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(editor’s note: the numbering in this table of contents is incorrect, but the sequence of issues is correct)

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## PREFACE

In 1943 the first state law providing for the creation of fire districts was passed. In 1972, the Bureau of Public Affairs Research at the University of Idaho issued the first edition of the *Handbook for Idaho Fire Protection Districts*. The Bureau is pleased to present the 2003 edition of the *Handbook for Idaho Fire Protection Districts* explaining provisions of Idaho law related to fire protection districts in a convenient and non-legal form.

This edition of the *Handbook for Idaho Fire Protection Districts* brings together all the essential information for fire protection districts according to Idaho law, as of 2003. Throughout the *Handbook*, Idaho laws have been paraphrased and a notation of this appears with an *Idaho Code* citation placed after the portion from the law. For example, (31-1401) after a section of text refers to Title 31, Chapter 14, Section 01 of the *Idaho Code*. Readers can refer to the *Idaho Code* for the precise legal wording of provisions.

The Bureau of Public Affairs Research appreciates your interest in fire protection districts and the opportunity to present this handbook to assist district officials.

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## INTRODUCTION

Recognizing that "the protection of property against fire and the preservation of life" are public purposes (31-1401), in 1943 the Idaho legislature passed and Governor C.A.

Bottolfson signed the Idaho Fire Protection District Law. The basic purpose of the law is to establish procedures for the formation, operation and dissolution of fire protection districts in the state of Idaho. That law specifically recognized the legality of all fire protection districts existing prior to its passage and declared them and all lawful acts of their officers to be de facto legal. Pre-existing districts were instructed to comply with the provisions of the law as soon as they could conveniently do so (31-1434). Since that time the law has been amended over two dozen times. The most comprehensive revision of the law occurred in 1994. Those revisions stipulated that all districts created or annexed during the twelve month period prior to June 1, 1994 were considered to be in full compliance with all applicable laws regardless of prior interpretations (31-1402(2)).

## **CREATION OF FIRE PROTECTION DISTRICTS**

Fire protection districts may be created in any portion of a county that is not already organized into a district (31-1401). Three steps must be taken to establish a fire protection district: filing a petition, holding a hearing and securing approval of residents at an election.

### **FILING THE PETITION**

The first step in creating a fire protection district is to draw up a petition requesting its creation. The petition must designate the boundaries of the district, identify the proposed name and include a map of the district. It must be signed by at least twenty-five property owners in the proposed district whose holdings total at least 1,000 contiguous acres or have an assessed value of at least \$500,000 and are not currently included in any existing fire district (31-1402(1)).

The petition must be presented to the board of county commissioners and filed with the clerk of the board. The petition and supporting documents must be available for public inspection at the office of the clerk from the time of filing until the election (31-1403).

The petitioners must deposit with the board enough money to cover the costs of advertising and holding the election on creation of the district. The board determines the amount required and the funds must be deposited prior to the board's publishing notice of the hearing on creation of the district. If the district is organized, the petitioners are to be reimbursed from the first tax money collected by the newly formed district (31-1432).

Any area within a city may be included within a fire protection district by resolution or ordinance of its governing board (31-1429).

### **THE HEARING**

The board of county commissioners must set a time for a public hearing on the petition between four and six weeks after it has been filed. If the proposed fire protection district is located in two or more counties, the boards of commissioners of those counties must coordinate the hearing date and the publication of the hearing notice so that only one hearing is held. The hearing must be held in the county with the largest area in the proposed fire protection district (31-1404), and the boards are authorized to act jointly.

Once a week for three successive weeks prior to the hearing, the board must publish notice of the hearing in a newspaper published within each county in which the proposed district is to be located. The notice must include a description of the proposed district and its boundaries, the date of the hearing and state that all taxpayers within the proposed district may appear and express their views on the organization of the district

and its boundaries. At the hearing all objections are presented to the board. After considering all testimony the board(s) decides whether to deny the petition, grant it as filed or grant it with modifications. If the petition is granted, the board of county commissioners fixes the boundaries of the proposed district and files a map of the district with the clerk of the board (31-1404).

### **THE ELECTION**

After the commissioners have fixed the boundaries of the district, the clerk of the county board must twice publish a notice of the election in a newspaper published within the county or counties affected to determine whether or not the district should be organized (31-1405). The notice must clearly designate the names and boundaries of the proposed district and require voters to cast ballots containing the words "fire protection district, yes," or "fire protection district, no." The first notice must be published not less than 12 days prior to the election and the second not less than five. If the proposed fire protection district is to be located in two or more counties, the boards of county commissioners will conduct the election on the same day in each county (31-1405).

Voter qualifications for a fire protection district election are the same as for other state elections: voters must be United States citizens, at least 18 years old, and residents of the state and county for at least 30 days (34-402). They must also be residents of the proposed fire protection district (31-1405), and be registered with the county clerk.

The board of commissioners creates as many election precincts within the proposed district as it deems necessary, and appoints three election judges for each precinct. The judges forward the official election results to the clerk of the board(s).

Within ten days of receiving the returns, the board(s) of county commissioners must canvass the votes. Where more than one county is involved, the boards of commissioners are to coordinate the canvassing and announcement of the results.

If one-half or more of the votes are "fire protection district, no" that must be entered into the minutes of the county board and all proceedings regarding the proposed district are void. Where a proposed fire district involves two counties, if a majority of votes cast in any county is against the formation of the fire protection district, the organization of the district is rejected for all counties involved (31-1407). If more than one-half of the votes cast are "yes," the board orders the territory organized as a fire protection district as named in the petition and enters the order in the minutes. Certified copies of the order are then filed with the county recorder and transmitted to the governor.

The board of county commissioners approving a newly formed district must provide a copy of the legal description and map, prepared in draftsmanlike manner, to the county assessor and recorder within 30 days of the effective date of its formation (63-215). The district is responsible for filing the map and legal description with the state tax commission.

Any action challenging the validity of the organization of a fire district must be commenced within six months of entering the order. After the election neither a defect in the petition nor in the number or qualifications of its signers constitutes grounds for challenging the district's validity (31-1407).

## **OFFICERS**

### **FIRE DISTRICT BOARD**

Initially all fire district boards consist of three commissioners. At the time of establishment of a new fire protection district , the board of county commissioners divides the district into three subdivisions, as nearly equal in population, area and mileage as possible. The three subdivisions are referred to as fire commissioners subdistricts one, two, and three (31-1409). No more than one commissioner may be an elector of any one subdistrict (31-1409). If the district is located in two or more counties, no more than two commissioners (three if the board has been enlarged to five members) can be from the same county (31-1408). Commissioners must be qualified voters who have resided in the district for at least one year (31-1409).

The first commissioners are appointed by the governor and serve until the next fire district election (31-1409). Certificates of the governor's appointment are to be filed with the county recorder, the clerk of the board(s) of county commissioners, and the county assessor/tax collector (31-1408). Fire district commissioners, appointed or elected, must take an official oath to be filed in the office of the board of the fire protection commissioners (31-1408).

Once appointed, the fire protection board may, by majority vote, expand the size of the board to five members (31-1408A).

### **Election of Commissioners**

Elections for fire district commissioners are to be held on the first Tuesday following the first Monday of November. At the meeting immediately preceding the election, the fire

protection board must divide the district into three or, if they have so determined, five subdistricts, designated subdistricts, "1", "2", "3" "4" and "5". Subdistricts must be as equal in population, area and mileage as possible. Subsequently, at the January meeting preceding an election the board revises subdivision boundaries (31-1410). No revision may disqualify any elected commissioners from completing their terms. At the first election, the commissioner from subdistrict 1 is elected for a one year term, the commissioner from subdistrict 2 for a two year term, the commissioner from subdistrict 3 to a three year term (31-1410). In all subsequent elections, all commissioners are elected for four year terms (31-1410).

If the board has decided to expand its size to five members, at the first election following that decision all five commissioners must be elected. The commissioner from subdistrict 1 is elected for one year the commissioner from subdistrict 2 for two years, the commissioner from subdistrict 3 for three years and the commissioners from subdistricts 4 and 5 for four years. (31-1408A). Subsequently all terms are for four years.

By unanimous agreement, the board of a district whose terms and elections were established by prior law may convert its election schedule so that one commissioner is elected each year except the fourth year. The conversion schedule may not extend the term of any sitting commissioner (31-1410).

The board, if it wishes, may contract with the county clerk to conduct all elections (34-1401), or it may act as election official and conduct the election itself. The county clerk must appoint any election official designated by the board to act as an at-large registrar (34-1402). The election official also has the responsibility to notify the county clerk by the last day of November of any elections for the district to occur in the next calendar

year. If that deadline is missed, the election official must publish notice of the omitted election as soon as the omission is noticed (34-1405(2)).

Between 7 and 14 days prior to the candidate filing deadline (5:00 p.m. on the sixth Friday preceding the election) the election official must publish notice of that deadline in the official newspaper of the district (34-1405(1)). The notice must include the name of the fire district, the place for filing and the availability of declarations of candidacy.

Candidates for election must be nominated by petition. The nominating petition must identify the name of the nominee, the office and term being sought and have the signatures of five qualified voters of the appropriate subdistrict. The exact form for the petition is prescribed by the county clerk. Petitions must be filed with the board or its designated election official no later than 5:00 p.m. on the sixth Friday preceding the election. The election official has seven days to verify the qualifications and certify the nominees to be placed on the ballot (34-1404). Write-in candidates must file a declaration of intent with the district's election official at least 25 days prior to the election (34-1407).

If only one qualified candidate is nominated for a position and no write-in candidate declarations have been filed, no election is required. Instead, within three days after the last day for filing write in declarations, the board declares the candidate elected and the secretary makes and delivers to that candidate a signed certificate of election (31-1410).

Notice of an election must be published twice in the official newspaper of the district: the first notice at least twelve days before the election and the second at least 5 days before the election (34-1406). The notice must include the date of the election, polling places and hours during which the polls will be open (34-1406).

The polls must be open from 8:00 a.m. to 8:00 p.m. but may open at 7:00 a.m. at the option of the election official (34-1409). Voters must be registered with the county clerk. The clerk must make the register of voters readily accessible to both voters and district officials. Absentee ballots must be provided to voters by the election official upon notification by the county clerk (34-1408).

When the polls are closed, the judges count the ballots and notify the fire district board of the results. The board then certifies the results to the county clerk (31-1410), and the secretary issues the appropriate certificates of election to winning candidates. Elected candidates take office on January 1 following the election (34-106).

## **Commissioner Vacancies**

### Interim Successor

Each fire district board member must designate two interim successors in order of succession and file the list of successors with their addresses and rank order of succession with the fire protection district board secretary (31-1416A). These successors must meet all qualifications to be a fire district board commissioner. Commissioners are responsible for ensuring that they have identified two qualified successors at all times.

Whenever a commissioner submits to the board written notification that s/he will be unable to perform the duties of office for a period of at least 90 days, the other members of the board appoint the highest ranked interim successor available from the list filed by that member. The order appointing the successor must be recorded in the official proceedings of the board. The interim successor serves until the incumbent is able to resume the duties of office or a permanent vacancy occurs (31-1416A).

### Permanent Vacancies

When a permanent vacancy occurs, other than by expiration of a term, the remaining fire board members appoint a successor. Any person so appointed must have the same qualifications as those required for elected fire board commissioners (31-1409). The person so appointed serves out the term of the commissioner s/he is replacing.

### **Recall of Commissioners**

Fire district commissioners are subject to recall. The recall procedure is initiated by filing a petition for recall with the county clerk (or clerks if more than one county is involved) signed by at least 50 percent of the number of voters who voted in the last district election (34-1702(5)). If no election has been held in the last six years, the petition must be signed by 20 percent of the registered voters in the district at the time the petition is filed.

### Recall Petition Form

To the honorable ....., County Clerk of the County of.....:

We, the undersigned citizens and registered electors of (here insert the official name of the district), respectfully demand that... holding the office of... of the (district), be recalled by the registered electors of the (district) for the following reasons, to-wit: (insert the reasons for the recall in two hundred (200) words or less); that a special election therefor be called, that we, each for himself say: I am a registered elector of the (district), my residence, post office address, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City or Post Office	Date
(Here follow twenty numbered lines for signatures.)				

#### Validating the Petition

After the petition has been filed, the county clerk has 10 days to determine if it has sufficient number of valid signatures. Signatures that are not legible, that have erasures, that are not of registered voters, that are not accompanied by all required identifying information, as well as duplicates and signatures of persons who have requested in writing to have their names removed will be rejected and not counted.

If the clerk determines that the petition does not have the required number of signatures, the person or organization circulating the petition must be informed. The petitioners have 30 days to obtain the needed signatures. If they do not do within that time period, the clerk declares the petition null and void (34-1707).

If the clerk determines the petition does have the required number of signatures, the clerk must promptly inform the officer being recalled, the petitioner, the fire district board and the election officials of the district.

If the officer being recalled resigns within five days of receipt of notice from the clerk, the resignation becomes effective immediately and the vacancy may be filled by the remaining fire board officers (34-1707; 31-1409).

### The Recall Election

If the affected officer does not resign within five days, the board must call a special election. The election must be held on whichever of the following dates is at least 45 days after the county clerk has ordered the recall:

1. The first Tuesday of February
2. The fourth Tuesday of May
3. The first Tuesday of August
4. The first Tuesday after the first Monday of November

The recall election is to be conducted in the same manner as other elections for the district. To recall an officer a majority of the votes cast at the election must favor recall and the number of votes for recall must equal or exceed the number of votes the officer received when elected. If the officer was appointed, a majority of votes cast at the recall election is required for recall (37-1712).

### Commissioner Compensation and Expenses

The fire protection district board determines the compensation, if any, to be paid to themselves, officers or other employees of the board. Compensation for board members may not exceed \$75.00 a day. Compensation and expenses are paid out of the fire protection district treasury (31-1418).

## **Board Officers**

Immediately after qualifying, the board of fire district commissioners must meet and organize as a board, electing a president and appointing a secretary and treasurer. All officers serve at the pleasure of the board or for terms fixed by the board. The secretary and treasurer may be board members and the offices may be held by the same individual. Certified copies of all appointments are to be filed with the clerk of the board of county commissioners and the county tax collector. All officers take an oath of office which must be filed with the secretary, and the treasurer must file an official bond in amount determined by board but not less than ten thousand dollars (31-1413).

### Secretary: Duties and Responsibilities

1. Make and attest to a list of all bills presented to the board, showing to whom payable, for what services or materials, amount claimed, amount allowed or disallowed. The list must also be signed by the president of the board (31-1413);
2. Give members who did not join the order calling for a special meeting notice of that meeting (31-1413);
3. Receive and maintain oaths of office of members;
4. Keep the minutes of meetings;
5. Deliver bills of sale to purchasers of board property (31-1417);
6. Send resolution of tax levy to county auditor, assessor and state board of equalization;
7. Countersign all drafts and warrants but only after determining that payment is legally authorized, that the money has been appropriated and the appropriation has not been exhausted (31-1426);

8. Sign and issue certificates of elections to winning candidates;
9. Publish notice of intention to sell bonds;

Treasurer: Duties and Responsibilities

1. Keep accounts with the districts;
2. Receive from the county treasurer tax funds collected;
3. Deposit such funds in the district bank;
4. Receive and deposit all other funds for the district;
5. Pay off money owed by the district on legally drawn warrants or on orders of district officers entitled to draw warrants;
6. Countersign all checks and vouchers for the district (31-1423);
7. If requested, submit an annual financial report to the state controller (67-1081);

President

- |                             |                             |
|-----------------------------|-----------------------------|
| 1. Preside at meetings;     |                             |
| 2. Sign all checks;         | 4. Call special meetings;   |
| 3. Countersign all warrants | 5. Sign all lists of bills. |

**OPERATIONS**

**BOARD MEETINGS**

At the first meeting, the fire protection board must designate the date, time and location for all regular meetings, which must be held at least quarterly. The board president or majority of the board members may order a special meeting and that order must be entered in the official minutes of the meeting. When special meetings are called, the secretary must provide those commissioners who did not join the order five days notice of the meeting. However called, any meeting where all the commissioners are present is a legal meeting and official business may be transacted (31-1413). For official business to be conducted at any other meetings a quorum, a majority of board members, must be present.

The Idaho open meetings law applies to all meetings of the district board (67-2341). All meetings of the board must be open to the public and all persons must be permitted to attend any meeting. Although a complete transcript is not required, written minutes must be taken at all meetings. The minutes must include the names of all board members present, all motions, resolutions and orders proposed and the disposition made of them, the results of all votes and upon request of a board member, the vote of each member by name (67-2334).

Notice of meetings must be given at least five calendar days prior to the meeting. This notice requirement may also be satisfied by posting an annual schedule of regular meetings. A notice of the agenda must be posted forty-eight hours prior to any meeting. Additional items may be added up to the time of the meeting. These requirements may be satisfied by posting notices at the principal office of the district or at the building where the meeting is to be held (67-2344). Twenty-four hour agenda notice must be given for special meetings unless an emergency exists.

The board may hold executive sessions that are closed to any persons upon a two-thirds recorded vote of the members for the following reasons (67-2345):

1. To consider personnel matters such as hiring, evaluation, dismissal, disciplining or hearing complaints brought against an employee;
2. To conduce deliberations concerning labor negotiations or acquisition of real property;
3. To conduct labor negotiations; and/or
4. To consider and advise legal representatives in pending litigation.

Executive sessions are prohibited for taking final action or making final decisions (67-2345). Minutes of executive sessions may be limited to prevent disclosure of protected material but must contain sufficient detail to convey the general tenor of the meeting.

Any action taken at a meeting in violation of the open meeting law is null and void. Any board member participating in such a meeting is subject to a maximum fine of \$150 for the first violation and \$300 for each subsequent violation. Enforcement of this law is the responsibility of the county prosecuting attorney. In addition, any person affected by a violation of this law may bring civil suit in the magistrate division of county court of the purpose of compelling compliance with the law. Monetary damages are not provided under this statute. Suits to have an action declared null and void must be filed within thirty days of the violation. All other suits under this law must be filed within 180 days of the violation (67-2348).

Minutes of all meetings must show bills submitted, considered, allowed or rejected. The secretary must list all bills presented to the board, indicating whom the bill is payable to, the service or material purchased, when and where the service or material was used, the amount of the bill and action taken by the board. The list of bills must be signed by the president and attested by the secretary (31-1413).

CONFLICTS OF INTEREST: ETHICS IN GOVERNMENT ACT

The Idaho Ethics in Government Act of 1990 applies to all political subdivisions of the state (59-703 (6)b). Both paid employees and board members are covered by the Act (59-703(10a and d)). They are prohibited from taking any official action, making a decision or formal recommendation on any matter where they have a conflict of interest and have failed to disclose that conflict (59-704).

A conflict of interest is any official action, decision or recommendation by a public official which would result in monetary benefit to the official, a member of his/her household, or a business with which he/she is associated (59-703(4)). The sole requirement of the law is that the official disclose the conflict of interest prior to taking any official action on the matter. It does not disqualify the official from being counted for purposes of a quorum, debating, or voting on the matter (59-704).

A board member who believes a conflict of interest may exist may seek legal advice from the attorney representing the entity, the attorney general or private counsel. If the legal advice is that a conflict of interest does exist, the board member must disclose the conflict prior to acting on the matter. The member may request to be excused from voting or acting on the matter. If the board does not excuse the member, that failure exempts the member from any civil or criminal liability related to that issue (59-704). An employee must prepare a written statement describing the potential conflict of interest and deliver it to the board.

Any public official who intentionally fails to disclose a conflict of interest is guilty of a civil offense which carries a maximum fine of \$500 (59-705).

## **POWERS OF THE FIRE DISTRICT BOARD**

Fire protection districts are governmental subdivisions of the state of Idaho. Their powers may be exercised only by the fire protection district board or agents and officers acting under its authority (31-1414). The name of the district designated in the formation order must be used in all actions and proceedings involving the corporate rights, property and duties of the district.

The board of fire protection district commissioners has the following duties and powers:

1. Manage and conduct the affairs and business of the district (31-1415);
2. Make and execute all necessary contracts (31-1415);
3. Adopt regulations and rules necessary for the operation of the fire protection district (31-1415);
4. Sue and be sued (31-1415) appear and defend in person or by attorneys in all court actions or suits (31-1417);
5. Institute legal actions necessary to carry out the powers and duties of the fire district (31-1417);
6. Enter into cooperative and reciprocal agreements for the use of fire-fighting apparatus and personnel with other fire protection districts, villages, towns and cities in Idaho and in the states of Montana, Nevada, Oregon, Utah, Washington and Wyoming (31-1430A, B);
7. Purchase, hold, sell, and dispose of real and personal property as is necessary or convenient to carry out its lawful purposes (31-1415 and 31-1417);
8. Levy and apply taxes for purposes under its exclusive jurisdiction (31-1415);
9. Make rules and regulations for conduct of fire district commissioner elections;
10. Fill vacancies on the board (31-1409);
11. Elect a president (Chair)(31-1413);
12. Appoint a secretary and treasurer (31-1413);
13. Establish and revise subdistricts (31-1410);
14. Adopt a budget;
15. Certify tax levies to the board of county commissioners;

16. Determine compensation for themselves and other officers and employees (31-1418)
17. Employ firefighters
18. Prescribe physical performance standards for firefighters (44-1812)
19. Meet and confer in good faith with bargaining agents of firefighters (44-1804)

## **DISTRICT PROPERTY**

### **Property Title**

A fire protection district holds legal title to all property acquired by it (31-1417).

### **Property Sale, Conveyance and Disposition**

The board may sell personal or real property the fire protection district no longer needs. If the board determines the property is worth less than \$5000 (five thousand), it may be sold without an independent appraisal, notice or competitive bids. If the value of the property exceeds \$5000 in value they must select three disinterested residents of the county in which the fire protection district is located to appraise it. After notice the property can then be sold to the highest bidder at not less than the appraised value.

Notice of the sale must be published at least twice, ten days before the sale, in a newspaper of general circulation within the fire protection district. The notice must describe the property and state its appraised value and the time, place, and conditions of the sale. The property may be sold on terms not to exceed ten years, with an annual interest rate of no more than six percent on all deferred payments. The fire protection district holds title to all property until full payment is received, although such property is assessed for tax purposes as though the buyer held full title. The board may cancel any sales contract if the buyer fails to comply with the terms of contract. The board may also, in agreement with the purchaser, modify the terms of the contract. The title or

deed to real property is issued when full payment is made. At the time of sale of personal property the board president and secretary deliver the bill of sale to the purchaser (31-1417A).

### **Motor Vehicle Exemption**

Motor vehicles leased or owned by the districts are exempt from state motor vehicle operating fees (49-426).

## **LIABILITY**

Under the Idaho Tort Claims against Government Entities Act (6-901) through 6-929), taxing districts may be held monetarily liable for their negligent or wrongful acts or omissions that result in bodily injury or property damage. This includes all actions within the scope and course of their employment taken by any officer, employee and other person, paid or unpaid, acting in an official capacity for the district (6-902). Volunteer firemen are considered to be employees under this statute (6-929). The district must pay the legal fees of the employee and any monetary judgments resulting from a civil lawsuit under this act. The district may not seek reimbursement from the employee unless a court determines the act that caused damages was either outside the scope of employment or included malice or criminal intent (6-903).

Although the statute establishes the general rule that governmental entities are liable for damages arising out of their own negligent or otherwise wrongful acts and for those of their employees acting within the scope of their employment, it also establishes many exceptions to that liability (*Grant v City of Twin Falls*, 120 Idaho 880, 813 P.2d 880 [1991]). The most important of these exceptions are for intentional torts for injuries

resulting from performance of a regulatory or discretionary function (6-904[1]) or arising out of a plan or design for construction or improvement to public property if the plan or design was prepared in substantial conformance with engineering standards in effect at the time it was prepared or was approved by the board in advance of construction (6-904[7]). If a claim is brought against the district and the district can show that the alleged injury was a result of action or inaction that falls within these exceptions, the claim would be summarily dismissed by the court. Although the precise meaning of "discretionary function" is legally arguable, generally, in determining if an action falls under the discretionary function exception, the courts distinguish between "planning" and "operational" actions (*Sterling v Bloom*, 111 Idaho 211, 723 P.2d 755 [1986]). If they determine the action can be categorized as planning, the governmental entity is immune even if the planning was negligent. "Planning " encompasses all policy decisions and actions that involve a consideration of the financial, political, economic aspects and impacts of a course of action (*Bingham v Franklin County*, 118 Idaho 318, 796 P.2d 527 [1990]). "Operational" activities are routine actions or inactions that implement policy decisions. For example, a city's failure to provide regular fire inspections would be considered a policy/planning action and even if a fire destroyed a building and the fire was caused by some condition that regular fire inspections would have detected and presumably required to be corrected, the city would still be immune from suit (*Lewis v Estate of Smith*, 111 Idaho 755, 727 P.2d 1183 [1986]). If, however, the city did have regular fire inspections and those inspections were conducted negligently and injury resulted, the city would have no immunity.

Anyone wishing to file a claim against a district under this act must present it to the secretary of the board within one hundred twenty days from the date the claim arose or reasonably should have been discovered, whichever is later (6-906). If the claimant is a minor, the claim must be presented within one hundred twenty days after the claimant reaches majority or six years from the date the claim arose or reasonably should have

been discovered, whichever is earlier (6-906A). If the district carries liability insurance, notice to the insurer usually satisfies the notice requirement (*Sysco Intermountain Food Service v City of Twin Falls*, 109 Idaho 88, 75 P.2d 548 [1985]). The claim must accurately describe the injury or damage, the time and place the injury occurred, the conduct or circumstances that caused the injury, the amount of damages sought and a statement of residence of the claimant currently and for the six month period prior to the time the claim arose. Claims will not be ruled invalid because of inaccuracies unless the governmental entity can show that it was in fact injured by the inaccuracy. Claims may be presented by any relative, attorney or agent of the claimant (6-907).

The district has ninety days after the claim is filed to respond, notifying the claimant of its approval or denial. The district board may compromise and settle any claim, subject to the terms of its insurance (6-912). If the district does not respond within ninety days, the claim is considered to be denied (6-909). If the claim is denied, the claimant may institute action in the district court in the county in which the cause of action arose or in any county in which the district is located (6-915). Such action must be instituted within two years from the date the claim arose or reasonably should have been discovered, whichever is later (6-911).

No punitive damages are allowed under this law (6-918) and aggregate liability for one occurrence or accident regardless of the number of persons injured or number of claimants is limited to \$500,000, including costs and attorney fees. If any judgments in excess of that are awarded, the court must reduce them to that amount (6-926).

All districts are authorized to purchase liability insurance for themselves and their employees (6-923). All liability insurance contracts or comprehensive liability plans must provide coverage of at least \$500,000 for any one occurrence or accident (6-924).

Districts are specifically authorized to levy an annual property tax to provide for a comprehensive liability plan or insurance (6-927).

The law does not require a district to carry insurance or have a comprehensive plan, but if it does not and must pay a judgment under this act, unless it has funds available, it must levy and collect a property tax at the earliest possible time to pay off the judgment.

### **NON LIABILITY FOR DELAY IN REPORTING FIRES**

No person authorized by the district to receive reports of fire or to receive and transmit such reports to the district may be held liable in any civil action for damage to property or persons caused by delaying or failing to report a fire unless the delay or failure is the result of gross negligence (31-1437).

### **COOPERATIVE ARRANGEMENTS**

#### **COOPERATIVE ARRANGEMENTS WITH CITIES**

Fire protection districts may enter into written or contractual agreements with cities outside their boundaries. Under such agreements the district may house its equipment and fire fighters in incorporated cities and establish arrangements for reciprocal use of fire fighting forces and equipment (31-1430).

With or without a contract, fire protection districts may provide fire-fighting assistance to incorporated cities outside their boundaries if requested by an officer of the city. If the district does provide assistance it is entitled to be compensated for the reasonable value of its services. Such compensation is to be paid by the owner of the property serviced and the district is entitled to a lien on the property filed in the name of the district (31-

1430). Officers or agents of the district may also request and receive fire-fighting assistance from cities outside its boundaries. The city is similarly entitled to compensation and a lien against the property serviced.

#### **COOPERATIVE ARRANGEMENTS WITH OTHER DISTRICTS AND CITIES IN OTHER STATES**

Fire districts may enter into agreements with other districts, counties, cities and privately funded organizations in Idaho and neighboring states for mutual protection, joint use, ownership and operation of land, equipment or facilities. Agreements may provide for a fixed monetary consideration or for monetary compensation based on reasonable value of services actually provided. Any such fees or considerations must be paid out of the fire district's treasury (31-1430A).

#### **CONTRACTS BETWEEN FIRE PROTECTION DISTRICTS AND PROPERTY OWNERS OUTSIDE OF THE DISTRICT**

Districts may contract to provide fire protection services for individuals whose property is located outside the district boundaries, as long as the house and outbuildings on the property are not farther from the fire station than the most distant point in the district is. All of the contiguous lands of a contracting property owner must be included in the contract unless they are located beyond the specified distance. All such contracts are to be for one year beginning at 12:01 a.m. on January and expiring at midnight of the contract year.

Contracts must provide for monetary compensation to be paid in advance. The fee charged must be based on the cost of providing the service and take into consideration distance of the property from the fire station. In no case may the fee be less than the

amount than that would have been paid in taxes if the property were located in the district. For property located outside the state of Idaho, the fire district board determines what the assessed values of the land would be if it were located in Idaho (31-1430B).

## **PERSONNEL MANAGEMENT**

### **MINIMUM QUALIFICATIONS FOR PAID FIREFIGHTERS**

Any person newly employed as a firefighter must meet the following standards:

1. Be at least 18 years of age
2. Meet the physical performance standards adopted by the board
3. Supply to the board a medical history and certification by an examining physician selected by and paid by the board that the applicant meets the minimum health and medical requirements specified in chapter 2-3 of the 1997 edition of the National Fire Protection Association manual (44-1812).\*

These requirements do not apply to firefighters hired before October 1, 1980, those reemployed within 2 years of termination or to firefighters who are reinstated after military or disability leave or who were terminated in a reduction of force (44-1812).

\**NFPA 1582: Standard on Medical Requirements for Fire Fighters*, 1997 Edition may be obtained from the NFPA website at: <http://www.nfpa.org/catalog/> or at 1-800-344-3555.

## **COLLECTIVE BARGAINING RIGHTS AND REQUIREMENTS**

Firefighters have an explicit statutory right to organize and bargain collectively with their employers (44-1802). Their employers, "the corporation authorities," (44-1804) have a statutory obligation to meet and confer in good faith with the firefighters' bargaining agent (44-1804). Firefighters have the right to be represented by a bargaining agent

selected by the majority of firefighters employed by the district on matters related to wages, rates of pay, working conditions and all other conditions and terms of employment (44-1802). The selected bargaining agent must be recognized as the sole and exclusive agent for all the firefighters in the fire department until recognition of that bargaining agent is withdrawn by majority vote of the firefighters (44-1803).

"Firefighters" are paid members, other than supervisors, of a fire department in any city, county, fire district or political subdivision in the state (44-1801(a)). A "supervisor" is an individual authorized to exercise independent judgment on matters of hiring, directing, assigning, promoting, rewarding, transferring, laying off, recalling, suspending, disciplining, discharging or adjusting grievances of other employees. A supervisor's administrative responsibilities must include involvement in policy and budget development for the department. Although supervisors have the right to become and remain members of a union, the employer has no obligation to bargain with them. (44-1801(a)).

## **NEGOTIATING AGREEMENTS AND CONTRACTS**

The board must meet and confer in good faith for collective bargaining purposes within ten days of receipt of a written request from the bargaining agent (44-1804). On bargaining matters requiring an appropriation of funds, the bargaining agent must provide written request for collective bargaining at least ninety days before the last day on which funds can be appropriated by the fire protection district to cover the contract

period which is to be the subject of the negotiations (44-1808)). It is the obligation of the board to reduce any agreement resulting from the negotiations to a written contract (44-1804).

## **IMPASSE RESOLUTION**

### **Fact-finding**

If after 30 days from the first bargaining session, a contract agreement has not been reached, any and all unresolved issues will be turned over to a fact finding commission (44-1805). After the thirty day expiration, the fire district board and the bargaining agent have five days to each name one person to serve on the fact finding commission and must immediately notify each other of the name and address of the individual selected. Those two members have ten days to name a third commission member. If they are unable to agree on the selection of a third member within ten days, either the board or the bargaining agent can request, in writing, the director or the Idaho department of labor to appoint the third member. Regardless of how chosen, the third member serves as the chair of the fact finding commission. No member of the fact finding commission may be an elected official or an employee of the city, county, fire protection district, or political subdivision affected. Fact finding commission expenses are shared equally by the corporate authorities and the bargaining agent (44-1806).

The fact finding commission will schedule a hearing and must notify the board and the bargaining agent either personally or by registered mail of its location, date, and time at least five days before the hearing. Appearance at the hearing waives the notice requirement. All fact finding commission members must attend the hearing, but only a majority is required to determine any question and suggest a recommendation. If a fact finding commission member is unable to act or serve on the commission for any reason, the other two appointed members may continue the hearing process and render a

recommendation (44-1809). All interested parties are entitled to be heard, to present information related to the hearing and to cross-examine hearing witnesses.

The commission may adjourn the hearing and, either on request by either party or its own motion, postpone it. It may hear and make decisions based on the evidence presented even if one of the parties fails to appear (44-1809).

The recommendation of the commission must be put in writing and signed by those members that support it. The recommendation is then delivered to both the bargaining agent and the board (44-1810). Any agreements negotiated by the board and the bargaining agent within thirty days of the fact finding commission's recommendation become the collective bargaining contract governing the firefighters and the board (44-1807).

### **Strikes**

Strikes are prohibited and firefighters may not recognize a picket line of any other labor organization while on duty during the term of a written contract (44-1811). However, once a contract expires and if no new contract has been consummated, strikes by firefighters are legal. During that interval both parties are free to negotiate depending on their economic strengths (Local 1494, IAFF V City of Coeur d'Alene, 99 Idaho 630, 586 p.2d 1346 (1978)).

## **FINANCE**

### **BUDGET**

The district board must adopt a budget and present it at a public hearing before certifying a tax levy to the board(s) of county commissioners with territory in the district (31-1419A).

### **Notice**

No later than April 30 each year, the board must set a date and location for the budget hearing and notify the county clerk (63-802A). At least ten full days before the public budget hearing, the board must post a notice of the hearing in a least one obvious place within the district and also publish notice once in a daily or weekly newspaper published within the district. The notice must include a complete copy of the budget, the time and place of the hearing and the place where the proposed budget may be examined before the hearing (31-1419A).

### **Public Inspection**

The proposed budget must be available for public inspection on and after the date the notice is posted. The business hours and location for public budget inspection is determined by the board of directors (31-1419A).

### **Hearing**

The hearing must be attended by a quorum of the board, who will explain the proposed budget and hear all objections to it (31-1419A).

### **Certification to County Commissioners**

The board must file a certified copy of the budget with the board of county commissioners at the time it certifies the total amount required from tax levy (63-804).

## **REVENUES**

### **Taxes**

Fire protection districts are legally classified as taxing districts under Idaho law (63-3101). As such they may levy taxes on all taxable property within their boundaries to pay the costs of equipping and running the district. The levy may not exceed twenty-four hundredths percent (.24%) of assessed value (31-1420). Districts whose levy was significantly below the .24 percent prior to passage of 63-802IC in 1995 which limits tax increases may seek voter approval to raise the levy to the .24 percent level. Such an increase requires 66 2/3% approval of the voters at an election called for that purpose (31-1420). All taxable property within the district must be assessed equally in proportion to its valuation and be benefited in proportion to that valuation (31-1401).

If the district was formed after the first of January, it may not levy any taxes in that year and if it annexes property after January 1, it may not levy taxes against the annexed property during that year (63-807).

The county auditor must certify to the board the total assessed value of all taxable property within the district as soon as the value is known (63-803).

### Exempt Property

The property of all public utilities: railroads, bus lines, gas plants, pipe lines, telephone and telegraph lines, water systems, warehouses, electric transmission lines and all common carriers is automatically exempt from taxation by fire protection districts. That

property is not entitled to nor shall it receive protection from the district unless written consent has been filed with the clerk of the board of county commissioners (31-1422(1)).

At the request of the fire district board the board of county commissioners may by ordinance passed no later than the second Monday of July also exempt all or a portion of unimproved real property and personal property from taxation. In granting such exemptions county commissioners must ensure that each category of property is treated uniformly. Prior to passage of the ordinance the county commissioners must provide written notice of intent to all affected property owners (67-6511(b)).

#### Determination of Tax Levy

After equalized taxable property values have been determined, the board, based on the budget previously approved, determines the total amount required from taxes and the tax levy, and if the district is located in more than one county, the apportionment of taxes among the counties.

#### Tax Increase Limits

Property tax increases are generally limited to no more than 3% (three percent) of the dollar amount of property taxes requested for the preceding year (63-802(1)). No district may certify a budget request that exceeds that amount plus the amount of revenue that would have been generated by applying last year's levy to any increases in market value of property resulting from new construction, plus the amount of revenue raised from applying that levy to any newly annexed property.

In calculating the base dollar amount, the district may select that one of the preceding three years in which it requested the highest dollar amount of property taxes. Tax revenues from voter approved bonds, override levies, and supplemental levies are not to be included in calculating the base amount (63-802(1)).

If no tax levy was made in the preceding year, the levy may not exceed the amount for the last year in which a levy was made (63-802(1)). For newly created districts, the levy amount may not exceed the dollar amount of the actual budget request (63-802).

In the year following the consensual inclusion of a public utility into a fire district, the tax levy may be increased to include the prior year's levy on the taxable value of the utility (63-802(2)). If the district does not request the allowed increase in tax revenues in any one year, it may, in the following year recover the foregone increase by certifying that amount in addition to any other increase allowed.

These tax increase limitations may be overridden only by a majority of the district's electors voting on the question at an election called for that purpose. Such voter approval may be given for no longer than two years (63-802(3)).

#### Apportionment of Tax Revenue Requests

If a taxing district is located in more than one county, the amount certified to the commissioners of each county is to be computed according to the following formula:

$$A = B \times (C \div D)$$

- A = Amount to be certified to county commissioners;
- B = Total amount of money to be raised;
- C = Total cash value of district property in the county, and
- D = Total cash value of property in the district (63-803).

### The Levy

The levy must be made by resolution and entered into the minutes of the board. The secretary must send the resolution to the county auditor, assessor and the state board of equalization (31-1420).

### Certification to County Commissioners

The total amount of money requested from tax revenues must be certified in dollars to the appropriate board or boards of county commissioners no later than the Thursday prior to the second Monday in September unless the board of commissioners grants an extension (63-804). An extension may not be longer than seven working days (63-803). This certification must be accompanied by a copy of the district's budget (63-804).

### Collection of Taxes

The county commissioners must certify the district's levy to the county auditor who must then include it on county tax rolls. Taxes levied by a fire protection district constitute a lien against property and are collected at the same time and in the same manner as the county property tax (31-1421).

### Disbursement of Tax Revenues

Fire protection district funds collected by a county treasurer must be immediately paid to the treasurer of the fire protection district, who must deposit the funds into a bank account and handle according to the state depository law (31-1423).

#### Unauthorized Tax Levy

If the state tax commission finds that a district has fixed a levy in excess of the maximum provided by law, it must notify the county commissioners and the board no later than the fourth Monday in October (63-809). If the commission determines the board has fixed a levy for any purposes not authorized by law or in excess of the maximum, it must also notify the county commissioners, county treasurer and county attorney. The county attorney must immediately bring suit against the governing authorities levying such unauthorized tax with the purpose of setting the levy aside as illegal. Costs incurred in such action are borne by the county in which the suit was brought (63-809).

#### **Fee Increases**

Prior to imposing any new fees or fee increases greater than one hundred five percent (105%) of the amount of fees previously collected, the board must hold a hearing on the proposed increase at either its regular or a special meeting. The board must give public notice of the hearing on the proposed fee increase by running an advertisement in the appropriate newspaper once a week for two weeks preceding the hearing, mailing a notice to all district residents at least one week before the hearing or by holding three public meetings in three different locations in the district. The notice must state the time,

place and the purpose of the hearing. Failure to comply will result in all or a portion of the fee increased collected being voidable (63-1311A).

### **Management Of District Funds**

The treasurer of the district receives all district funds and ensures that they are credited to the district's account (31-1425). District funds may be drawn on only upon voucher and by check signed by the treasurer and countersigned by the president. The board may designate, by resolution, a representative, bonded in an appropriate amount, to sign district checks (31-1423).

Payments by the district must be made by warrants or drafts. No warrant or draft may be drawn without a prior appropriation of the board. Generally, no warrant may be drawn in excess of money in the district treasury. The only exception to that is that warrants may be drawn in anticipation of revenues (31-1426). Warrants may only be drawn upon order and with the counter signature of the president of the board or, in his absence, other members of the board. The secretary of the district must countersign all warrants, but only after determining that payment has been duly authorized, that the money has been appropriated and not exhausted.

Warrants must be presented to the treasurer for payment. After determining that there is sufficient money in the treasury, the treasurer must pay the warrant and write on its face, "paid," the date of payment, and sign it (31-1426).

### **Budgetary Surpluses**

If at the end of the fiscal year, the district has accumulated a fund balance, an excess of assets over liabilities, it may carry that balance over into the next fiscal year and use it to equip and maintain the district (31-1424A).

**Annual Financial Reports For Taxing Districts**

If requested to do so, the treasurer of the board must submit to the state controller an annual financial report. The state controller is to formulate rules and prescribe a standard form for the reports (67-1081); (67-1082). Failure to submit a required annual financial statement or report within one hundred eighty days after the last day of the reporting unit's fiscal year is a misdemeanor (67-1083). The controller must report any failure to comply with this provision to the prosecuting attorney who must take action to enforce compliance (67-1081(2)).

**ANNUAL AUDIT**

State law requires that districts are subject to audit under certain conditions. The minimum requirements for the audit depend on the size of the district's annual budget. The Table below identifies these audit requirements.

***Audit Requirements Based on Annual Budget (67-450B)***

<b>Annual Budget</b>	<b>Minimum Audit Requirements</b>
Less than \$50,000	The district has no minimum audit requirements.
\$50,000 - \$100,000	The district may elect to have its financial statements

	reviewed and compiled on a biennial basis. Biennial reports of review must include a review of each fiscal year since the previous review.
\$100,001 - \$250,000	The district may elect to have its financial statements audited on a biennial basis and continue a biennial auditing cycle in subsequent years. Biennial audits must include an audit of each fiscal year since the previous audit.
Exceeding \$250,000	A full and complete audit of the district's financial statements must be made each fiscal year.

Audits must be done in accordance with generally accepted governmental auditing standards as defined by the United States General Accounting Office. The district must file two copies of the completed audit report with the legislative council within ten days after receiving the report from the independent auditor.

### **DEBT**

The board has power to incur debt only under the following circumstances:

1. In the first year of organization to finance preliminary expenses and general expenses to achieve the purposes of the district.
2. To acquire, purchase, construct, improve and equip, land, building sites, buildings, necessary facilities and equipment, including fire fighting equipment and apparatus.
3. In anticipation of revenues.

Each of these circumstances requires the board to follow different procedures.

#### **Debt Incurred for Preliminary Expense**

The amount of indebtedness incurred in the first year of a district's existence for initial expenses may not exceed \$.01(one cent) per each \$100 of assessed market value of personal and real property in the district (31-1424(a)).

## **Debt Incurred for Capital Expenses**

For the purposes of acquiring land, fire fighting equipment and apparatus and construction of buildings and equipment the board may issue general obligation coupon bonds not to exceed 2% (two percent) of the assessed market value of real and personal property in the district (31-1424b).

### Passing the Ordinance

The issuance of such bonds must be done by ordinance passed and adopted by the board. The ordinance must:

- a) specify the purpose of the bond issue and the maturity date of the bond. If it is for new debt, the ordinance must state the object of expenditure; if for refunding, describe in detail all bonds, warrants or securities being refunded. All ordinances must specify the provisions for payment of the principal and interest and create a sinking fund (57-203).
- b) make provision for collection of an annual tax to create a sinking fund large enough to pay off the principal of the debt within 30 years and to pay the interest on the bonds as it falls due.
- c) establish the bond and coupon form.
- d) provide for holding an election on the question of whether the bond should be issued.

### Holding An Election

Notice of the election must be given for thirty days in a newspaper or newspapers of general circulation in the district. Voting at the election must be by ballot which is to

read: "In favor of issuing bonds to the amount of .....dollars for the purpose stated in the Ordinance No....." and "Against issuing bonds to the amount of .... dollars for the purpose stated in the Ordinance No....."

The election is to be conducted in the same manner as elections for commissioners (see pps 5 - 7 above). Two-thirds of those voting must approve the issuance of the bonds. If voter approval is granted, the bonds must be issued according to the provisions of Title 2, Chapter 57, *Idaho Code*, Idaho's municipal bond law (31-1424).

If a proposal for the approval of a bond issue is defeated, no subsequent elections can be held on a similar proposal for six months (63-1309).

#### Issuance of Bonds

If the ordinance passes, the board may proceed with issuance of the bonds. Before issuing the bonds the board must set the interest rate for the bonds and the date interest will be paid. Variable interest rates are permitted (57-231) and interest must be paid semiannually (57-208). Interest on fire protection district bonds is exempt from all taxation except transfer and estate taxes (31-1424(b)). The board must also develop an annual amortization plan (57-211), and determine the annual principal amounts payable for the first five maturities. Payments on amortized or serial annual maturities may be started at any time on or before five years after the date of their issue. Such bonds, or any part thereof, are redeemable at any time prior to their fixed maturities at the option of the district governing board 57-228.

Bonds may be offered for public sale only after notice of intention to sell has been published in either the official newspaper of the district or any paper with general

circulation in the district at least twenty-one days prior to the sale. The president and secretary of the board are responsible for ensuring publication of the notice (57-215). Bonds may be sold to the United States government or any of its agencies by private sale without prior notice (57-227). Specific procedures for sale of bonds are detailed in sections 57-213-217.

### **Inability to Pay Off Debt**

If at any time the district is unable to pay warrants on fire district indebtedness, interest, at a rate determined by the board, must be paid on those warrants from the time they are registered with the treasurer. The amount of such warrants may not exceed the total revenue of the district for the year in which indebtedness was incurred (31-1433).

### **Refunding Bonds**

Fire protection districts also have the power to refund general obligation or revenue bonds if they are in arrears, are about to become due and insufficient funds are available for payment, to achieve a savings or for other purposes beneficial to the district (57-504). Such purposes include removal of obligations in the original bond ordinance, such as unnecessarily high debt coverage ratios or other administrative liabilities which inhibit the governing body's ability to function effectively, or to restructure an existing debt service schedule. Advance refunding of bonds allows a district to restructure its outstanding bond debt in advance of maturity or optional call date, or to refinance its capital improvement debt when lower interest rates become available (57-504).

The principal amount of advance refunding bonds may be greater than, equal to, or less than the principal amount of the bonds to be refunded as long as provision is made to retire or redeem the entire amount of the bonds being refunded (57-504(3)). The bond proceeds may also be used to defray incidental expenses which have been capitalized (57-504(4)).

Prior to using the money received from the sale of advance refunding bonds, these proceeds and other legally available funds may be invested only in government obligations maturing in time to provide funds to pay principal, interest and redemption premiums due on those bonds.

For the purposes of safe keeping and application of advance refunding bond proceeds, the fire district board may contract with or appoint as a trustee any trust company or state or national bank having the powers of a trust company. The application of such proceeds should be indicated in the advance refunding plan (57-504(5)).

In computing statutory debt limitation any government obligations which have been deposited in escrow and dedicated to paying off outstanding general obligation bonds may be subtracted from the amount of outstanding indebtedness. Similarly, any bonds for which the district has irrevocably set aside and pledged funds sufficient to pay them off are also exempt from being included in such calculations (57-504).

Refunding bonds are issued following the provisions of law applicable to the type of bonds being refunded (57-504). Refunding bonds may be made payable from any taxes and/or other revenue pledged for their payment at the time of their issuance or at the

time of issuance of the bonds being refunded, as determined by the board of directors (57-504).

### **Revenue Anticipation Notes**

Fire protection districts may, by passing a resolution, borrow money and issue revenue anticipation notes or bonds (63-3101-63-3108). The board determines interest rates to be borne by such bonds or notes which may mature no more than one year from the date they are issued (63-3102).

The total amount borrowed must not exceed seventy-five percent of the tax and other revenues anticipated for the current fiscal year (or the previous fiscal year if the tax levy has not yet been completed), as shown by the adopted district budget (63-3102).

The resolution providing for the issuance of revenue anticipation bonds or notes must define the form and detail of the bonds and show taxes levied, or other anticipated funds and the amounts of such funds not yet collected. If the tax levy or budget for the fiscal year is not completed, then the figures for the preceding fiscal year should be used (63-3102). Taxes raised or to be raised to pay the principal of outstanding bonded indebtedness of the district must not be included in the anticipated amount against which revenue anticipated bonds or notes are authorized to be issued (63-3102).

The resolution must also provide for the creation of a fund to be known as "Revenue Anticipation Bond or Note Redemption Fund," for the purpose of payment of the revenue anticipation bonds or notes at maturity. All anticipated revenues, against which the issuance of such bonds or notes was authorized, must be placed in this fund until funds accumulated are sufficient to pay outstanding revenue anticipation bonds or notes

together with interest at maturity. Such bonds or notes are the direct and general obligation of the taxing district (63-3104).

In providing for the levy of taxes for the succeeding fiscal year, the district must include the amount necessary to cover any deficiencies between collected and appropriated revenues and revenue anticipation bonds or notes issued in the preceding year. When writing the upcoming budget, the previous year's shortfalls are counted as an expense (63-3105).

The district may also refund tax anticipation bonds by issuing refunding bonds or notes (63-3106). Refunding bonds are subject to the same restrictions and procedural requirements as the original revenue anticipation notes (63-3106), described in the preceding paragraphs.

Revenue anticipation bonds or notes are negotiable instruments, backed by the full faith, credit and resources of the district. These bonds or notes may be sold at public or private sale at such times, in such amounts and on such terms as determined by the board (63-3103).

### **BANKRUPTCY OF TAXING DISTRICTS**

Any taxing district in the state of Idaho which becomes bankrupt may avail itself of the Federal Bankruptcy Statute (U.S. Code Title II, sections 401-404). Procedures for using this statute are given in sections 67-3901 through 67-3910 of the *Idaho Code*.

Any district may file a petition under Chapter IX of the Federal Bankruptcy Statute stating that the district is unable to meet its debts (67-3903, 11 USC 9[403.a]). The petitioning district must pay the expenses of filing, as well as all other necessary or incidental

expenses (67-3903) The petition should be filed with the United States district court in which the territory of the district, or the major part thereof, is located (11 USC 9[403.a]), and detail the plan of re-adjustment (67-3903).

Before filing the petition, the district board must adopt a resolution authorizing the filing (consenting to the proposed re-adjustment plan), and authorizing its elected or appointed attorney or special counsel to file the petition and represent the district in court proceedings (67-3904). In order for any re-adjustment plan (i.e. repayment schedule in bankruptcy) to be binding on the district, the board must file with the United States district court a copy of that resolution (67-3906). The petition must include:

- the procedure for levying and collecting taxes, special assessment taxes, or special assessments for the payment of any refunding bonds;
- the character, effect, and enforcement of liens to be created by the issuance of any refunding bonds;
- the rights of holders of refunding bonds upon their issuance (67-3907).

The district is then authorized to take all action necessary to implement the plan of re-adjustment, subject only to the provisions of the Idaho Constitution (67-3905).

District implementation powers and duties for adopting and implementing the plan of re-adjustment include:

1. Cancellation and Remission: the power to cancel, remit or reduce money owed by the district for which refunding is sought in the re-adjustment plan.
2. Adoption of Ordinances: The power to adopt any ordinances necessary to accomplish the purposes of this act and to provide due process of law. The district board of directors shall constitute a legislative body for such purpose.

3. **Levying Taxes and Assessments:** The power to assess, levy and collect taxes, special assessment taxes and special assessments as provided in the plan of re-adjustment.
4. **Providing Notice and Hearing:** If the plan of re-adjustment anticipates issuing refunding bonds for which special assessment taxes or reassessments requiring liens upon real property, the district must publish notice and hold a hearing before the plan may be signed and approved by the federal district court. The notice must set forth the amount and manner of proposed special assessment taxes or reassessments upon real property, and the time and place where interested persons may be heard by the district. The board must prescribe by ordinance or resolution the method of giving notice and the procedures to be followed at the hearing.
5. **Issuance of Refunding Bonds:** To refund bonds secured by unpaid assessments levied upon real property in the district and/or to fund or refund any obligation of the district.
  - a) **Nature of Refunding Bonds:** Such bonds may be those described in the re-adjustment plan. They must have the denominations, interest rates and maturities and be payable as provided in the plan of re-adjustment. The bonds must not exceed in amount, or bear a higher rate of interest than the total obligation sought to be refunded.
  - b) **Payment of Bonds:** Refunding bonds will be payable in the same manner as the obligations being refunded.
  - c) **Payment of Bonds:** Refunding bonds will be payable in the same manner as the obligations being refunded.
6. **Reductions and Cancellations:** The power to cancel or reduce any taxes or special assessment taxes levied to pay off obligations which are to be refunded in the re-adjustment plan. The district may also cancel or reduce

interest, penalties and costs that were levied or assessed because of previous delinquency in payment of such taxes or special assessments.

7. The above powers do not exclude other powers not mentioned but necessary for the accomplishment of the purposes of this act (63-3907,a-h).

All actions in filing or attempting to file under Chapter IX of the Federal Bankruptcy Statute and subsequent proceedings must be in accordance with this act (67-3908).

This act does not affect any other act adopted for the same purpose, but only provides an alternative system for the refunding of bonds (67-3909).

## **ANNEXATION OF TERRITORY**

### **ANNEXATION OF TERRITORY WITHIN THE SAME COUNTY**

Both contiguous and noncontiguous territory may be annexed by existing fire protection districts. Noncontiguous territory must consist of at least 40 acres of contiguous territory in order to be subject to annexation (31-1411). There are two methods for annexing territory in the same county:

- At least 75 percent of the owners or contract purchasers of the land sought to be annexed may petition the fire protection board for annexation. After receiving the petition, the fire protection board must hold a public hearing within ten to thirty days. The board must publish notice of the place of the hearing in at least one issue of a newspaper of general circulation within the district. Any person attending the hearing who wishes to express support or opposition must be allowed to speak at the hearing. After the hearing, the fire protection district board approves or rejects the petition. If the

board approves the petition, it makes an order to that effect, sending a certified copy of it and a legal description of the annexed territory to the board of county commissioners.

The board of county commissioners enters and records an order of annexation, ensuring that the annexed property will be properly included in the tax rolls for the district (31-1411).

- If more than 25 percent of the owners or contract purchasers of the land sought for annexation do not join in the petition, or if the petition is denied, the territory may still be annexed by the affirmative vote of a majority of the qualified voters residing in the additional territory. That vote may be taken at either a general or special election. Before the annexation election, the inclusion must be approved by resolution of the board of the existing fire protection district and entered in the board minutes. The same procedures used in creating and organizing a district, including petition, hearing, election notice and election are to be followed for the annexation election (31-1411).

- The board of county commissioners must provide a copy of the legal description and map, prepared in draftsmanlike manner of the new boundaries to the county assessor and recorder within 30 days of the effective date of the annexation of the district or no later than January 10 of the following year (63-215). The district is responsible for filing the map and legal description with the state tax commission.

#### **ANNEXATION OF TERRITORY IN AN ADJOINING COUNTY**

Contiguous or non-contiguous territory located in an adjoining county may also be annexed to an existing fire protection district. Non contiguous territory must consist of at least forty contiguous acres (31-1412). The procedures are similar to those required for creation of a fire protection district with following modifications:

- Proceedings may be initiated by two or more property owners of contiguous lands totaling at least 100 acres, or having an assessed value of at least \$125,000 (31-1412(a)).

- A petition describing the territory to be annexed and naming and describing the fire protection district to which annexation is sought must be filed with the board of county commissioners of the county in which the new territory is situated. The petition must be accompanied by a map showing the boundaries of the original district, the territory proposed to be annexed and the location of the intervening county line, and a certified copy of a resolution of the fire district board consenting to the annexation (31-1412(b)).

- Notice of the hearing on the petition before the board of county commissioners must identify the territory prepared to be annexed, the time and place of the hearing and state any taxpayer in that territory may appear and present objections (31-1412(c)).

- After the hearing, if the petition is granted, the board of county commissioners enters an order fixing the boundaries of the annexed territory, directing the clerk of the board to have a map prepared. Certified copies of the order and the map are then sent to the clerk of the board of county commissioners of the county in which the original fire protection district is situated (31-1412(c)).

- An election must then be held in the territory desiring annexation. Notice of the election must describe the boundaries of the territory for which annexation is sought, state the name of the district and that a map of the district and the territory to be annexed is on file with the clerk of the board of county commissioners. The notice must also describe the form of the ballot to be used at the election. That ballot must contain the words "In favor of annexation to .... Fire Protection District" and "Against annexation to .... Fire Protection District," and direct voters indicate their preference on the ballot by a cross (X) (31-1412(d)).

- The territory proposed to be annexed constitutes one election precinct. If a voter is challenged, he/she must swear in addition to the usual elector's oath, "I am a resident within the boundaries of the territory proposed to be annexed to ... Fire Protection district" (31-1412(e)).

- Returns of the election are canvassed by the board of county commissioners. If more than half of the voters support annexation, the board of county commissioners by order declares the territory to be annexed to the existing fire protection district. A certified copy of the order is sent to the board of the original fire protection district, to the board of county commissioners of the county in which the original district is situated, and to the county recorder of the county in which the newly annexed territory is situated (31-1412(e)).

- The board of county commissioners must provide a copy of the legal description and map showing the new boundaries of the district, to the county assessor and recorder within 30 days of the effective date of its formation (63-215). The district is responsible for filing the map and legal description with the state tax commission.

- At the first meeting of the board of county commissioners following the annexation the county commissioners must re-divide the expanded fire protection district into three subdivisions as equal as possible in terms of land area and population. No more than one fire protection district commissioner may reside in each subdistrict. If redistricting results in two commissioners residing in the same subdistricts they must draw lots to determine who will remain in the position. County commissioners appoint individuals to fill any vacancies resulting from the annexation and the appointed commissioners serve for the remainder of the term to which they are appointed. Certified copies of appointments of the secretary and treasurer of the fire district boards must be filed with the clerks of the boards of county commissioners and the tax collectors in which district is located. All taxes levied by the fire protection district must

be certified to, collected and remitted by, the proper officers of the county in which the property subject to the levy is located (31-1412(e)).

### **ANNEXATION OF CITIES**

Any area within the limits of any city may, by resolution or ordinance of its governing board, be annexed to a fire protection district (31-1429).

### **CONSOLIDATION OF FIRE DISTRICTS**

Fire protection districts may consolidate with each other. Consolidation requires consent of all affected fire protection district boards, and under certain circumstances, the voters of the affected districts.

If a fire protection district board determines it would be advantageous to consolidate with one or more fire protection districts, it prepares a consolidation agreement. The agreement must include: (1) the name of the proposed consolidated district; (2-3) that all debts and property of the separate districts will be transferred to the consolidated district; (4) the number of commissioners, either 3 or 5, on the new board; (5) that all existing commissioners will be commissioners of the consolidated district until the next scheduled election when new commissioners will be elected; (6) employees of the consolidated district will be chosen from employees of the existing districts and will retain seniority rights under their existing employment contracts (31-1411A(a)). If the new

board is to consist of three members, the commissioners from subdistricts one and two will be chosen for four-year terms, and the commissioner from subdistrict three for a two-year term. If the new board is to consist of five members, commissioners from subdistricts one, three and five will be chosen for four year terms and those from two and four receive an initial term of two years. Subsequently all commissioners will have four terms.

Each of the fire district boards must approve the agreement.

Between ten and thirty days after approval of the consolidation agreement, each board must also hold a public hearing. Notice of the time and place of hearing must be published in at least one newspaper of general circulation within the district at least five days before the hearing. Any person attending the hearing must be given the opportunity to support or oppose the agreement. After the hearing, each board votes to approve or reject the consolidation agreement. If each board approves, the agreement becomes effective and the consolidation complete in thirty days unless a petition of objection, signed by five percent of the qualified electors of one of the districts, is filed with the fire protection district secretary during that time (31-1411A(b)).

If a petition of objection is filed, an election must be held following the same procedures as for creating a district (see page 39 above). The question on the ballot must read: "consolidation of \_\_\_\_\_ fire protection district, yes, or "consolidation of \_\_\_\_\_ fire protection district, no. If a majority of voters support consolidation, the consolidation agreement becomes effective. If a majority opposes the consolidation agreement, no new consolidation can be proposed for six months (31-1411A(b)).

As soon as the consolidation agreement becomes effective, the consolidated fire protection district board must file a certified copy of the agreement with the county

recorder of each county affected (31-1411A(c)). The board of county commissioners must provide a copy of the legal description and map of the new district boundaries to the county assessor and recorder within 30 days of the effective date of its formation (63-215). The district is responsible for filing the map and legal description with the state tax commission. A newly consolidated fire protection district has the same rights and obligations as any other fire protection district (31-1411A(c)).

The alternative procedure for consolidation may be initiated by either fire district commissioners or by a petition signed by 10% of the electors in the last general election from the fire protection districts to be consolidated. Under this procedure an election is conducted on the question "Shall . . . fire protection districts be consolidated?" (31-1411B). At least one public hearing must be held prior to the election. If a majority of the votes in each district favor consolidation, the consolidation proceeds and the boards affected enter an agreement similar to that described in the preceding paragraphs. This agreement is not subject to an election. If a majority in all affected districts oppose consolidation, it fails. If more than two districts are proposed, the consolidation becomes effective for any districts in which it receives majority approval. (31-1411B).

## **WITHDRAWAL OF TERRITORY**

Property may be withdrawn from a fire district upon a finding by the board of county commissioners that both the portion sought to be withdrawn and the portion that remains will benefit. The procedure for withdrawal from a fire district is initiated by filing a petition with the board of county commissioners. The petition must be signed by fifty or more property owners within the portion of the district wishing to withdraw; or if there are less than 100 property owners in that portion, by a majority of the property owners. The board of county commissioners must then set a time for a public hearing on the petition,

between 10 and 30 days of its receipt. Notice of the hearing must be published at least a week prior to its scheduled time in a newspaper of general circulation in the district (31-1427).

Any interested person may appear and testify at the hearing to support or object to the withdrawal. If after the hearing the board of county commissioners finds that the portion sought to be withdrawn will not benefit by remaining in the district and the territory not to be withdrawn will be benefited by continuing as a district, the board must grant the petition and enter an order on its records. Upon withdrawal, all property acquired by the district remains vested in the county to be used for purposes of the district (31-1428). Territory withdrawn continues to be subject to taxation for payment of any and all indebtedness outstanding at the time of withdrawal (31-1438).

If the territory withdrawn is subsequently organized as a new fire protection district, the county commissioners must order an appraisal of all assets of the original fire district prior to the withdrawal. The total value of the assets must be divided between the two districts based on the percentage of the assessed property valuation in the two districts (31-1428). For example, if assessed value of property of the new district encompasses 40% of the assessed property value of the original district; it would receive 40% of the value of the assets. The new district is also entitled to receive the same proportionate share of tax revenues received or receivable by the original districts (31-1438).

Any area within the limits of a city may also be withdrawn from a fire district following these procedures (31-1429).

## **CHANGING THE NAME OF THE DISTRICT**

Once legally established, the name of a fire protection district may be changed following a hearing, and if the name change is opposed, an election on the question. The board initiates the procedure by adopting a proposal to change the name of the district. At least one hearing must be held and notice of the time and place of the hearing and the proposed name change must be published in a newspaper of general circulation in the district at least 15 days in advance of the hearing. Notice may also be published in other papers and made available to radio and television stations serving the district (67-2321).

If a petition opposing the name change signed by ten percent of the qualified voters in the district is presented to the board, the board must submit the question to an election, held according to normal election procedures. If a majority of votes cast at that election are in favor of the name change, the board must then adopt a resolution specifying the present name and date of organization of the district and providing for the name change (67-2321(2)).

If no petition is presented and it appears to the board after the hearing that no good cause for denying the name change exists, the board may immediately adopt a resolution providing for the name change. The resolution must also specify the present name and date of organization of the district (67-2321(2)).

The name change does not become effective until a certified copy of the resolution has been filed with the state tax commission and the county recorder of all counties in which the district is located (67-2321(2)). A change of name does not affect any of the rights, property or obligations of the district.

## **DISSOLUTION**

Fire protection districts may be dissolved by two different methods: the first method is initiated by petition signed by either 25% of the property owners in the district or by 25 or more owners of contiguous property of at least 1000 acres or assessed value of at least \$500,000; the second method is initiated by petition signed by all property owners in the district (31-1435).

For the first method, the signed petition is presented to the board of county commissioners of each county in which the fire district is located. The petition must state the name of the district, describe specifically the boundaries of the district and include a map of the district. Once filed, the petition must be available for public inspection at the office of the clerk of the board of commissioners until the election (31-1435).

The petition must be presented to the board of county commissioners and filed with the clerk of the board. The petition and supporting documents must be available for public inspection at the office of the clerk of the board of county commissioners from the time of filing until the election (31-1435). The county commissioners must set a time for a public hearing (of the petition) between four weeks and six weeks after the date of the presentation and filing.

If the fire protection district is located in two or more counties, the boards of commissioners in all counties must coordinate the hearing date and publication of the notice so that only one hearing is held. The hearing will be held in the administrative offices of the district and the boards are to act jointly (31-1435).

Once a week for three successive weeks prior to the hearing, the board must publish notice in a newspaper published within each county in which the district is located. The

notice must state that a petition to dissolve the district has been filed and include a description of the district, its boundaries, the date and place of the hearing and that all taxpayers within the district may appear and express their views on the dissolution (31-1435).

After considering all testimony the county commissioners decide whether to grant or deny the petition. If the petition is granted, the clerk of the board of county commissioners publishes a notice of election once a week for three successive weeks prior to the election in a newspaper published within the county or counties affected (31-1435). The notice must clearly designate the names and boundaries of the proposed district, the purpose of the election and require voters to cast ballots containing the words "fire protection district dissolved yes," or "fire protection district dissolved no."

Voter qualifications for a fire protection district election are the same as for other state elections, except that no previous registration is necessary, and voters must have been residents of the proposed fire protection district for at least thirty days (31-1406). If the fire protection district is located in two or more counties, the boards of county commissioners must conduct the election on the same day in each county (31-1435). Procedures for conducting the election and canvassing the returns are the same as described on pages 5 - 7 of this handbook.

If one-half or more of the votes are for "fire protection district dissolved, yes" the county commissioners enter an order into the minutes of the board dissolving the fire district. Where a fire district involves two counties, if a majority of votes cast in any county is against its dissolution, dissolution of the district is rejected for all counties involved (31-1435).

All property owners in the district may also sign and present a petition for dissolution accompanied by a map to the board of county commissioners. In that situation the county commissioners must set a time for a hearing within four to six weeks of receiving the petition. They must publish notice of the hearing once a week for three weeks in a newspaper published within the county. The notice must state that a petition for dissolution has been filed, describe the boundaries of the district and that any resident, taxpayer or creditor of the district may appear and offer objections at the hearing. If no one objects at the hearing, the county commissioners are to enter an order dissolving the district into their minutes.

If any objections from residents, taxpayers or creditors are raised at the hearing, the county commissioners must decide within 30 days whether to dissolve the district. If they decide to dissolve it, they enter an order for dissolution in their minutes and the dissolution is immediately effective (31-1435).

