

TITLE 43
IRRIGATION DISTRICTS

CHAPTER 2
ELECTION OF DIRECTORS

43-201. ELECTION, TERM OF OFFICE, NOMINATIONS AND QUALIFICATIONS. (1) Following the organization of any district, an election shall be held in accordance with section [34-106](#), Idaho Code, at which shall be elected one (1) director for each division of said district by the electors of the district at large.

(2) The term of office of the directors shall, immediately after the first election following such organization, be selected by lot so that as nearly as may be one-third (1/3) of the number shall hold office for the term of one (1) year, one-third (1/3) for the term of two (2) years, and the balance for the term of three (3) years. An election shall be held in the district each year thereafter in accordance with section [34-106](#), Idaho Code, to elect directors to succeed those whose terms expire. Each director's term of office shall commence on the regularly scheduled board meeting closest to the date specified for taking office in section [34-106](#), Idaho Code, and shall continue for a term of three (3) years and until their successors are elected and qualified. If no director is elected and qualified at the end of an incumbent director's three (3) year term, an election shall be held at the next regular election of the irrigation district for the incumbent director's successor to hold office for the remainder of the unexpired term. This election requirement shall apply retroactively where an incumbent director remains in office on the date of the effective date of this act because the incumbent's successor was not elected and qualified in the 2012 election.

(3) Every director must be a qualified elector and a resident of the division of the director whom he is to succeed in office; provided that the bylaws may, by resolution of two-thirds (2/3) of the board and adoption by two-thirds (2/3) of the electors voting in a district election conducted in accordance with the general election laws of the state applicable to irrigation districts, set forth a provision allowing a district landowner to serve as the director from the division in which the landowner owns land, if the landowner possesses all the qualifications required of electors under the general laws of the state and has resided within fifteen (15) miles of the district for a period of at least thirty (30) days prior to the election; provided further that any landowner who owns land in more than one (1) division may serve as the director only from the division nearest which he resides.

(4) Candidates for election to the office of director of an irrigation district shall be nominated by nominating petitions on forms provided by the district. Each nominating petition shall:

- (a) Identify the name of the nominee;
- (b) Identify the office for which the nomination is made;
- (c) Identify the term for which nomination is made;
- (d) Be signed by at least six (6) electors in districts having less than one hundred (100) resident electors and by at least twelve (12) electors in districts having more than one hundred (100) resident electors; and
- (e) Be filed with the secretary of the district not less than forty (40) days or more than sixty (60) days before the date of election; and the names of the persons so nominated shall be placed upon the official ballot to be furnished by the district.

(5) Each nominee shall subscribe to a nominee's oath on a form provided by the irrigation district and shall submit the oath to the secretary of the district with the written nomination. The oath shall:

- (a) Identify the land the nominee owns within the district;
- (b) Provide the address of the nominee's residence;
- (c) Certify that the nominee meets the residency and qualification requirements of subsection (3) of this section and section [43-111](#), Idaho Code; and
- (d) Certify that the nominee will meet such requirements on the date of election.

The secretary of the district shall verify the qualifications of each nominee and shall, no more than seven (7) days after the close of filing, certify the qualified nominees for inclusion on the election ballot. If at any time prior to the election, circumstances change so that a nominee no longer meets the qualification requirements of section [43-111](#), Idaho Code, the nominee shall be disqualified, shall not take office if elected, and shall immediately file with the secretary of the district a written withdrawal of his nomination for the office of director. The secretary shall not place on the election ballot the name of any candidate that does not meet the qualification requirements of section [43-111](#), Idaho Code.

[(43-201) 1903, p. 150, part of sec. 4; R.C., sec. 2378; am. 1915, ch. 48, sec. 1, part of subd. 2378, p. 135; am. 1917, ch. 90, sec. 1, p. 313; reen. C.L., sec. 2378; C.S., sec. 4330; am. 1929, ch. 110, sec. 1, p. 178; I.C.A., sec. 42-201; am. 1957, ch. 147, sec. 1, p. 247; am. 1981, ch. 166, sec. 1, p. 292; am. 1995, ch. 125, sec. 1, p. 541; am. 1999, ch. 207, sec. 2, p. 555; am. 2006, ch. 124, sec. 1, p. 357; am. 2008, ch. 212, sec. 1, p. 668; am. 2013, ch. 133, sec. 1, p. 304; am. 2022, ch. 106, sec. 1, p. 359.]

43-201A. WHEN ELECTION NOT REQUIRED. If, pursuant to section [43-201](#), Idaho Code, the secretary of the district verifies that there is only one (1) qualified candidate who has been nominated for the position of director to be filled, it shall not be necessary to hold an election for that position, and the board of directors shall declare such candidate elected as director at the next regularly scheduled board meeting following the expiration of the date for filing written nominations. If the secretary of the district verifies that there is no qualified candidate, the incumbent director's term of office shall continue until the director's successor is elected and qualified. The procedure set forth in this section shall not apply to any other irrigation district election.

[43-201A, added 1979, ch. 293, sec. 1, p. 772; am. 2012, ch. 119, sec. 1, p. 335; am. 2014, ch. 64, sec. 1, p. 167.]

43-202. DIRECTOR'S OATH AND BOND. On the date a director's term of office is to begin, at the meeting of the irrigation district's board of directors as provided in section [43-201](#)(2), Idaho Code, the person that has been elected shall: (1) take and subscribe the official oath required by section [59-401](#), Idaho Code, in which the person shall verify that he or she meets the qualification requirements of section [43-111](#), Idaho Code; (2) be presented a certificate of election; (3) execute a bond if one (1) is hereinafter required; and (4) assume the duties of the office of director. The incumbent director's term of office shall be terminated upon the next director's assumption of office as provided in this section. Each director shall file

the same in the office of the board of directors, and execute the bond hereinafter provided for. Each member of said board of directors shall execute an official bond in the sum of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), the amount to be determined and approved by the judge of the probate court of said county where such organization was effected and shall be recorded in the office of the county recorder thereof and filed with the secretary of said board. All official bonds provided for in this title shall be in the form prescribed by law for the official bond of county officers. If the district obtains a surety bond, blanket surety bond or crime insurance coverage pursuant to the applicable provisions of [chapter 8, title 59](#), Idaho Code, the directors shall not be required to post a bond under the provisions of this section.

[(43-202) 1903, p. 150, part of sec. 4; reen. R.C., sec. 2378; am. 1915, ch. 48, sec. 1, p. 135; am. 1917, ch. 90, sec. 1, part of subd. 2378, p. 313; reen. C.L., sec. 2378a; C.S., sec. 4331; I.C.A., sec. 42-202; am. 2010, ch. 285, sec. 1, p. 766; am. 2013, ch. 133, sec. 2, p. 305.]

43-203. INCREASING OR DECREASING NUMBER OF DIRECTORS -- PETITION. In any irrigation district, organized under the laws of the state of Idaho, having three (3), five (5) or seven (7) directors, whenever a petition amounting to fifty per cent (50%) of the votes cast at the last annual election within the district, shall be filed with the board of directors of such district asking for an election within the district, for the purpose of increasing or decreasing the number of directors of such district, such board of directors shall thereafter immediately call an election for the purpose of deciding the question: provided, that the petition shall recite that each signer thereof is a legal voter, or land holder within such district and the signatures thereupon are verified by the person or persons circulating the same: provided, that the petition shall specify the number of directors demanded, which shall be three (3), five (5) or seven (7): provided, that such petition shall represent not less than twenty-five per cent (25%) of the area of the lands within such district as shown by the records of the district.

[(43-203) 1915, ch. 91, sec. 1, p. 210; reen. C.L., sec. 2378b; C.S., sec. 4332; I.C.A., sec. 42-203.]

43-204. INCREASING OR DECREASING NUMBER OF DIRECTORS -- HEARING AND ELECTION. Upon the filing of a petition with the board of directors of any irrigation district as provided in section [43-203](#)[, Idaho Code,] the board of directors of such district shall set a date for hearing the said petition, not less than two (2) weeks and not more than sixty (60) days after the first regular monthly meeting following the filing of such petition, and if the petition does comply with the requirements of section [43-203](#)[, Idaho Code,] then the directors shall immediately thereafter order an election upon the question, and proceed according to the laws governing elections within irrigation districts for the submission of questions of creating indebtedness.

[(43-204) 1915, ch. 91, sec. 2, p. 210; reen. C.L., sec. 2378c; C.S., sec. 4333; I.C.A., sec. 42-204.]

43-204A. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS. (a) A district shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or com-

pleted action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the district) by reason of the fact that he is or was a director, officer, employee or agent of the district, or is or was serving at the request of the district as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the district, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the district, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) A district shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the district to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the district, or is or was serving at the request of the district as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the district and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the district unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(c) To the extent that a director, officer, employee or agent of a district has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsection (a) or (b) hereof, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under subsection (a) or (b) of this section (unless ordered by a court) shall be made by the district only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsection (a) or (b). Such determination shall be made (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the qualified electors of the district.

(e) Expenses (including attorneys' fees) incurred in defending a civil or criminal action, suit or proceeding may be paid by the district in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the district as authorized in this section.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of qualified electors of the district or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

(g) A district shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the district, or is or was serving at the request of the district as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any capacity or arising out of his status as such, whether or not the district would have the power to indemnify him against such liability under the provisions of this section.

(h) The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, and personal representatives of such a person.

[43-204A, added 1988, ch. 325, sec. 1, p. 986.]

43-204B. BYLAW LIMITING DIRECTOR LIABILITY AUTHORIZED. The bylaws of the district may set forth a provision eliminating or limiting the personal liability of a director to the district or its qualified electors for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director:

(a) For any breach of the director's duty of loyalty to the district or its qualified electors.

(b) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law.

(c) For any transaction from which the director derived an improper personal benefit.

No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective.

[43-204B, added 1988, ch. 325, sec. 2, p. 988.]

43-205. INCREASING OR DECREASING NUMBER OF DIRECTORS -- PROCEDURE FOLLOWING ELECTION. Upon the canvass of the returns, as provided by section [43-208](#)[, Idaho Code], of any election for determining the number of the directors for any irrigation district, and if there be any change voted, then the board shall immediately proceed to redivide the said district into directors' divisions of convenient boundaries and as nearly as possible of equal area, and appoint a qualified person from each division as a director whose term of office shall expire with the next regular election, and the

first succeeding directors elected under the new arrangement shall determine their terms of office as contemplated by this chapter, and in case the number of directors shall have been decreased the old members of the board of directors shall continue in office until the expiration or sooner determination of their terms, successors being appointed or elected only in divisions where representation will terminate with the term of such director.

[(43-205) 1915, ch. 91, sec. 3, p. 210; reen. C.L., sec. 2378d; C.S., sec. 4334; I.C.A., sec. 42-205.]

43-206. NOTICE OF ELECTION -- APPOINTMENT OF JUDGES. (1) The secretary of the district shall give notice of all elections in said district subsequent to the organization thereof, by posting the same in three (3) public places in each such precinct and in the office of said board, at least four (4) weeks before the day of such election, or by publication of the same once a week for two (2) successive weeks in a newspaper having general circulation within said district. If notice be given by publication in a weekly newspaper, the same shall be published in two (2) successive issues thereof, or, if in a daily newspaper, at least six (6) days shall elapse between the first and last dates of publication, and, in either case, publication shall be completed not less than fifteen (15) days before such election. Notices shall state the time of said election and the polling place for each precinct and the director to be elected or other question to be voted upon, as the case may be. At least ten (10) days before the holding of any such election, the board of directors shall appoint three (3) electors of each precinct to serve as judges of election for such precinct, and such judges shall constitute a board of election for such precinct.

(2) A polling place for a precinct need not be located in the precinct, but shall be located within the district. Polling places for two (2) or more precincts may be combined at one (1) location, as long as the physical arrangements of the polling place are sufficient to guarantee all voters the right to cast a secret ballot. Any combined polling place thus created shall be no farther than ten (10) miles outside of the precinct which is losing its polling place. In cases of combined polling places, the board of directors shall name one (1) elector from each of the combined precincts to serve as judges of election for that polling place.

(3) Notwithstanding other provisions of this section, irrigation districts comprising fifteen thousand (15,000) or fewer irrigated acres within their boundary may, upon resolution of the board of directors, combine all precincts into one (1) polling place. In cases where such a district resolves to combine precincts into a single polling place, the polling place shall be the irrigation district office, and the board of directors shall name one (1) elector from each precinct to serve as judges of election at the combined polling place.

[43-206, added 1903, sec. 5, p. 150; am. 1907, sec. 1, p. 484, part of subd. 5; reen. R.C., sec. 2379; am. 1913, ch. 116, sec. 1, p. 453; reen. C.L., sec. 2379; C.S., sec. 4335; I.C.A., sec. 42-206; am. 1951, ch. 149, sec. 1, p. 342; am. 1965, ch. 29, sec. 1, p. 47; am. 1975, ch. 240, sec. 1, p. 649; am. 1976, ch. 146, sec. 1, p. 532; am. 2014, ch. 71, sec. 2, p. 178; am. 2020, ch. 177, sec. 1, p. 549.]

43-207. CONDUCT OF ELECTION. Said judges shall elect a chairman, who may administer any oath required in the progress of an election, and may

appoint additional judges if, during the progress of election, any judges cease to act. Said judges of election shall not appoint clerks of election unless they deem it necessary to have the assistance of clerks in order to accommodate the number of electors who desire to vote. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of the election. Before opening the polls, each member of the board of election and each clerk, in case clerks are appointed, must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The time of opening and closing the polls, the manner of conducting the election, canvassing and announcing the result, the keeping of tally lists, and the making and certifying said result, and the disposition of the ballots after the election, shall be the same as near as may be, as provided for election under the general election laws of the state: provided, that the returns shall be delivered to the secretary of the district, and the election oaths shall be included with such returns; provided further, that by resolution of the board of directors duly entered on the minutes, at any regular meeting, and notice thereof given in the notices of election, any irrigation district may provide for the opening of the polls at 1 o'clock P.M. and closing at 7 P.M.

[(43-207) 1903, p. 150, part of sec. 6; am. 1907, p. 484, sec. 1, part of subd. 6; reen. R.C., sec. 2380; am. 1915, ch. 87, sec. 1, part of subd. 2380, p. 205; compiled and reen. C.L., sec. 2380; C.S., sec. 4336; I.C.A., sec. 42-207; am. 1941, ch. 36, sec. 1, p. 83; am. 1945, ch. 7, sec. 1, p. 9.]

43-208. CANVASS OF RETURNS. The board of directors must meet at its usual place of meeting on or before the next regularly scheduled board meeting following each election to canvass the returns, and they shall proceed in the same manner and with like effect, as near as may be, as the board of county commissioners in canvassing the returns of general elections, and when they shall have declared the result, the secretary shall enter a statement of the result on the records of the board of directors as required by section [43-213](#), Idaho Code. The board of directors must declare elected the person or persons having the highest number of votes for each office.

[(43-208) 1903, p. 150, part of sec. 6; am. 1907, p. 484, sec. 1, part of subd. 6; reen. R.C., sec. 2380; am. 1915, ch. 87, sec. 1, p. 205; reen. C.L., sec. 2380a; C.S., sec. 4337; I.C.A., sec. 42-208; am. 2008, ch. 207, sec. 1, p. 661; am. 2013, ch. 133, sec. 3, p. 305.]

43-209. VACANCIES. (1) Each director shall meet the qualification requirements of section [43-201](#)(3), Idaho Code, during his term of office. Each director shall notify the other directors if circumstances change so that he will no longer meet those requirements during his term of office, or if any of the events specified in section [59-901](#), Idaho Code, are occurring or have occurred. The remaining directors shall have the authority to determine whether a vacancy in the office of director has occurred upon the director no longer qualifying to serve as a director as provided in section [43-201](#)(3), Idaho Code, or upon the occurrence of any of the events specified in section [59-901](#), Idaho Code.

(2) If the remaining directors determine that a vacancy in the office of director has occurred as provided in subsection (1) of this section, the

remaining directors shall, by resolution, declare that the vacancy shall be filled as herein provided. The remaining directors may allow the disqualified director to remain in office temporarily until his successor is appointed or elected if they determine that they will be unable to conduct the district's affairs without a director serving in that office. The disqualified director shall not remain in office after the district's next regular election.

(3) After declaring a vacancy, the remaining directors shall fill such vacancy by appointing thereto a qualified elector under the provisions of section [43-201](#), Idaho Code. A director appointed to fill a vacancy shall take and subscribe the official oath and execute a bond if one is required in the case of an elected director under section [43-202](#), Idaho Code, and shall hold his office until the next regular election of said district, at which election a director shall be elected for the remainder of the unexpired term.

(4) Any person filling a vacancy as herein provided shall possess all the rights and powers and is subject to all the liabilities, duties and obligations of the office filled.

[(43-209) 1903, p. 150, part of sec. 6; am. 1907, p. 484, sec. 1, part of subd. 6; reen. R.C., sec. 2380; am. 1915, ch. 87, sec. 1, p. 205; reen. C.L., sec. 2380b; C.S., sec. 4338; I.C.A., sec. 42-209; am. 1953, ch. 130, p. 206; am. 2014, ch. 70, sec. 1, p. 177; am. 2014, ch. 71, sec. 3, p. 179; am. 2021, ch. 111, sec. 1, p. 353.]

43-210. VOTING AND COUNT OF BALLOTS. Voting may commence as soon as the polls are open and may continue during all the time the polls remain open, and shall be conducted as nearly as practicable in accordance with the provisions of [title 34](#) of this code relating to elections. As soon as the polls are closed the judges shall open the ballot box and shall commence counting the votes; and in no case shall the ballot box be removed from the room in which the election is held until all the ballots have been counted. The counting of ballots shall in all cases be public. The ballots shall be taken out, one by one by the chairman of the board of election or one (1) of the judges, who shall open them and read aloud the name of each person contained thereon, and the office for which every such person is voted for. Each clerk shall write down each office to be filled, and the name of each person voted for such office, and shall keep the number of votes by tallies as they are read by such chairman or judge. The counting of the votes shall continue without adjournment until all the votes have been counted.

[(43-210) 1903, p. 150, sec. 7; am. R.C. & C.L., sec. 2381; C.S., sec. 4339; I.C.A., sec. 42-210.]

43-211. DISPOSAL OF BALLOTS. As soon as all the votes are read off and counted, a certificate shall be drawn up on each of the papers containing the poll list and tallies, or attached thereto, stating the number of votes each one voted for has received, and designating the office to fill which he was voted for, which number shall be written in words and figures at full length. Each certificate shall be signed by all members of the board of election and by both clerks. One (1) of said certificates, with the poll list and tally paper to which it is attached, shall be retained by the chairman of the board of election, and preserved by him for at least six (6) months. The ballots shall be strung on a cord or thread by the said chairman, during the counting thereof, in the order in which they are entered upon the tally list by the

clerks; and said ballots, together with the other of said certificates with the poll list and tally paper to which it is attached, shall be sealed by the said chairman in the presence of the other of said judges and clerks, and indorsed "Election returns of (naming precinct) precinct," and be directed to the secretary of the board of directors, and shall be immediately delivered by said chairman, or by other safe and responsible carrier designated by him, to said secretary, and the ballots shall be kept unopened for at least six (6) months, and if any person be of the opinion that the vote of any precinct has not been correctly counted he may appear on the day appointed for the board of directors to open and canvass the returns, and demand a recount of the precinct that is claimed to have been incorrectly counted.

[(43-211) 1903, p. 150, sec. 8; reen. R.C. & C.L., sec. 2382; C.S., sec. 4340; I.C.A., sec. 42-211.]

43-212. INFORMALITIES DISREGARDED -- POSTPONEMENT OF CANVASS. No list, tally paper or certificate returned from any election shall be set aside or rejected for want of form if it can be satisfactorily understood. If, at the time of the meeting, the returns of each precinct in which polls have been opened have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until all the returns have been received, or until six (6) postponements have been had. The canvass must be made in public and by opening the returns and counting the vote of the district for each person voted for and declaring the result thereof.

[(43-212) 1903, p. 150, sec. 9; am. R.C. & C.L., sec. 2383; C.S., sec. 4341; I.C.A., sec. 42-212.]

43-213. STATEMENT OF RESULT. The secretary of the board of directors must, as soon as the result is declared, enter on the records of such board a statement of such result, which statement must show:

1. The whole number of votes cast in the district and in each voting precinct thereof.
2. The names of the person or persons voted for.
3. The office to fill which each person was voted for.
4. The number of votes given in each precinct to such person or persons.
5. The number of votes given in the district for such person or persons.

The board of directors must declare elected the person or persons having the highest number of votes given for each office.

[(43-213) 1903, p. 150, sec. 10; am. R.C. & C.L., sec. 2384; C.S., sec. 4342; I.C.A., sec. 42-213.]

43-214. INITIATING RECALL PROCEEDINGS -- STATEMENT -- CONTENTS -- VERIFICATION -- DEFINITIONS. Whenever any legal voter of the irrigation district, either individually or on behalf of an organization, desires to demand the recall and discharge of a director of an irrigation district, under the provisions of article VI, section 6, of the constitution of the state of Idaho, he shall prepare a typewritten petition. The petition may recite that the director has wilfully neglected or failed to perform faithfully a duty imposed by law; or acted in an arbitrary and capricious manner; or has committed an unlawful act; or has wrongfully acted so as to interfere with, interrupt, or adversely affect the performance of his official duty;

or has violated his oath of office. The petition may describe the act or acts complained of, if applicable, in concise language, give a detailed description including the approximate date, location and nature of each act complained of, be signed by the person making the charge, give his respective post office address and be verified, under oath, that he believes the charge or charges to be true and that he has knowledge of the alleged facts relating to the charges if any have been alleged in the recall petition.

[43-214, added 1989, ch. 337, sec. 1, p. 850.]

43-215. PETITION -- WHERE FILED. Any person making a charge shall file it with the secretary of the district, whose duty it is to receive and to promptly serve a copy of the charge upon the director whose recall is demanded.

[43-215, added 1989, ch. 337, sec. 1, p. 851.]

43-216. BALLOT SYNOPSIS. (1) Within fifteen (15) days after receiving a petition, the secretary of the district shall formulate a ballot synopsis of not more than two hundred (200) words.

(2) The synopsis shall set forth the name of the person seeking to be recalled and if any charges have been filed in the petition, a concise statement of the elements of the charge. Upon completion of the ballot synopsis, the secretary shall certify and transmit the exact language of the ballot synopsis to the person filing the petition and the director subject to recall. The secretary shall additionally certify and transmit the charges, if any, and the ballot synopsis to the magistrate court of the county in which the director subject to recall resides and shall petition the magistrate court to approve the synopsis and to determine the sufficiency of the charges, if any.

[43-216, added 1989, ch. 337, sec. 1, p. 851.]

43-217. DETERMINATION BY MAGISTRATE COURT -- CORRECTION OF BALLOT SYNOPSIS. Within fifteen (15) days after receiving the petition, the magistrate court shall have conducted a hearing on and shall have determined, without cost to any party the adequacy of the ballot synopsis. If any charges have been included in the petition and ballot synopsis, the magistrate court shall dismiss those charges that are frivolous and designed to harass the director. The clerk of the magistrate court shall notify the person subject to recall and the person demanding recall of the hearing date. Both persons may appear with counsel. The court may hear arguments as to the adequacy of the ballot synopsis and if any charges have been included in the petition and ballot synopsis, the sufficiency of the charges. The court shall not consider the truth of the charges if any have been included, but only their sufficiency. Any decision regarding the ballot synopsis by the magistrate court is final. The court shall certify and transmit the ballot synopsis to the director subject to recall, the person demanding the recall, and the secretary of the irrigation district.

[43-217, added 1989, ch. 337, sec. 1, p. 851.]

43-218. FILING SUPPORTING SIGNATURES -- TIME LIMITATIONS. (1) The sponsors of a recall demanded of any director of an irrigation district shall

stop circulation and file all petitions with the appropriate irrigation district secretary not less than six (6) months before the next regular election in which any director is subject to reelection.

(2) The sponsors of a recall demanded of any director shall have a maximum of thirty (30) days in which to obtain and file supporting signatures after the approval of a ballot synopsis by the magistrate court.

[43-218, added 1989, ch. 337, sec. 1, p. 851.]

43-219. PETITION -- FORM. Recall petitions shall be printed on single sheets of paper of good writing quality including, but not limited to, newsprint not less than eight and one-half (8 1/2) inches in width and not less than fourteen (14) inches in length. No petition may be circulated or signed prior to the approval of a ballot synopsis by the magistrate court. Such petitions shall be substantially in the following form:

WARNING

Every person who signs this petition with any other than his true name, or who knowingly (1) signs more than one (1) of these petitions, (2) signs this petition when he is not a legal voter, or (3) makes herein any false statement, may be fined, or imprisoned, or both.

Petition for the recall of (here insert the name of the person whose recall is petitioned for) to the (here insert the name and title of the secretary of the irrigation district with whom the charge is filed).

We, the undersigned citizens and legal voters of (the irrigation district's official name), respectfully direct that a special election be called to determine whether or not (here insert the name of the person) be recalled and discharged from his office; and each of us for himself says: I have personally signed this petition; I am a legal voter of the state of Idaho in (the irrigation district's official name) and county written after my name, and my residence address is correctly stated, and to my knowledge, have signed this petition only once.

Each and every signature sheet of each petition containing signatures shall be verified on the face thereof in substantially the following form by the person who circulated said sheet of the petition, by his or her affidavit thereon, as a part thereof:

State of Idaho)
) ss.
County of)

I,, swear, under penalty of perjury, that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence. I believe that each has stated his or her name and the accompanying required information on the signature sheet correctly, and that the person was eligible to sign this petition.

(Signature)
Post Office address
.....

Subscribed and sworn to before me thisday of,

(Notary Seal)
Notary Public
Residing at

[43-219, added 1989, ch. 337, sec. 1, p. 852; am. 2007, ch. 90, sec. 23, p. 260.]

43-220. PETITION -- SIZE. Each recall petition at the time of circulating, signing and filing with the secretary of the irrigation district with whom it is to be filed, shall consist of not more than five (5) sheets with numbered lines for not more than twenty (20) signatures on each sheet, with the prescribed warning, title and form of petition on each sheet, and a full, true and correct copy of the original statement of the charges against the director referred to therein, printed on sheets of paper of like size and quality as the petition, firmly fastened together.

[43-220, added 1989, ch. 337, sec. 1, p. 852.]

43-221. NUMBER OF SIGNATURES REQUIRED. When the person, demanding the recall of a director has secured sufficient signatures upon the recall petition he may submit the same to the secretary of the irrigation district for filing in his office. The number of signatures required shall be equal to twenty percent (20%) of the total number of eligible voters residing in the district as compiled by the secretary.

[43-221, added 1989, ch. 337, sec. 1, p. 853.]

43-222. CANVASSING PETITION FOR SUFFICIENCY OF SIGNATURES -- NOTICE. Upon the filing of a recall petition in his office, the secretary of the irrigation district with whom the charge was filed shall stamp on each petition the date of filing, and shall notify the person filing them and the director whose recall is demanded of the date when the petitions will be canvassed, which date shall be not less than five (5) nor more than ten (10) days from the date of its filing.

[43-222, added 1989, ch. 337, sec. 1, p. 853.]

43-223. VERIFICATION AND CANVASS OF SIGNATURES -- PROCEDURE. (1) Upon the filing of a recall petition, the secretary of the irrigation district shall proceed to verify and canvass the names of legal voters on the petition.

(2) The verification and canvass of signatures on the petition may be observed by persons representing the advocates and opponents of the proposed recall so long as they make no record of the names, addresses, or other information on the petitions or related records during the verification process except upon the order of the magistrate court. The secretary of the irrigation district may limit the number of observers if in his opinion a greater number would cause undue delay or disruption of the verification process. Any such limitation shall apply equally to both sides, but in no case shall fewer than two (2) observers on each side be allowed. If the secretary of the irrigation district finds the same name signed to more than one (1) petition, he shall reject all but one (1) such valid signature.

[43-223, added 1989, ch. 337, sec. 1, p. 853.]

43-224. FIXING DATE FOR RECALL ELECTION -- NOTICE. If, at the conclusion of the verification and canvass, it is found that a petition for recall bears the required number of signatures of certified legal voters, the secretary of the irrigation district shall promptly certify the petitions as sufficient and fix a date for the special election to determine whether or not the director charged shall be recalled and discharged from office. The

special election shall be held not less than fourteen (14) days nor more than forty-five (45) days from the certification. Notice shall be given in the manner as required by law for all other irrigation district elections as provided in section [43-206](#), Idaho Code.

[43-224, added 1989, ch. 337, sec. 1, p. 853.]

43-225. RESPONSE TO PETITION CHARGES. When a date for a special election is set, the secretary of the irrigation district shall serve a notice of the date of the election to the director whose recall is demanded and the person demanding recall. Such notice may be made only in person or by certified mail, return receipt requested. After having been served a notice of the date of the election and the ballot synopsis, the director whose recall is demanded may submit to the secretary of the irrigation district a response, not to exceed two hundred (200) words in length, to the charge contained in the ballot synopsis. Such response shall be submitted by the seventh consecutive day after service of the notice. The secretary of the irrigation district shall promptly send a copy of the response to the person who filed the petition.

[43-225, added 1989, ch. 337, sec. 1, p. 853.]

43-226. DESTRUCTION OF INSUFFICIENT RECALL PETITION. If it is found that the recall petition does not contain the requisite number of signatures of certified legal voters, the secretary of the irrigation district shall so notify the person filing the petition, and specify the number of additional signatures required to make the petition valid. The petition must be perfected within thirty (30) days of the date that the secretary finds the petition defective for lack of certified signatures. If the petition is not perfected within the thirty (30) day period, the secretary shall declare the petition null and void ab initio in its entirety.

[43-226, added 1989, ch. 337, sec. 1, p. 854.]

43-227. INVALID NAMES -- RECORD OF. The secretary of the irrigation district shall keep a record of all names appearing thereon which are not certified to be legal residents of the district, and of all names appearing more than once thereon, and he may report the same to the prosecuting attorneys of the respective counties where such names appear to have been signed, to the end that prosecutions may be had for such violation of the provisions of this chapter.

[43-227, added 1989, ch. 337, sec. 1, p. 854.]

43-228. CONDUCT OF ELECTION -- FORM OF BALLOT. The special election to be called for the recall of directors of irrigation districts shall be conducted in the same manner as regular irrigation district elections are conducted. The secretary of the irrigation district shall provide for the holding of recall elections and the necessary places and officers, ballot boxes, ballots, poll books, voting machines, supplies, and returns as are required by law for holding regular irrigation district elections. The ballots at any recall election shall contain a full, true, and correct copy of the ballot synopsis of the charge, the director's response to the charge if such has been filed, and shall be so arranged that any voter can, by making one cross

(X), express his desire to have the director charged recalled from his office, or retained therein. The following form shall substantially comply with the provisions of this section:

RECALL BALLOT

(Here insert the ballot synopsis of the charge.)

(Here insert the irrigation director's response to the charge.)

FOR the recall of (here insert the name of the director of the irrigation district)
AGAINST the recall (here insert the name of the director of the irrigation district)

[43-228, added 1989, ch. 337, sec. 1, p. 854.]

43-229. ASCERTAINING THE RESULT -- WHEN RECALL EFFECTIVE. The votes on a recall election shall be counted, canvassed, and the results certified in the manner provided by law for counting, canvassing, and certifying the results of an election for directors. If a majority of all votes cast at the recall election is for the recall of the director charged, he shall thereupon be recalled and discharged from his office and there shall be declared a vacancy in the office.

[43-229, added 1989, ch. 337, sec. 1, p. 855.]

43-230. ENFORCEMENT PROVISIONS -- MANDAMUS -- APPEALS. The magistrate court of the county in which the director subject to recall resides has original jurisdiction to compel the performance of any act required of any public officer or to prevent the performance by any such officer of any act in relation to the recall not in compliance with law.

[43-230, added 1989, ch. 337, sec. 1, p. 855.]

43-231. VIOLATIONS BY SIGNERS. Every person who signs a recall petition with any other than his true name is guilty of a felony. Every person who knowingly (1) signs more than one (1) petition for the same recall, (2) signs a recall petition when he is not a legal voter, or (3) makes a false statement as to his residence on any recall petition is guilty of a misdemeanor.

[43-231, added 1989, ch. 337, sec. 1, p. 855.]

43-232. VIOLATIONS -- CORRUPT PRACTICES. (1) Every person is guilty of a misdemeanor, who:

- (a) Wilfully or knowingly circulates, publishes or exhibits any false statement or representation concerning the contents, purpose or effect of any recall petition for the purpose of obtaining any signature to any such petition, or for the purpose of persuading any person to sign any such recall petition;
- (b) Presents to any officer for filing any recall petition to which is attached, appended or subscribed any signature which the person so filing the petition knows to be false or fraudulent, or not the genuine signature of the person purporting to sign such petition, or whose name is attached, appended or subscribed thereto;

(c) Circulates or causes to circulate any recall petition, knowing the same to contain false, forged or fictitious names;

(d) Makes any false affidavit concerning any recall petition or the signatures appended thereto;

(e) Offers, proposes or threatens for any pecuniary reward or consideration:

(i) To offer, propose, threaten or attempt to sell, hinder or delay any recall petition or any part thereof or any signatures thereon;

(ii) To offer, propose or threaten to desist from beginning, promoting or circulating any recall petition;

(iii) To offer, propose, attempt or threaten in any manner or form to use any recall petition or any power of promotion or opposition in any manner or form for extortion, blackmail or secret or private intimidation of any person or business interest.

(2) A public officer is guilty of a felony, who knowingly makes any false return, certification or affidavit concerning any recall petition, or the signatures appended thereto.

[43-232, added 1989, ch. 337, sec. 1, p. 855.]