

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 392

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO APPEALS OF DECISIONS ON REQUESTS FOR CHANGES IN ZONING; AMENDING
2 SECTION 50-222, IDAHO CODE, TO PROVIDE THAT DECISIONS OF A CITY COUNCIL
3 REGARDING THE ZONING OF LANDS ANNEXED PURSUANT TO ANY CATEGORY OF
4 ANNEXATION SHALL BE SUBJECT TO JUDICIAL REVIEW IN ACCORDANCE WITH
5 THE PROCEDURES IN THE ADMINISTRATIVE PROCEDURE ACT AND TO MAKE A
6 TECHNICAL CORRECTION; AND AMENDING SECTION 67-6521, IDAHO CODE, TO
7 PROVIDE THAT A PERSON HAVING AN INTEREST IN REAL PROPERTY THAT MAY BE
8 ADVERSELY AFFECTED BY A DECISION ON A REQUEST BY A PROPERTY OWNER FOR
9 ESTABLISHMENT OF OR CHANGE IN ZONING OR FOR CONDITIONAL REZONING MAY
10 SEEK JUDICIAL REVIEW AS PROVIDED IN THE ADMINISTRATIVE PROCEDURE ACT.
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Section 50-222, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 50-222. ANNEXATION BY CITIES. (1) Legislative intent. The
16 legislature hereby declares and determines that it is the policy of the state
17 of Idaho that cities of the state should be able to annex lands which are
18 reasonably necessary to assure the orderly development of Idaho's cities in
19 order to allow efficient and economically viable provision of tax-supported
20 and fee-supported municipal services, to enable the orderly development
21 of private lands which benefit from the cost-effective availability of
22 municipal services in urbanizing areas and to equitably allocate the costs
23 of public services in management of development on the urban fringe.

24 (2) General authority. Cities have the authority to annex land into a
25 city upon compliance with the procedures required in this section. In any
26 annexation proceeding, all portions of highways lying wholly or partially
27 within an area to be annexed shall be included within the area annexed
28 unless expressly agreed between the annexing city and the governing board
29 of the highway agency providing road maintenance at the time of annexation.
30 Provided further, that said city council shall not have the power to declare
31 such land, lots or blocks a part of said city if they will be connected to
32 such city only by a shoestring or strip of land which comprises a railroad or
33 highway right-of-way.

34 (3) Annexation classifications. Annexations shall be classified and
35 processed according to the standards for each respective category set forth
36 herein. The three (3) categories of annexation are:

37 (a) Category A: Annexations wherein:

38 (i) All private landowners have consented to annexation.
39 Annexation where all landowners have consented may extend beyond
40 the city area of impact provided that the land is contiguous to
41 the city and that the comprehensive plan includes the area of
42 annexation;

1 (ii) Any residential enclaved lands of less than one hundred (100)
2 privately-owned parcels, irrespective of surface area, which are
3 surrounded on all sides by land within a city or which are bounded
4 on all sides by lands within a city and by the boundary of the
5 city's area of impact; or

6 (iii) The lands are those for which owner approval must be given
7 pursuant to subsection (5) (b) (v) of this section.

8 (b) Category B: Annexations wherein:

9 (i) The subject lands contain less than one hundred (100)
10 separate private ownerships and platted lots of record and where
11 not all such landowners have consented to annexation; or

12 (ii) The subject lands contain more than one hundred (100)
13 separate private ownerships and platted lots of record and where
14 landowners owning more than fifty percent (50%) of the area of the
15 subject private lands have consented to annexation prior to the
16 commencement of the annexation process; or

17 (iii) The lands are the subject of a development moratorium or a
18 water or sewer connection restriction imposed by state or local
19 health or environmental agencies; provided such lands shall not be
20 counted for purposes of determining the number of separate private
21 ownerships and platted lots of record aggregated to determine the
22 appropriate category.

23 (c) Category C: Annexations wherein the subject lands contain more
24 than one hundred (100) separate private ownerships and platted lots of
25 record and where landowners owning more than fifty percent (50%) of the
26 area of the subject private lands have not consented to annexation prior
27 to commencement of the annexation process.

28 (4) (a) Evidence of consent to annexation. For purposes of this
29 section, and unless excepted in paragraph (b) of this subsection
30 (4), consent to annex shall be valid only when evidenced by written
31 instrument consenting to annexation executed by the owner or the
32 owner's authorized agent. Written consent to annex lands must be
33 recorded in the county recorder's office to be binding upon subsequent
34 purchasers, heirs, or assigns of lands addressed in the consent. Lands
35 need not be contiguous or adjacent to the city limits at the time the
36 landowner consents to annexation for the property to be subject to a
37 valid consent to annex; provided however, no annexation of lands shall
38 occur, irrespective of consent, until such land becomes contiguous or
39 adjacent to such city.

40 (b) Exceptions to the requirement of written consent to annexation.
41 The following exceptions apply to the requirement of written consent to
42 annexation provided for in subsection (4) (a) of this section:

43 (i) Enclaved lands: In category A annexations, no consent
44 is necessary for enclaved lands meeting the requirements of
45 subsection (3) (a) (ii) of this section;

46 (ii) Implied consent: In category B and C annexations, valid
47 consent to annex is implied for the area of all lands connected to a
48 water or wastewater collection system operated by the city if the
49 connection was requested in writing by the owner, or the owner's
50 authorized agent, or completed before July 1, 2008.

1 (5) Annexation procedures. Annexation of lands into a city shall
2 follow the procedures applicable to the category of lands as established by
3 this section. The implementation of any annexation proposal wherein the
4 city council determines that annexation is appropriate shall be concluded
5 with the passage of an ordinance of annexation.

6 (a) Procedures for category A annexations: Lands lying contiguous or
7 adjacent to any city in the state of Idaho may be annexed by the city
8 if the proposed annexation meets the requirements of category A. Upon
9 determining that a proposed annexation meets such requirements, a city
10 may initiate the planning and zoning procedures set forth in chapter 65,
11 title 67, Idaho Code, to establish the comprehensive planning policies,
12 where necessary, and zoning classification of the lands to be annexed.

13 (b) Procedures for category B annexations: A city may annex lands that
14 would qualify under the requirements of category B annexation if the
15 following requirements are met:

16 (i) The lands are contiguous or adjacent to the city and lie
17 within the city's area of city impact;

18 (ii) The land is laid off into lots or blocks containing not more
19 than five (5) acres of land each, whether the same shall have been
20 or shall be laid off, subdivided or platted in accordance with
21 any statute of this state or otherwise, or whenever the owner
22 or proprietor or any person by or with his authority has sold or
23 begun to sell off such contiguous or adjacent lands by metes and
24 bounds in tracts not exceeding five (5) acres, or whenever the land
25 is surrounded by the city. Splits of ownership which occurred
26 prior to January 1, 1975, and which were the result of placement
27 of public utilities, public roads or highways, or railroad lines
28 through the property shall not be considered as evidence of an
29 intent to develop such land and shall not be sufficient evidence
30 that the land has been laid off or subdivided in lots or blocks.
31 A single sale after January 1, 1975, of five (5) acres or less to
32 a family member of the owner for the purpose of constructing a
33 residence shall not constitute a sale within the meaning of this
34 section. For purposes of this section, "family member" means a
35 natural person or the spouse of a natural person who is related to
36 the owner by blood, adoption or marriage within the first degree of
37 consanguinity;

38 (iii) Preparation and publication of a written annexation plan,
39 appropriate to the scale of the annexation contemplated, which
40 includes, at a minimum, the following elements:

41 (A) The manner of providing tax-supported municipal
42 services to the lands proposed to be annexed;

43 (B) The changes in taxation and other costs, using examples,
44 which would result if the subject lands were to be annexed;

45 (C) The means of providing fee-supported municipal
46 services, if any, to the lands proposed to be annexed;

47 (D) A brief analysis of the potential effects of annexation
48 upon other units of local government which currently provide
49 tax-supported or fee-supported services to the lands
50 proposed to be annexed; and

1 (E) The proposed future land use plan and zoning designation
2 or designations, subject to public hearing, for the lands
3 proposed to be annexed;

4 (iv) Compliance with the notice and hearing procedures governing
5 a zoning district boundary change as set forth in section 67-6511,
6 Idaho Code, on the question of whether the property should be
7 annexed and, if annexed, the zoning designation to be applied
8 thereto; provided however, the initial notice of public hearing
9 concerning the question of annexation and zoning shall be
10 published in the official newspaper of the city and mailed by first
11 class mail to every property owner with lands included in such
12 annexation proposal not less than twenty-eight (28) days prior
13 to the initial public hearing. All public hearing notices shall
14 establish a time and procedure by which comments concerning the
15 proposed annexation may be received in writing and heard and,
16 additionally, public hearing notices delivered by mail shall
17 include a one (1) page summary of the contents of the city's
18 proposed annexation plan and shall provide information regarding
19 where the annexation plan may be obtained without charge by any
20 property owner whose property would be subject to the annexation
21 proposal.

22 (v) In addition to the standards set forth elsewhere in this
23 section, annexation of the following lands must meet the following
24 requirements:

25 (A) Property, owned by a county or any entity within
26 the county, that is used as a fairgrounds area under the
27 provisions of chapter 8, title 31, Idaho Code, or chapter 2,
28 title 22, Idaho Code, must have the consent of a majority of
29 the board of county commissioners of the county in which the
30 property lies; and

31 (B) Property, owned by a nongovernmental entity, that
32 is used to provide outdoor recreational activities to
33 the public and that has been designated as a planned unit
34 development of fifty (50) acres or more and does not require
35 or utilize any city services must have the express written
36 permission of the nongovernmental entity owner.

37 (vi) After considering the written and oral comments of property
38 owners whose land would be annexed and other affected persons,
39 the city council may proceed with the enactment of an ordinance
40 of annexation and zoning. In the course of the consideration of
41 any such ordinance, the city must make express findings, to be
42 set forth in the minutes of the city council meeting at which the
43 annexation is approved, as follows:

44 (A) The land to be annexed meets the applicable requirements
45 of this section and does not fall within the exceptions or
46 conditional exceptions contained in this section;

47 (B) The annexation would be consistent with the public
48 purposes addressed in the annexation plan prepared by the
49 city;

1 (C) The annexation is reasonably necessary for the orderly
2 development of the city;

3 (vii) Notwithstanding any other provision of this section,
4 railroad right-of-way property may be annexed pursuant to this
5 section only when property within the city adjoins or will adjoin
6 both sides of the right-of-way.

7 (c) Procedures for category C annexations: A city may annex lands that
8 would qualify under the requirements of category C annexation if the
9 following requirements are met:

10 (i) Compliance with the procedures governing category B
11 annexations; and

12 (ii) Evidence of consent to annexation based upon the following
13 procedures:

14 (A) Following completion of all procedures required for
15 consideration of a category B annexation, but prior to
16 enactment of an annexation ordinance and upon an affirmative
17 action by the city council, the city shall mail notice to
18 all private landowners owning lands within the area to be
19 annexed, exclusive of the owners of lands that are subject
20 to a consent to annex which complies with subsection (4) (a)
21 of this section defining consent. Such notice shall invite
22 property owners to give written consent to the annexation,
23 include a description of how that consent can be made and
24 where it can be filed, and inform the landowners where the
25 entire record of the subject annexation may be examined.
26 Such mailed notice shall also include a legal description of
27 the lands proposed for annexation and a simple map depicting
28 the location of the subject lands.

29 (B) Each landowner desiring to consent to the proposed
30 annexation must submit the consent in writing to the city
31 clerk by a date specified in the notice, which date shall
32 not be later than forty-five (45) days after the date of the
33 mailing of such notice.

34 (C) After the date specified in the notice for receipt of
35 written consent, the city clerk shall compile and present
36 to the city council a report setting forth: (i) the total
37 physical area sought to be annexed, and (ii) the total
38 physical area of the lands, as expressed in acres or square
39 feet, whose owners have newly consented in writing to the
40 annexation, plus the area of all lands subject to a prior
41 consent to annex which complies with subsection (4) (a) of
42 this section defining consent. The clerk shall immediately
43 report the results to the city council.

44 (D) Upon receiving such report, the city council shall
45 review the results and may thereafter confirm whether
46 consent was received from the owners of a majority of the
47 land. The results of the report shall be reflected in the
48 minutes of the city council. If the report as accepted by
49 the city council confirms that owners of a majority of the
50 land area have consented to annexation, the city council may

1 enact an ordinance of annexation, which thereafter shall be
 2 published and become effective according to the terms of the
 3 ordinance. If the report confirms that owners of a majority
 4 of the land area have not consented to the annexation, the
 5 category C annexation shall not be authorized.

6 (6) The decision of a city council to annex ~~and zone~~ lands as a category
 7 B or category C annexation or regarding the zoning of lands annexed pursuant
 8 to any category of annexation shall be subject to judicial review in
 9 accordance with the procedures provided in chapter 52, title 67, Idaho Code,
 10 and pursuant to the standards set forth in section 67-5279, Idaho Code. Any
 11 such appeal shall be filed by an affected person in the appropriate district
 12 court no later than twenty-eight (28) days after the date of publication
 13 of the annexation ordinance. All cases in which there may arise a question
 14 of the validity of any annexation under this section shall be advanced as a
 15 matter of immediate public interest and concern, and shall be heard by the
 16 district court at the earliest practicable time.

17 (7) Annexation of noncontiguous municipal airfield. A city may annex
 18 land that is not contiguous to the city and is occupied by a municipally owned
 19 or operated airport or landing field. However, a city may not annex any
 20 other land adjacent to such noncontiguous facilities which is not otherwise
 21 annexable pursuant to this section.

22 SECTION 2. That Section 67-6521, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 67-6521. ACTIONS BY AFFECTED PERSONS.

25 (1) (a) As used herein, an affected person shall mean one having an
 26 interest in real property which may be adversely affected by:

27 (i) The issuance or denial of a permit authorizing the
 28 development; or

29 (ii) The approval or denial of a request by an owner of one (1) or
 30 more parcels or sites for adoption of an ordinance establishing or
 31 changing the zoning district applicable to those parcels or sites
 32 pursuant to section 67-6511, Idaho Code; or

33 (iii) An approval or denial of a request by an owner of one (1) or
 34 more parcels or sites for conditional rezoning pursuant to section
 35 67-6511A, Idaho Code.

36 (b) Any affected person may at any time prior to final action on a
 37 permit required or authorized under this chapter, if no hearing has been
 38 held on the application, petition the commission or governing board
 39 in writing to hold a hearing pursuant to section 67-6512, Idaho Code;
 40 provided, however, that if twenty (20) affected persons petition for a
 41 hearing, the hearing shall be held.

42 (c) After a hearing, the commission or governing board may:

43 (i) Grant or deny a permit; or

44 (ii) Delay such a decision for a definite period of time for
 45 further study or hearing. Each commission or governing board
 46 shall establish by rule and regulation a time period within which a
 47 recommendation or decision must be made.

1 (d) An affected person aggrieved by a decision may within twenty-eight
2 (28) days after all remedies have been exhausted under local ordinances
3 seek judicial review as provided by chapter 52, title 67, Idaho Code.

4 (2) (a) Authority to exercise the regulatory power of zoning in land use
5 planning shall not simultaneously displace coexisting eminent domain
6 authority granted under section 14, article I, of the constitution of
7 the state of Idaho and chapter 7, title 7, Idaho Code.

8 (b) An affected person claiming "just compensation" for a perceived
9 "taking," the basis of the claim being that a specific zoning action or
10 permitting action restricting private property development is actually
11 a regulatory action by local government deemed "necessary to complete
12 the development of the material resources of the state," or necessary
13 for other public uses, may seek a judicial determination of whether the
14 claim comes within defined provisions of section 14, article I, of the
15 constitution of the state of Idaho relating to eminent domain. Under
16 these circumstances, the affected person is exempt from the provisions
17 of subsection (1) of this section and may seek judicial review through
18 an inverse condemnation action specifying neglect by local government
19 to provide "just compensation" under the provisions of section 14,
20 article I, of the constitution of the state of Idaho and chapter 7, title
21 7, Idaho Code.