 1990, ch. 396, sec. 1, p. 1109.]

42-4406. PETITION -- BOND -- CONDITION FOR WITHDRAWAL OF NAMES. The petitioners for formation of a levee district shall, at the time of the filing of the petition, file a bond with the clerk of the district court of the county in which the proposed district is to be located. The bond shall run to the state of Idaho and shall be in the penal sum of one thousand dollars (\$1,000) with two (2) or more sureties, to be approved by the judge of the district court.

In case said district be not established, then all costs shall be collectible on such bond. Any person having a charge against said district shall have a right of action on such bond.

After the petition seeking formation of a levee district is filed with the clerk of said court, no petitioner shall be allowed to withdraw his name or land therefrom without tendering into court his pro rata share of all costs and expenses incurred by petitioners to the date of such withdrawal.

[42-4406, added 1990, ch. 396, sec. 1, p. 1109.]

42-4407. JURISDICTION TO ESTABLISH DISTRICTS. The district court sitting in and for any county in this state, or any judge thereof in vacation, is hereby vested with jurisdiction, power and authority to establish levee districts which may be entirely within or partly within and partly without the judicial district in which said court is located.

[42-4407, added 1990, ch. 396, sec. 1, p. 1110.]

42-4408. ACTION ON PETITION -- NOTICE OF HEARING. Immediately after the filing of the petition for formation of a levee district the judge of the court shall fix a time for the hearing on the petition by order made by him, which order shall provide that said petition and notice of hearing be published for at least three (3) successive weeks in some weekly newspaper or newspapers, printed and published in said county or counties in which the

lands are situated, and in case no such paper is published in such county, then in some paper of general circulation therein; together with a notice of the time and place at which such judge will consider said petition. The last date of publication shall be not less than ten (10) days nor more than twenty (20) days before the date of the hearing.

[42-4408, added 1990, ch. 396, sec. 1, p. 1110.]

42-4409. HEARINGS ON PETITIONS -- OBJECTION TO INCLUSION. On the day fixed for such hearing or at any adjournment thereof the court shall ascertain from the tax rolls of the county or counties in which the district is located or into which it extends, the total number of taxpayers within the proposed district who pay a general tax on real property owned by them within the district.

If the court finds that no petition has been signed and presented in conformity with this chapter, or that the material facts are not as set forth in the petition filed, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in such proportion as it shall deem just and equitable. No appeal or writ of error shall lie from an order dismissing said proceedings; but nothing herein shall be construed to prevent the filing of a subsequent petition or petitions for similar improvements or for a similar district, and the right so to renew such proceedings is hereby expressly granted and authorized.

Any time after the filing of the petition for the organization of a district and before the day fixed for the hearing thereon, the owner or owners of any real property within the proposed district may file an objection with the court stating reasons why said property should not be included therein, why his land or any part thereof will not be benefited by the proposed district, and praying that said property be excluded therefrom. Such objection shall be duly verified and shall describe the property sought to be excluded. The court shall, at the hearing, examine and take testimony and evidence on all objections to inclusion in the district. In case any owner of real estate included in said proposed district shall satisfy the court that his real estate, or any part thereof, has been wrongfully included therein or will not be benefited thereby then the court shall exclude such real estate as will not be benefited.

Upon said hearing, if it shall appear that a petition for the organization of a district has been signed and presented as hereinabove provided, in conformity with this chapter, and the allegations of the petition are true, the court shall, by order duly entered of record, direct that the question of the organization of the district be submitted to the qualified electors of the district at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose, and such order shall appoint three (3) qualified electors of the district as judges of said election. The clerk of the court having jurisdiction shall publish notice of the time and place of an election to be held in the district.

Such election shall be held and conducted in the same manner as general elections in this state, except that the court shall establish as many election precincts within such proposed district as are deemed necessary, shall define the boundaries thereof, which precincts and boundaries may thereafter be changed by the board of commissioners of such district if so organized.

[42-4409, added 1990, ch. 396, sec. 1, p. 1110; am. 1995, ch. 118, sec. 80, p. 494.]

42-4410. NOMINEES FOR BOARD OF COMMISSIONERS. If upon the hearing as provided in section 42-4409, Idaho Code, the court shall order an election for the creation of the district, nominees for the board of commissioners of the district shall be nominated by the filing of petitions in accordance with the provisions of section 34-1404, Idaho Code. The court shall order that the names of persons whom the court finds to have been properly nominated shall be listed upon a ballot submitted to the electors at such election.

[42-4410, added 1990, ch. 396, sec. 1, p. 1111; am. 1995, ch. 118, sec. 81, p. 495.]

42-4411. ELECTION. In the event the court makes its order providing for such election, it shall prescribe the form of the question and ballot relating to the creation of the district, and also the form of the ballot relating to the election of the commissioners, provided, that all matters may be contained upon one (1) ballot to be submitted to the voters.

At such election the voters shall vote for or against the organization of the district, and for three (3) qualified electors, who shall constitute the board of commissioners of the district, if organized, one (1) commissioner to act until the first biennial election, one (1) until the second, and one (1) until the third biennial election.

The judges of election shall certify the returns of the election to the district court having jurisdiction.

[42-4411, added 1990, ch. 396, sec. 1, p. 1111.]

42-4412. ENTRY OF ORDER. If a majority of the votes cast at the election are in favor of the organization of the levee district, the district court shall declare the levee district organized, shall give it a corporate name by which, in all proceedings, it shall thereafter be known, and designate the first board of commissioners to have been elected. Thereupon the district shall be a governmental subdivision of the state of Idaho and a body corporate with all the powers of a public or quasi-municipal corporation.

[42-4412, added 1990, ch. 396, sec. 1, p. 1112.]

42-4413. FINALITY OF ORDER. If an order be entered establishing the district, such order shall be deemed final and no appeal or writ of error shall lie therefrom, and the entry of such order shall finally and conclusively establish the regular organization of the said district against all persons except the state of Idaho, in an action in the nature of a writ of quo warranto, commenced by the attorney general within thirty (30) days after said decree declaring such district organized as herein provided, and not otherwise. The organization of said district shall not be directly or collaterally questioned in any suit, action or proceeding except as herein expressly authorized.

[42-4413, added 1990, ch. 396, sec. 1, p. 1112.]

42-4414. OFFICERS -- MEETINGS. The board of commissioners of such district shall elect one (1) of their number chairman and one (1) secretary, and shall keep minutes of all their proceedings. The levee district commissioners shall hold their meetings for the transaction of business at any place in the county or counties in which the district is located.

[42-4414, added 1990, ch. 396, sec. 1, p. 1112.]

42-4415. VACANCIES. In case a vacancy or vacancies occur in said board by death, failure to appoint, failure to qualify, or resignation of one (1) or more of the members thereof, such vacancy or vacancies shall be filled at once by appointment by the remaining commissioners and said appointee shall serve for the unexpired term or until his successor is elected.

[42-4415, added 1990, ch. 396, sec. 1, p. 1112.]

42-4416. COMMISSIONERS -- POWERS AND DUTIES. The board of commissioners of levee 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 maintenance, operation, and/or construction of the levees 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 eight hundredths percent (.08%) of each dollar of market value for assessment purposes; 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, 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 real property within the boundaries of the district. Such certification of levies shall be prepared and forwarded by the board of the levee 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 and regulations 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 maintain, operate and/or construct levees for containment of irrigation water and for the prevention of floodwater whether within or without the boundaries of the district, and to enter into contract for the purposes set forth above; provided, however, that the board shall not enter into contracts except 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 emergency, 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 according to generally accepted accounting principles, and 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 of the department of water resources.

(9) To have an audit of the financial affairs of the district as required in section 67-450B, Idaho Code.

(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 any contract or agreement for the acquisition, purchase or repair of personal property shall be entered into in accordance with the provisions of chapter 28, title 67, Idaho Code.

(11) To have the power of eminent domain for the use of the district in the maintenance, operation, and construction of its levees 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 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, 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 their 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.

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

(16) To take over, administer and maintain pursuant to any agreement or contract entered into in accordance with the provisions of this chapter, any levee 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.

(17) 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.

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

[42-4416, added 1990, ch. 396, sec. 1, p. 1112; am. 1993, ch. 327, sec. 22, p. 1214; am. 1993, ch. 387, sec. 14, p. 1432; am. 1995, ch. 118, sec. 82, p. 495; am. 2005, ch. 213, sec. 12, p. 648.]

42-4417. MAINTENANCE OF SYSTEM -- DISTRICT NOT TO BE OPERATED FOR PROFIT. Any levee district organized under the provisions of this chapter is not to be conducted or operated for profit or with the view of paying dividends, but solely for the benefit and welfare of the residents and property owners of said district.

[42-4417, added 1990, ch. 396, sec. 1, p. 1115.]

42-4418. INTERESTED PERSONS -- RIGHT OF EXAMINATION. Any person or corporation having an interest in, or lien upon, any land situate within the boundaries of a levee district now organized or existing, or hereafter organized under the laws of the state of Idaho, and which land has been, or hereafter may be, assessed for benefits for the maintenance, operation, or construction of levees in such district, as provided in this chapter, as shown by the assessment roll of said district, confirmed by the court, shall have the right personally, or through his agents, attorneys or auditors to examine the books, records and accounts of the board of commissioners and to make copies thereof.

[42-4418, added 1990, ch. 396, sec. 1, p. 1115.]