

IN THE SENATE

SENATE BILL NO. 1265

BY LOCAL GOVERNMENT AND TAXATION COMMITTEE

AN ACT

1 RELATING TO AIRPORT ZONING; AMENDING SECTION 21-503, IDAHO CODE, TO PROVIDE  
2 THAT POLITICAL SUBDIVISIONS HAVE THE POWER TO ADOPT REGULATIONS, TO  
3 REVISE TERMINOLOGY, TO REVISE A CODE REFERENCE, TO REMOVE PROVISIONS  
4 RELATING TO THE METHOD OF ADOPTING ZONING REGULATIONS, TO REMOVE A PRO-  
5 VISION RELATING TO ZONING AVIATION HAZARD AREAS ADJACENT TO AN AIRPORT  
6 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-6502, IDAHO  
7 CODE, TO REVISE TERMINOLOGY AND TO PROVIDE THAT PUBLIC AIRPORTS ARE  
8 ESSENTIAL COMMUNITY FACILITIES; AMENDING SECTION 67-6508, IDAHO CODE,  
9 TO PROVIDE FOR PUBLIC AIRPORT FACILITIES IN THE PLANNING DUTIES OF A  
10 PLANNING AND ZONING COMMISSION; AMENDING SECTION 67-6509, IDAHO CODE,  
11 TO PROVIDE THAT NOTICE OF INTENT TO AMEND A ZONING PLAN SHALL BE SENT TO  
12 THE MANAGER OF A LOCAL AIRPORT; AMENDING SECTION 67-6512, IDAHO CODE,  
13 TO PROVIDE THAT A STUDY OF AVIATION HAZARDS MAY BE REQUIRED FOR A SPE-  
14 CIAL USE PERMIT; AMENDING SECTION 67-6515A, IDAHO CODE, TO PROVIDE FOR  
15 NOTICE AND HEARING IN THE TRANSFER OF DEVELOPMENT RIGHTS AND TO PROVIDE  
16 THAT AVIATION HAZARDS SHALL BE AVOIDED IN THE TRANSFER OF DEVELOPMENT  
17 RIGHTS; AND AMENDING SECTION 67-6516, IDAHO CODE, TO PROVIDE FOR NOTICE  
18 AND HEARING IN THE CONSIDERATION OF VARIANCE PERMITS.  
19

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

21 SECTION 1. That Section 21-503, Idaho Code, be, and the same is hereby  
22 amended to read as follows:

23 21-503. AIRPORT ZONING REGULATIONS. (1) Power to Adopt Regulations.  
24 In order to prevent the creation or establishment of aviation hazards,  
25 political subdivisions of the state of Idaho, by and through the Idaho trans-  
26 portation department, may having zoning ordinance authority are empowered  
27 to adopt, administer, and enforce, under the police power and in the manner  
28 and upon the conditions hereinafter prescribed, airport zoning regulations  
29 for aviation hazard areas within the state, which regulations may divide  
30 such areas into zones, and, within such zones, specify the land uses permit-  
31 ted and regulate and restrict the height to which structures and trees may be  
32 erected or allowed to grow.

33 (2) Method of Adopting Zoning Regulations. The department Political  
34 subdivisions having zoning ordinance authority shall promulgate and adopt  
35 in the manner and in conformance with the procedure set forth in this chap-  
36 ter 65, title 67, Idaho Code, such reasonable regulations for the zoning of  
37 airports, aviation hazard areas and aviation hazards within the state their  
38 jurisdiction as may be reasonably necessary to accomplish the highest de-  
39 gree of safety for airflight operations. Prior to adopting any zoning regu-  
40 lations:

41 (a) The director Political subdivisions having zoning ordinance au-  
42 thority shall cause to be prepared a map or maps, as the individual

1 situation may require, for each airport, and surrounding aviation  
 2 hazard area to be zoned. Such map shall contain a description of the  
 3 exterior boundaries of the area to be included within the zoning regula-  
 4 tions, and the boundaries and runways of the airport and shall disclose  
 5 the existing and any planned approaches to the subject airport, the  
 6 proposed glide angles and restricted areas deemed necessary ~~by the~~  
 7 ~~director~~, and such other information as may be deemed helpful by the  
 8 ~~director~~ political subdivision to fairly portray the areas involved and  
 9 the airspace required.

10 (b) The ~~director~~ political subdivision shall also cause to be prepared  
 11 proposed regulations setting forth the various zones within the area  
 12 and the restrictions applicable to each. Zones may be named or numbered  
 13 or otherwise designated to distinguish one zone from another.

14 ~~(c) Such proposed regulations and the map or maps of the area involved~~  
 15 ~~shall be filed with the county recorder of the county or counties in~~  
 16 ~~which the airport or any part thereof is situated.~~

17 ~~(d) To amend any adopted zoning regulations the director shall proceed~~  
 18 ~~in the same manner set forth for the adoption of regulations except that~~  
 19 ~~he need only give notice and file maps and regulations that relate to the~~  
 20 ~~particular amendment to be made.~~

21 ~~Upon the approval and designation of any airport in this state the de-~~  
 22 ~~partment may immediately thereafter take such steps necessary under this~~  
 23 ~~chapter to zone the aviation hazard area adjacent to such airport and the~~  
 24 ~~department shall, if requested by the owners of any existing airport which~~  
 25 ~~has heretofore been approved and designated and which is open to public use,~~  
 26 ~~take such steps necessary under this chapter to zone the aviation hazard area~~  
 27 ~~adjacent to such airport, or the director may proceed to zone any such area~~  
 28 ~~without such a request.~~

29 SECTION 2. That Section 67-6502, Idaho Code, be, and the same is hereby  
 30 amended to read as follows:

31 67-6502. PURPOSE. The purpose of this act shall be to promote the  
 32 health, safety and general welfare of the people of the state of Idaho as  
 33 follows:

34 (a) To protect property rights while making accommodations for other  
 35 necessary types of development such as low-cost housing and mobile home  
 36 parks.

37 (b) To ensure that adequate public facilities and services are provided  
 38 to the people at reasonable cost.

39 (c) To ensure that the economy of the state and localities is protected.

40 (d) To ensure that the important environmental features of the state  
 41 and localities are protected.

42 (e) To encourage the protection of prime agricultural, forestry and  
 43 mining lands and land uses for production of food, ~~fi~~bre fiber and minerals,  
 44 as well as the economic benefits they provide to the community.

45 (f) To encourage urban and urban-type development within incorporated  
 46 cities.

47 (g) To avoid undue concentration of population and overcrowding of  
 48 land.

1 (h) To ensure that the development on land is commensurate with the  
2 physical characteristics of the land.

3 (i) To protect life and property in areas subject to natural hazards and  
4 disasters.

5 (j) To protect fish, wildlife and recreation resources.

6 (k) To avoid undue water and air pollution.

7 (l) To allow local school districts to participate in the community  
8 planning and development process so as to address public school needs and  
9 impacts on an ongoing basis.

10 (m) To protect public airports as essential community facilities that  
11 provide safe transportation alternatives and contribute to the economy of  
12 the state.

13 SECTION 3. That Section 67-6508, Idaho Code, be, and the same is hereby  
14 amended to read as follows:

15 67-6508. PLANNING DUTIES. It shall be the duty of the planning or plan-  
16 ning and zoning commission to conduct a comprehensive planning process de-  
17 signed to prepare, implement, and review and update a comprehensive plan,  
18 hereafter referred to as the plan. The plan shall include all land within the  
19 jurisdiction of the governing board. The plan shall consider previous and  
20 existing conditions, trends, compatibility of land uses, desirable goals  
21 and objectives, or desirable future situations for each planning component.  
22 The plan with maps, charts, and reports shall be based on the following com-  
23 ponents as they may apply to land use regulations and actions unless the plan  
24 specifies reasons why a particular component is unneeded.

25 (a) Property Rights -- An analysis of provisions which may be necessary  
26 to ensure that land use policies, restrictions, conditions and fees do not  
27 violate private property rights, adversely impact property values or cre-  
28 ate unnecessary technical limitations on the use of property and analysis as  
29 prescribed under the declarations of purpose in chapter 80, title 67, Idaho  
30 Code.

31 (b) Population -- A population analysis of past, present, and future  
32 trends in population including such characteristics as total population,  
33 age, sex, and income.

34 (c) School Facilities and Transportation -- An analysis of public  
35 school capacity and transportation considerations associated with future  
36 development.

37 (d) Economic Development -- An analysis of the economic base of the area  
38 including employment, industries, economies, jobs, and income levels.

39 (e) Land Use -- An analysis of natural land types, existing land covers  
40 and uses, and the intrinsic suitability of lands for uses such as agricul-  
41 ture, forestry, mineral exploration and extraction, preservation, recre-  
42 ation, housing, commerce, industry, and public facilities. A map shall be  
43 prepared indicating suitable projected land uses for the jurisdiction.

44 (f) Natural Resources -- An analysis of the uses of rivers and other wa-  
45 ters, forests, range, soils, harbors, fisheries, wildlife, minerals, ther-  
46 mal waters, beaches, watersheds, and shorelines.

47 (g) Hazardous Areas -- An analysis of known hazards as may result from  
48 susceptibility to surface ruptures from faulting, ground shaking, ground  
49 failure, landslides or mudslides; avalanche hazards resulting from de-

1 velopment in the known or probable path of snowslides and avalanches, and  
2 floodplain hazards.

3 (h) Public Services, Facilities, and Utilities -- An analysis showing  
4 general plans for sewage, drainage, power plant sites, utility transmission  
5 corridors, water supply, fire stations and fire fighting equipment, health  
6 and welfare facilities, libraries, solid waste disposal sites, schools,  
7 public safety facilities and related services. The plan may also show loca-  
8 tions of civic centers and public buildings.

9 (i) Transportation -- An analysis, prepared in coordination with  
10 the local jurisdiction(s) having authority over the public highways and  
11 streets, showing the general locations and widths of a system of major traf-  
12 fic thoroughfares and other traffic ways, and of streets and the recommended  
13 treatment thereof. This component may also make recommendations on build-  
14 ing line setbacks, control of access, street naming and numbering, and a  
15 proposed system of public or other transit lines and related facilities  
16 including rights-of-way, terminals, future corridors, viaducts and grade  
17 separations. The component may also include port, harbor, ~~aviation~~, and  
18 other related transportation facilities.

19 (j) Recreation -- An analysis showing a system of recreation areas, in-  
20 cluding parks, parkways, trailways, river bank greenbelts, beaches, play-  
21 grounds, and other recreation areas and programs.

22 (k) Special Areas or Sites -- An analysis of areas, sites, or struc-  
23 tures of historical, archeological, architectural, ecological, wildlife,  
24 or scenic significance.

25 (l) Housing -- An analysis of housing conditions and needs; plans for  
26 improvement of housing standards; and plans for the provision of safe, sani-  
27 tary, and adequate housing, including the provision for low-cost conven-  
28 tional housing, the siting of manufactured housing and mobile homes in sub-  
29 divisions and parks and on individual lots which are sufficient to maintain  
30 a competitive market for each of those housing types and to address the needs  
31 of the community.

32 (m) Community Design -- An analysis of needs for governing landscaping,  
33 building design, tree planting, signs, and suggested patterns and standards  
34 for community design, development, and beautification.

35 (n) Agriculture -- An analysis of the agricultural base of the area in-  
36 cluding agricultural lands, farming activities, farming-related businesses  
37 and the role of agriculture and agricultural uses in the community.

38 (o) Implementation -- An analysis to determine actions, programs, bud-  
39 gets, ordinances, or other methods including scheduling of public expendi-  
40 tures to provide for the timely execution of the various components of the  
41 plan.

42 (p) National Interest Electric Transmission Corridors -- After noti-  
43 fication by the public utilities commission concerning the likelihood of  
44 a federally designated national interest electric transmission corridor,  
45 prepare an analysis showing the existing location and possible routing  
46 of high voltage transmission lines, including national interest electric  
47 transmission corridors based upon the United States department of energy's  
48 most recent national electric transmission congestion study pursuant to  
49 sections 368 and 1221 of the energy policy act of 2005. "High-voltage trans-  
50 mission lines" means lines with a capacity of one hundred fifteen thousand

1 (115,000) volts or more supported by structures of forty (40) feet or more in  
2 height.

3 (q) Public Airport Facilities -- An analysis prepared with assistance  
4 from the Idaho transportation department division of aeronautics, if re-  
5 quested by the planning and zoning commission, and the manager or person in  
6 charge of the local public airport identifying, but not limited to, facility  
7 locations, the scope and type of airport operations, existing and future  
8 planned airport development and infrastructure needs, and the economic im-  
9  pact to the community.

10 Nothing herein shall preclude the consideration of additional planning  
11 components or subject matter.

12 SECTION 4. That Section 67-6509, Idaho Code, be, and the same is hereby  
13 amended to read as follows:

14 67-6509. RECOMMENDATION AND ADOPTION, AMENDMENT, AND REPEAL OF THE  
15 PLAN. (a) The planning or planning and zoning commission, prior to recom-  
16 mending the plan, amendment, or repeal of the plan to the governing board,  
17 shall conduct at least one (1) public hearing in which interested persons  
18 shall have an opportunity to be heard. At least fifteen (15) days prior to  
19 the hearing, notice of the time and place and a summary of the plan to be  
20 discussed shall be published in the official newspaper or paper of general  
21 circulation within the jurisdiction. The commission shall also make avail-  
22 able a notice to other papers, radio and television stations serving the  
23 jurisdiction for use as a public service announcement. Notice of intent to  
24 adopt, repeal or amend the plan shall be sent to all political subdivisions  
25 providing services within the planning jurisdiction, including school dis-  
26 tricts and the manager or person in charge of the local public airport, at  
27 least fifteen (15) days prior to the public hearing scheduled by the com-  
28 mission. Following the commission hearing, if the commission recommends a  
29 material change to the proposed amendment to the plan which was considered at  
30 the hearing, it shall give notice of its proposed recommendation and conduct  
31 another public hearing concerning the matter if the governing board will  
32 not conduct a subsequent public hearing concerning the proposed amendment.  
33 If the governing board will conduct a subsequent public hearing, notice of  
34 the planning and zoning commission recommendation shall be included in the  
35 notice of public hearing provided by the governing board. A record of the  
36 hearings, findings made, and actions taken by the commission shall be main-  
37 tained by the city or county.

38 (b) The governing board, as provided by local ordinance, prior to adop-  
39 tion, amendment, or repeal of the plan, may conduct at least one (1) public  
40 hearing, in addition to the public hearing(s) conducted by the commission,  
41 using the same notice and hearing procedures as the commission. The govern-  
42 ing board shall not hold a public hearing, give notice of a proposed hearing,  
43 nor take action upon the plan, amendments, or repeal until recommendations  
44 have been received from the commission. Following consideration by the gov-  
45 erning board, if the governing board makes a material change in the recommen-  
46 dation or alternative options contained in the recommendation by the commis-  
47 sion concerning adoption, amendment or repeal of a plan, further notice and  
48 hearing shall be provided before the governing board adopts, amends or re-  
49 peals the plan.

1 (c) No plan shall be effective unless adopted by resolution by the gov-  
2 erning board. A resolution enacting or amending a plan or part of a plan  
3 may be adopted, amended, or repealed by definitive reference to the specific  
4 plan document. A copy of the adopted or amended plan shall accompany each  
5 adopting resolution and shall be kept on file with the city clerk or county  
6 clerk.

7 (d) Any person may petition the commission or, in absence of a com-  
8 mission, the governing board, for a plan amendment at any time, unless the  
9 governing board has established by resolution a minimum interval between  
10 consideration of requests to amend, which interval shall not exceed six (6)  
11 months. The commission may recommend amendments to the comprehensive plan  
12 and to other ordinances authorized by this chapter to the governing board at  
13 any time.

14 SECTION 5. That Section 67-6512, Idaho Code, be, and the same is hereby  
15 amended to read as follows:

16 67-6512. SPECIAL USE PERMITS, CONDITIONS, AND PROCEDURES. (a) As part  
17 of a zoning ordinance each governing board may provide by ordinance adopted,  
18 amended, or repealed in accordance with the notice and hearing procedures  
19 provided under section 67-6509, Idaho Code, for the processing of appli-  
20 cations for special or conditional use permits. A special use permit may  
21 be granted to an applicant if the proposed use is conditionally permitted  
22 by the terms of the ordinance, subject to conditions pursuant to specific  
23 provisions of the ordinance, subject to the ability of political subdivi-  
24 sions, including school districts, to provide services for the proposed  
25 use, and when it is not in conflict with the plan. Denial of a special use  
26 permit or approval of a special use permit with conditions unacceptable to  
27 the landowner may be subject to the regulatory taking analysis provided for  
28 by section 67-8003, Idaho Code, consistent with requirements established  
29 thereby.

30 (b) Prior to granting a special use permit, at least one (1) public  
31 hearing in which interested persons shall have an opportunity to be heard  
32 shall be held. At least fifteen (15) days prior to the hearing, notice of  
33 the time and place, and a summary of the proposal shall be published in the  
34 official newspaper or paper of general circulation within the jurisdiction.  
35 Each local government is encouraged to post such notice on its official  
36 websites, if one is maintained. Notice may also be made available to other  
37 newspapers, radio and television stations serving the jurisdiction for use  
38 as a public service announcement. Notice shall be posted on the premises not  
39 less than one (1) week prior to the hearing. Notwithstanding jurisdictional  
40 boundaries, notice shall also be provided to property owners or purchasers  
41 of record within the land being considered, three hundred (300) feet of the  
42 external boundaries of the land being considered, and any additional area  
43 that may be substantially impacted by the proposed special use as determined  
44 by the commission, provided that in all cases notice shall be provided indi-  
45 vidualy by mail to property owners or purchasers of record within the land  
46 being considered and within three hundred (300) feet of the external bound-  
47 aries of the land being considered and provided further that where a special  
48 use permit is requested by reason of height allowance that notice shall be  
49 provided individually by mail to property owners or purchasers of record

1 within no less than three (3) times the distance of the height of the allowed  
 2 height of a structure when more than one hundred (100) feet and within no less  
 3 than one (1) mile when the peak height of a structure in an unincorporated  
 4 area is four hundred (400) feet or more and, when four hundred (400) feet  
 5 or more, the structure's proposed location and height shall be stated in  
 6 the notice. Any property owner entitled to specific notice pursuant to the  
 7 provisions of this subsection shall have a right to participate in public  
 8 hearings before a planning commission, planning and zoning commission or  
 9 governing board.

10 (c) When notice is required to two hundred (200) or more property owners  
 11 or purchasers of record, alternate forms of procedures which would provide  
 12 adequate notice may be provided by local ordinance in lieu of mailed notice.  
 13 In the absence of a locally adopted alternative notice procedure, sufficient  
 14 notice shall be deemed to have been provided if the city or county provides  
 15 notice through a display advertisement at least four (4) inches by two (2)  
 16 columns in size in the official newspaper of the city or county at least fif-  
 17 teen (15) days prior to the hearing date, in addition to site posting on all  
 18 external boundaries of the site.

19 (d) Upon the granting of a special use permit, conditions may be at-  
 20 tached to a special use permit including, but not limited to, those:

- 21 (1) Minimizing adverse impact on other development;
- 22 (2) Controlling the sequence and timing of development;
- 23 (3) Controlling the duration of development;
- 24 (4) Assuring that development is maintained properly;
- 25 (5) Designating the exact location and nature of development;
- 26 (6) Requiring the provision for on-site or off-site public facilities  
 27 or services;
- 28 (7) Requiring more restrictive standards than those generally required  
 29 in an ordinance;
- 30 (8) Requiring mitigation of effects of the proposed development upon  
 31 service delivery by any political subdivision, including school dis-  
 32 tricts, providing services within the planning jurisdiction.

33 (e) Prior to granting a special use permit, studies may be required of  
 34 the social, economic, fiscal, and environmental effects and any aviation  
 35 hazard as defined in section 21-501(2), Idaho Code, of the proposed special  
 36 use. A special use permit shall not be considered as establishing a binding  
 37 precedent to grant other special use permits. A special use permit is not  
 38 transferable from one (1) parcel of land to another.

39 (f) In addition to other processes permitted by this chapter, excep-  
 40 tions or waivers of standards, other than use, inclusive of the subject  
 41 matter addressed by section 67-6516, Idaho Code, in a zoning ordinance may  
 42 be permitted through issuance of a special use permit or by administrative  
 43 process specified by ordinance, subject to such conditions as may be imposed  
 44 pursuant to a local ordinance drafted to implement subsection (d) of this  
 45 section.

46 SECTION 6. That Section 67-6515A, Idaho Code, be, and the same is hereby  
 47 amended to read as follows:

48 67-6515A. TRANSFER OF DEVELOPMENT RIGHTS. (1) Any city or county gov-  
 49 erning body may, by ordinance and following notice and hearing procedures

1 provided for under section 67-6509, Idaho Code, create development rights  
2 and establish procedures authorizing landowners to voluntarily transfer  
3 said development rights subject to:

4 (a) Such conditions as the governing body shall determine to ful-  
5 fill the goals of the city or county to preserve open space, protect  
6 wildlife habitat and critical areas, ~~and~~ enhance and maintain the rural  
7 character of lands with contiguity to agricultural lands suitable for  
8 long-range farming and ranching operations and avoid creation of avia-  
9 tion hazards as defined in section 21-501(2), Idaho Code; and

10 (b) Voluntary acceptance by the landowner of the development rights and  
11 any land use restrictions conditional to such acceptance.

12 (2) Before designating sending areas and receiving areas, a city or  
13 county shall conduct an analysis of the market in an attempt to assure that  
14 areas designated as receiving areas will have the capacity to accommodate  
15 the number of development rights expected to be generated from the sending  
16 areas.

17 (3) Ordinances providing for a transfer of development rights shall not  
18 require a property owner in a sending area to sell development rights. Once  
19 a transfer of development rights has been exercised it shall constitute a re-  
20 striction on the development of the property in perpetuity, unless the city  
21 or county elects to extinguish such restriction pursuant to the provisions  
22 of this chapter.

23 (4) A city or county may not condition an application for a permit to  
24 which an applicant is otherwise entitled under existing zoning and subdivi-  
25 sion ordinances on the acquisition of development rights. A city or county  
26 may not condition an application for a zoning district boundary change which  
27 is consistent with the comprehensive plan on the acquisition of development  
28 rights. A city or county may not reduce the density of an existing zone and  
29 thereafter require an applicant to acquire development rights as a condition  
30 of approving a request for a zoning district boundary change which would per-  
31 mit greater density.

32 (5) It shall be at the discretion of the persons selling and buying a  
33 transferable development right to determine whether a right will be trans-  
34 ferred permanently without being exercised in a designated receiving area or  
35 whether a right will have requirements to be exercised within a designated  
36 receiving area within a set time period. If the development right is not used  
37 before the end of the time period provided by written contract and any exten-  
38 sion thereof, the development right will revert to the owner of the property  
39 from which it was transferred.

40 (6) No transfer of a development right, as contemplated herein, shall  
41 affect the validity or continued right to use any water right that is ap-  
42 purtenant to the real property from which such development right is trans-  
43 ferred. The transfer of a water right shall remain subject to the provisions  
44 of title 42, Idaho Code.

45 (7) (a) Ordinances providing for the transfer of development rights  
46 shall prescribe procedures for the issuance and recording of the in-  
47 struments necessary to sever development rights from the sending  
48 property and to affix the development rights to the receiving property.  
49 These instruments shall specifically describe the property, shall be  
50 executed by all lienholders and other parties with an interest of record



1 in any of the affected property, and shall be recorded with the county  
2 recorder. Transfers of development rights without such written and  
3 recorded consent shall be void.

4 (b) A development right which is transferred shall be deemed to be an  
5 interest in real property and the rights evidenced thereby shall inure  
6 to the benefit of the transferee, his heirs, successors and assigns.  
7 An unexercised development right shall not be taxed as real or personal  
8 property.

9 (8) For the purposes of this section:

10 (a) "Development rights" shall mean the rights permitted to a lot, par-  
11 cel or area of land under a zoning or other ordinance respecting permis-  
12 sible use, area, density, bulk or height of improvements. Development  
13 rights may be calculated and allocated in accordance with such factors  
14 as area, floor area, floor area ratios, density, height limitations, or  
15 any other criteria that will effectively quantify a value for the devel-  
16 opment right in a reasonable and uniform manner that will carry out the  
17 objectives of this section.

18 (b) "Receiving area" shall mean one (1) or more designated areas of land  
19 to which development rights generated from one (1) or more sending areas  
20 may be transferred and in which increased development is permitted to  
21 occur by reason of such transfer.

22 (c) "Sending area" shall mean one (1) or more designated areas of land  
23 in which development rights may be designated for use in one (1) or more  
24 receiving areas.

25 (d) "Transfer of development rights" shall mean the process by which  
26 development rights are transferred from one (1) lot, parcel or area of  
27 land in any sending area to another lot, parcel or area of land in one (1)  
28 or more receiving areas.

29 SECTION 7. That Section 67-6516, Idaho Code, be, and the same is hereby  
30 amended to read as follows:

31 67-6516. VARIANCE -- DEFINITION -- APPLICATION -- NOTICE -- HEAR-  
32 ING. Each governing board shall provide, as part of the zoning ordinance,  
33 for the processing of applications for variance permits. A variance is a  
34 modification of the bulk and placement requirements of the ordinance as  
35 to lot size, lot coverage, width, depth, front yard, side yard, rear yard,  
36 setbacks, parking space, height of buildings, or other ordinance provision  
37 affecting the size or shape of a structure or the placement of the structure  
38 upon lots, or the size of lots. A variance shall not be considered a right or  
39 special privilege, but may be granted to an applicant only upon a showing of  
40 undue hardship because of characteristics of the site and that the variance  
41 is not in conflict with the public interest. Prior to granting a variance,  
42 notice and an opportunity to be heard shall be provided to property owners  
43 adjoining the parcel under consideration and the manager or person in charge  
44 of the local airport if the variance could create an aviation hazard as de-  
45 defined in section 21-501, Idaho Code. Denial of a variance permit or approval  
46 of a variance permit with conditions unacceptable to the landowner may be  
47 subject to the regulatory taking analysis provided for by section 67-8003,  
48 Idaho Code, consistent with the requirements established thereby.