

MINUTES  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

**DATE:** Thursday, February 15, 2024  
**TIME:** 3:00 P.M.  
**PLACE:** Room WW53  
**MEMBERS PRESENT:** Chairman Ricks, Vice Chairman Schroeder, Senators Grow, Cook, Adams, Bernt, Trakel, Rabe, and Just  
**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Ricks** convened the meeting of the Senate Local Government and Taxation Committee (Committee) at 3:07 p.m.

**S 1293** **Senator Van Orden** introduced **S 1293**. This legislation, entitled "Annexation by Cities", specified requirements and procedures for annexation by a city. It further provided definitions related to annexation. It also provided a threshold for approval by affected landowners which the city was required to meet.

**Representative Young** continued to present **S 1293**. She explained that under the current statute there were three categories of annexation as illustrated in the Land Use Planning Handbook (Attachment 1). There were different procedures and requirements for each category. Idaho was only one of about three states that allowed nonconsensual annexation without any threshold. According to the Land Use Planning Handbook, there was a threshold at the beginning of a category B annexation and a threshold at the end of a category C annexation. There was no threshold under a category A annexation if all landowners provided written consent, or it was an enclave of 100 parcels. There were also exceptions for fairgrounds and other special cases. This legislation attempted to clarify the requirements and procedures for each category of annexation.

Attachment 2, a cross reference of the existing Idaho Code § 50-222, and Attachment 3, a cross reference to **S 1293**, outlined the changes in this legislation. The intent language in Section (1) was amended to strike a balance between property rights and a city's need for growth. Section (2) added new definitions for "contiguous," "landowner," "Planning and Zoning Commission", and others, most of which were from the Land Use Planning Handbook. Subsection (c) included a new definition for "implied consent." There was implied consent if a landowner requested, in writing, to be connected to a water or sewer system prior to July 1, 2024, or if the connection was completed prior to July 1, 2008. There was an expectation going forward that a landowner would be made aware by the city that signing up for services gave consent to annexation. "Landowner" was defined in subsection (d) and was used consistently throughout **S 1293** rather than the current statute that used the terms "property owner" and "landowner" interchangeably.

Section (3) provided the requirements and process for annexation which were identical to those under the current statute with the exception of the requirement that the land be, "contiguous to or surrounded by the city." There were exceptions for highways, airports, and railroad rights-of-way. This required that they follow the same process for annexation of an enclave where not all of the landowners had given consent.

Section (3)(b) required specific notice to the landowners and the board of county commissioners of its intent to annex.

Section (3)(c) required that the city also publish notice of its intent to annex.

Section (3)(d) required that the city adopt a written annexation plan.

Section (3)(e) clarified that the city and the Planning and Zoning Commission were each required to hold a public hearing on the proposed annexation. However, in smaller municipalities where the city council performed the duties of the Planning and Zoning Commission, only one hearing was required.

Section (3)(f) required voluntary consent from landowners representing two-thirds of the parcels and at least fifty percent of the area proposed for annexation. Current statute only required consent from fifty percent of the landowners. The specific requirements for the annexation plan required under Section (3)(d) were set forth in Section (4).

Section (5) stated exceptions to the requirements in Sections (3) and (4). The first exception was where all the landowners had requested annexation or where implied consent had been given. The second exception was for annexation of enclaves of 30 or fewer parcels that were surrounded on all sides by the city. In the current statute an enclave of fewer than 100 parcels was required.

Section (6) required that once the city met the requirements under Section (3) and (4) or met one of the exceptions in Section (5), the city council enact an annexation ordinance.

Sections (7) through (12) addressed special cases for highways, fairgrounds, airports, recreational areas, railroad rights-of-way, and agricultural or forest lands. Section (13) stated that the decision of the city council to annex was subject to judicial review and set forth those requirements.

**Representative Young** provided a letter from Mayor Wagoner of Caldwell in support of **S 1293** (Attachment 4) and asked the Committee to read it.

**DISCUSSION:**

**Senator Rabe** noted that, under the current statute, consent was not required for annexation of enclaves of 100 or fewer parcels and that this legislation eliminated that provision and required consent by two-thirds of the landowners and fifty percent of the area to be annexed regardless of the number of parcels. She asked **Representative Young** to explain the reason for that change. **Representative Young** responded that her intent was to balance the rights of the landowners and the needs of the city. Very few states allowed nonconsensual annexation. Lowering the size of enclave to fewer than 30 parcels recognized the need of cities. Furthermore, the landowners had provided written consent by requesting city services.

**TESTIMONY:**

**Bill Nary**, Meridian City Attorney, on behalf of Mayor Simison, and with the approval of the Association of Idaho Cities, spoke in opposition to **S 1293**. He stated that their experience with the existing annexation law had been positive. He noted that, though a category B annexation was rarely used, Meridian did use one in 2013 to annex two adjacent county enclaves with failing water and sewer systems.

He was concerned about the language in this legislation that the land to be annexed had to be, "contiguous to or surrounded by the city." That language had not been construed by the courts. He also expressed concern regarding the reduction of the number of parcels required in an enclave for a nonconsensual annexation from 100 parcels to 30 parcels. This potentially allowed a small number of landowners to prevent annexation and the provision of city services.

**DISCUSSION:** **Vice Chairman Schroeder** stated that under the current statute a city could annex an enclave of fewer than 100 parcels if they were completely surrounded by the city or surrounded by the city on three sides and the fourth side was within the city's area of impact (Attachment 5). He asked whether Meridian had any enclaves under the proposed definition that had more than 30 parcels. **Mr. Nary** replied that they did have enclaves of more than 30 parcels. He further stated that not all enclaves were surrounded by the city. Some were on the border of an impact area or another city.

**TESTIMONY:** **Kelley Packer**, Executive Director, Association of Idaho Cities, spoke in opposition to **S 1293**. There were four concerns they had. Their first concern was the removal of implied consent in Section (2)(c). **S 1293** required that there either be written consent prior to the effective date of July 1, 2024, or the landowner connected to city services prior to July 1, 2008. That language conflicted with Section (14) which stated, "This section applies to annexations occurring on and after July 1, 2024. It does not invalidate or affect consent, including implied consent...."

Their second concern was the increase in the threshold for a nonconsensual annexation in Section (3)(f). That required approval by two-thirds of the landowners in the area to be annexed and at least fifty percent of the area proposed to be annexed.

Their third concern was the addition of the language in Section (3)(a), "or surrounded by the city." This prevented annexation of property bordering on one side by another city.

Their final concern was the reduction of parcels required for a nonconsensual annexation of an enclave from 100 parcels to 30 parcels. In situations involving enclaves of more than 30 parcels this required multiple annexations with increased cost to cities.

**DISCUSSION:** **Vice Chairman Schroeder** explained that the July 1, 2008 date for implied consent resulting from connection to city services was taken from existing statute.

**Ms. Packer** asked Vice Chairman Schroeder whether he felt there was a conflict between Section (2)(c) and Section 14 relating to implied consent. **Vice Chairman Schroeder** opined that if there was connection to city services prior to July 1, 2008, or there was a written request for connection for city services prior to July 1, 2024, there was implied consent. However, after July 1, 2024 simply requesting connection to city services did not imply consent to annexation. He further commented that it was common practice for cities to notify landowners that requesting connection to city services was consent to annexation.

**Vice Chairman Schroeder** noted that the Land Use Planning Handbook considered the terms "contiguous" and "adjacent to" as synonymous. Section (2)(b) defined "contiguous" as, "sharing a common border." Therefore, the enclave must either be contiguous or surrounded by the city. He recommended perhaps defining enclave and "surrounded by the city" as synonymous.

**Representative Young** responded that by adding the language, "or surrounded by" allowed the annexation of an enclave that didn't share a border, but was surrounded by a city.

**Ms. Packer** stated that the requirement that the enclave be surrounded by the city, combined with the requirement that the enclave contain 30 or fewer parcels, meant there would still be circumstances where the city could not annex because the enclave was not surrounded by the city.

**Chairman Ricks** asked for clarification that Ms. Packer was concerned about a situation where property to be annexed was surrounded on three sides by a city and bordered another city on the fourth side. **Ms. Packer** stated that Section (5)(b) had the further requirement that an enclave be surrounded on all sides by a city.

**Senator Trakel** noted that Section (3)(a) required the land to be, "contiguous to or surrounded by the city." "Contiguous" was defined in Section (2)(b) as, "sharing a common border." He asked whether that would permit annexation in the situation Ms. Packer discussed. **Ms. Packer** responded that Section (5)(b) required that enclaves be, "surrounded on all sides by lands within a city."

**Senator Schroeder** explained that Section (3)(a) applied to nonconsensual annexations of land that was contiguous which was defined in Section (2)(b) as "sharing a common border", or it was entirely within the city. Section (5)(b) was an exception for nonconsensual annexations of enclaves. In order for a city to have a non-consensual annexation of an enclave, the enclave must be, "surrounded on all sides by the city" (Attachment 5). The requirements and procedures under Sections (3) and (4) would not apply.

**TESTIMONY:** **Brent McLane**, City of Pocatello, testified on behalf of Mayor Blad in opposition to **S 1393**. He expressed concern about the increase of the threshold for consensual annexations from fifty percent to two-thirds consent of landowners and fifty percent of the area to be annexed. He stated that threshold would be difficult to meet. In addition, he was concerned about the reduction of parcels necessary for the city to annex an enclave from 100 or fewer to 30 or fewer. That would allow a small number of landowners to disapprove an annexation. Finally, he expressed a concern regarding the requirement that the parcels be completely surrounded by the city. Physical features such as mountains or rivers made it difficult to meet that criteria. Under the current statute, the area of impact would provide closure of an enclave.

**DISCUSSION:** **Senator Rabe** asked whether Mr. McLane preferred the definition of enclave in the current statute, **S 1393** which required the parcels to be surrounded on all sides by the city, or another definition. **Mr. McLane** responded that he would like clarification in the bill on what constituted, "surrounded on all sides." He stated that using the area of impact to define the boundary addressed the situation where the parcels were bound on one side by another city or some physical feature.

**TESTIMONY:** **Mayor John Evans**, Garden City, read a statement from Mayor Casper of Idaho Falls (Attachment 6).

**Representative Young** responded to the previous testimony. She argued that a threshold of two-thirds of the landowners was reasonable in that it was the same threshold required to increase taxes. She clarified that you can annex an enclave, regardless of whether the enclave was surrounded by the city or not, if there was consent by two-thirds of the landowners and 50 percent of the area to be annexed. In terms of the reduction of parcels in the definition of enclave, she noted that many cities were reluctant to involuntarily annex larger areas because it was not popular. **Representative Young** stated that the issues of the threshold for nonconsensual annexation and the size of an enclave were policy decisions for the Committee to make.

**DISCUSSION:** **Senator Bernt** stated that he would like to have further discussion regarding the issues of the enclave language and the consent threshold for a nonconsensual annexation.

**Vice Chairman Schroeder** pointed out that the Committee had several policy decisions to make regarding the threshold for nonconsensual annexations, the number of parcels required for an enclave, and the sunset of implied consent through written applications for connection to city services. He felt the consent threshold for a nonconsensual annexation was too high.

**MOTION:** **Senator Bernt** moved to send **S 1293** to the 14th Order of Business for possible amendment. **Vice Chairman Schroeder** seconded the motion.

**DISCUSSION:** **Senator Bernt** stated that he felt the changes to this bill were simple and could be accomplished in the 14th Order rather than holding the bill in Committee.

**Senator Rabe** argued that there were three significant policy decisions to be made and felt those would be difficult to make in the amending order.

**Chairman Ricks** indicated that he supported increasing the threshold for a nonconsensual annexation, but that the comparison to the threshold for a levy or bond was not a fair analogy.

**Senator Trakel** sought clarification on whether Sections (3) and (4) applied if the area was surrounded by the city and had fewer than 30 parcels. **Vice Chairman Schroeder** confirmed that the requirements in Sections (3) and (4) did not apply if the area had fewer than 30 parcels and was surrounded by the city. That was considered consent.

**SUBSTITUTE MOTION:** **Senator Trakel** made a substitute motion to send **S 1293** to the floor with a **do pass** recommendation. **Senator Adams** seconded the motion.

**ROLL CALL VOTE:** **Chairman Ricks** called for a roll call vote on the substitute motion. **Chairman Ricks and Senators Adams and Trakel** voted aye. **Vice Chairman Schroeder and Senators Cook, Bernt, Rabe, and Just** voted nay. The motion failed.

**ROLL CALL VOTE:** **Chairman Ricks** called for a roll call vote on the original motion. **Chairman Ricks, Vice Chairman Schroeder, and Senators Cook, Adams, Bernt, Trakel, and Just** voted aye. **Senator Rabe** voted nay. The motion passed.

**MINUTES APPROVAL:** February 7, 2024. Approval of the minutes of February 7, 2024 was postponed until a future meeting.

**ADJOURNED:** There being no further business at this time, **Chairman Ricks** adjourned the meeting at 5:00 p.m.

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Senator Ricks  
Chair

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Meg Lawless  
Secretary