

IN THE SENATE

SENATE BILL NO. 1093

BY LOCAL GOVERNMENT AND TAXATION COMMITTEE

AN ACT

1 RELATING TO ANNEXATION; AMENDING CHAPTER 2, TITLE 50, IDAHO CODE, BY THE  
2 ADDITION OF A NEW SECTION 50-221A, IDAHO CODE, TO PROVIDE A NOTICE OF  
3 INTENT TO ANNEX AND TO PROVIDE PROCEDURES FOR AN ELECTION FOR CERTAIN  
4 PARCELS; AMENDING SECTION 50-222, IDAHO CODE, TO PROVIDE WHEN ELECTION  
5 PROVISIONS APPLY FOR CERTAIN PARCELS AND TO MAKE TECHNICAL CORRECTIONS;  
6 AND PROVIDING AN EFFECTIVE DATE.  
7

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

9 SECTION 1. That Chapter 2, Title 50, Idaho Code, be, and the same is  
10 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
11 ignated as Section 50-221A, Idaho Code, and to read as follows:

12 50-221A. NOTICE OF INTENT TO ANNEX -- ELECTION. (1) Before annexing  
13 adjacent territory containing less than one hundred (100) privately owned  
14 parcels, irrespective of surface area, which are surrounded on all sides by  
15 land within a city with a population of less than eight thousand (8,000) or  
16 which are bounded on all sides by lands within a city with a population of  
17 less than eight thousand (8,000) and by the boundary of the city's area of im-  
18 pact or contain less than one hundred (100) separate private ownerships and  
19 platted lots of record and where not all such landowners have consented to  
20 annexation and a sufficient number of persons protest the annexation, a city  
21 shall pass an ordinance declaring its intent to do so. The ordinance shall  
22 be adopted in compliance with all state and local laws and rules governing  
23 the adoption of an ordinance. After passing said ordinance of a city to an-  
24 nex adjacent territory, the city council shall have printed in the city's of-  
25 ficial newspaper as defined in section 50-213, Idaho Code, a legal notice of  
26 the city's intent to annex the territory and that a public hearing will be  
27 held regarding the proposed annexation. The legal notice shall contain the  
28 time, date and place of the hearing and a clear and unambiguous description  
29 of the area proposed to be annexed, why the city desires to annex the prop-  
30 erty and what public purpose annexation will serve, what services the city  
31 will be providing to the annexed property and residents of that property, a  
32 time limit on providing the services and if taxes are to be collected that  
33 they will be returned if services are not provided within a date when the  
34 services were initially promised to be provided and shall be printed for at  
35 least fourteen (14) days. As used in this section services shall include,  
36 but not be limited to, police, fire, paramedics, sewer, waste disposal or  
37 water. The notice shall also clearly and unambiguously describe the right  
38 of any person, natural or legal, to protest the proposed annexation. Within  
39 one (1) week after the last legal notice has been published, the city council  
40 shall hold a formal public hearing to give the residents of the affected area  
41 and any other interested person a chance to protest the proposed annexation.  
42 The hearing shall be scheduled for a time and date, and held in such a manner

1 as to maximize the opportunity for affected parties to attend and be heard.  
2 In addition to the legal notice specified in this subsection, a notice of  
3 hearing shall be printed in the city's official newspaper as defined in sec-  
4 tion 50-213, Idaho Code, for seven (7) days prior to the hearing. If, for any  
5 reason, the hearing required in this subsection is postponed or is continued  
6 after it is opened, notice for the postponed or continued hearing shall con-  
7 form to the content and minimum time limits provided in this subsection.

8 (2) Any person or business, whether a resident of the territory pro-  
9 posed to be annexed, a resident of the city with a population of less than  
10 eight thousand (8,000) proposing to annex the territory, or a resident of the  
11 area of impact of the city proposing to annex the territory, shall have the  
12 right to protest the annexation orally or in writing. A protest includes any  
13 objection to the proposed annexation in whole or in part. If no oral protests  
14 are received by the council at the public hearing or no written protests are  
15 received from property owners that may protest pursuant to section 50-222,  
16 Idaho Code, by the city council, city attorney's office, city clerk, the of-  
17 fice of the mayor, or the planning and zoning board of the city within five  
18 (5) business days after the close of the public hearing required in subsec-  
19 tion (1) of this section, the city council may proceed with annexation pro-  
20 ceedings as defined in sections 50-222 through 50-224, Idaho Code.

21 (3) If any oral or written protests are received by the council from  
22 the property owners that may protest pursuant to section 50-222, Idaho Code,  
23 in the area proposed to be annexed, an election shall be held on one (1) of  
24 the dates specified in section 34-106, Idaho Code, and polling places estab-  
25 lished in the area to be annexed for the purpose of submitting to the quali-  
26 fied electors residing in the area to be annexed, the question of whether the  
27 proposed area shall be annexed into the city. Such election shall be con-  
28 ducted by the county where the city is located which is proposing annexation  
29 of the adjacent territory, in a manner prescribed by chapter 4, title 50,  
30 Idaho Code, for general city elections. The county where the city proposing  
31 annexation is located shall incur all costs of the election and shall be re-  
32 imburged by the city proposing annexation. A qualified elector may cast only  
33 one (1) vote in the election regardless of the number of parcels that quali-  
34 fied elector owns.

35 (4) Only if a majority of votes cast by electors in the election favor  
36 annexation may the council then proceed with the annexation proceedings as  
37 defined in sections 50-222 through 50-224, Idaho Code.

38 (5) If, upon canvassing of the votes, it is determined that a majority  
39 of the qualified electors who voted in the election favored annexation, the  
40 clerk of the county shall, by abstract of the results of the election, cer-  
41 tify the fact to the board of county commissioners. The clerk of such board  
42 shall thereupon record the same and transmit said original abstract of the  
43 result of the election to the office of the secretary of state. The origi-  
44 nal abstract shall be filed by the secretary of state in his office immedi-  
45 ately upon receiving the same, and certificates of the filing of such origi-  
46 nal abstract in his office shall be transmitted to the clerk of the board of  
47 the county commissioners and to the clerk of the city. The date of annexation  
48 shall be October 1 next following the election and the perfection of the re-  
49 quired processes as specified in sections 50-222 through 50-224, Idaho Code.

1 (6) The provisions of this section shall not apply to applications or  
 2 requests for annexation made by property owners requesting that the owner's  
 3 property be annexed. The provisions of this section shall apply only to an-  
 4 nexations initiated by cities.

5 SECTION 2. That Section 50-222, Idaho Code, be, and the same is hereby  
 6 amended to read as follows:

7 50-222. ANNEXATION BY CITIES. (1) Legislative intent. The legisla-  
 8 ture hereby declares and determines that it is the policy of the state of  
 9 Idaho that cities of the state should be able to annex lands which are reason-  
 10 ably necessary to assure the orderly development of Idaho's cities in order  
 11 to allow efficient and economically viable provision of tax-supported and  
 12 fee-supported municipal services, to enable the orderly development of pri-  
 13 vate lands which benefit from the cost-effective availability of municipal  
 14 services in urbanizing areas and to equitably allocate the costs of public  
 15 services in management of development on the urban fringe.

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

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

29 (a) Category A: Annexations wherein:

30 (i) All private landowners have consented to annexation. Annex-  
 31 ation where all landowners have consented may extend beyond the  
 32 city area of impact provided that the land is contiguous to the  
 33 city and that the comprehensive plan includes the area of annexa-  
 34 tion;

35 (ii) Any residential enclaved lands of less than one hundred (100)  
 36 ~~privately-owned~~ privately owned parcels, irrespective of surface  
 37 area, which are surrounded on all sides by land within a city or  
 38 which are bounded on all sides by lands within a city and by the  
 39 boundary of the city's area of impact, provided that if more than  
 40 twenty-five percent (25%) of the owners of such land file a written  
 41 protest to such annexation, in which case an election shall be held  
 42 pursuant to section 50-221A, Idaho Code; or

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

45 (b) Category B: Annexations wherein:

46 (i) The subject lands contain less than one hundred (100) sepa-  
 47 rate private ownerships and platted lots of record and where not  
 48 all such landowners have consented to annexation, provided that  
 49 if more than twenty-five percent (25%) of the owners of such land

1 file a written protest to such annexation, in which case an elec-  
 2 tion shall be held pursuant to section 50-221A, Idaho Code; ~~or~~

3 (ii) The subject lands contain more than one hundred (100) sep-  
 4 arate private ownerships and platted lots of record and where  
 5 landowners owning more than fifty percent (50%) of the area of the  
 6 subject private lands have consented to annexation prior to the  
 7 commencement of the annexation process; or

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

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

19 (4) (a) Evidence of consent to annexation. For purposes of this sec-  
 20 tion, and unless excepted in paragraph (b) of this subsection ~~(4)~~,  
 21 consent to annex shall be valid only when evidenced by written instru-  
 22 ment consenting to annexation executed by the owner or the owner's  
 23 authorized agent. Written consent to annex lands must be recorded in  
 24 the county recorder's office to be binding upon subsequent purchasers,  
 25 heirs, or assigns of lands addressed in the consent. Lands need not be  
 26 contiguous or adjacent to the city limits at the time the landowner con-  
 27 sents to annexation for the property to be subject to a valid consent to  
 28 annex; provided however, no annexation of lands shall occur, irrespec-  
 29 tive of consent, until such land becomes contiguous or adjacent to such  
 30 city.

31 (b) Exceptions to the requirement of written consent to annexation.  
 32 The following exceptions apply to the requirement of written consent  
 33 to annexation provided for in ~~subsection (4)~~ paragraph (a) of this  
 34 subsection:

35 (i) Enclaved lands: In category A annexations, no consent is nec-  
 36 essary for enclaved lands meeting the requirements of subsection  
 37 (3) (a) (ii) of this section;

38 (ii) Implied consent: In category B and C annexations, valid con-  
 39 sent to annex is implied for the area of all lands connected to a  
 40 water or wastewater collection system operated by the city if the  
 41 connection was requested in writing by the owner, or the owner's  
 42 authorized agent, or completed before July 1, 2008.

43 (5) Annexation procedures. Annexation of lands to a city shall fol-  
 44 low the procedures applicable to the category of lands as established by this  
 45 section. The implementation of any annexation proposal wherein the city  
 46 council determines that annexation is appropriate shall be concluded with  
 47 the passage of an ordinance of annexation.

48 (a) Procedures for category A annexations: Lands lying contiguous or  
 49 adjacent to any city in the state of Idaho may be annexed by the city  
 50 if the proposed annexation meets the requirements of category A. Upon

1 determining that a proposed annexation meets such requirements, a city  
2 may initiate the planning and zoning procedures set forth in chapter 65,  
3 title 67, Idaho Code, to establish the comprehensive planning policies,  
4 where necessary, and zoning classification of the lands to be annexed.

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

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

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

29 (iii) Preparation and publication of a written annexation plan,  
30 appropriate to the scale of the annexation contemplated, which in-  
31 cludes, at a minimum, the following elements:

32 (A) The manner of providing tax-supported municipal ser-  
33 vices to the lands proposed to be annexed;

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

36 (C) The means of providing fee-supported municipal ser-  
37 vices, if any, to the lands proposed to be annexed;

38 (D) A brief analysis of the potential effects of annexation  
39 upon other units of local government which currently provide  
40 tax-supported or fee-supported services to the lands pro-  
41 posed to be annexed; and

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

45 (iv) Compliance with the notice and hearing procedures governing  
46 a zoning district boundary change as set forth in section 67-6511,  
47 Idaho Code, on the question of whether the property should be  
48 annexed and, if annexed, the zoning designation to be applied  
49 thereto; provided however, the initial notice of public hearing  
50 concerning the question of annexation and zoning shall be pub-

1 lished in the official newspaper of the city and mailed by first  
2 class mail to every property owner with lands included in such  
3 annexation proposal not less than twenty-eight (28) days prior  
4 to the initial public hearing. All public hearing notices shall  
5 establish a time and procedure by which comments concerning the  
6 proposed annexation may be received in writing and heard and,  
7 additionally, public hearing notices delivered by mail shall in-  
8 clude a one (1) page summary of the contents of the city's proposed  
9 annexation plan and shall provide information regarding where the  
10 annexation plan may be obtained without charge by any property  
11 owner whose property would be subject to the annexation proposal.

12 (v) In addition to the standards set forth elsewhere in this sec-  
13 tion, annexation of the following lands must meet the following  
14 requirements:

15 (A) Property, owned by a county or any entity within the  
16 county, that is used as a fairgrounds area under the pro-  
17 visions of chapter 8, title 31, Idaho Code, or chapter 2,  
18 title 22, Idaho Code, must have the consent of a majority of  
19 the board of county commissioners of the county in which the  
20 property lies; and

21 (B) Property, owned by a nongovernmental entity, that is  
22 used to provide outdoor recreational activities to the pub-  
23 lic and that has been designated as a planned unit develop-  
24 ment of fifty (50) acres or more and does not require or uti-  
25 lize any city services must have the express written permis-  
26 sion of the nongovernmental entity owner.

27 (vi) After considering the written and oral comments of property  
28 owners whose land would be annexed and other affected persons,  
29 the city council may proceed with the enactment of an ordinance  
30 of annexation and zoning. In the course of the consideration of  
31 any such ordinance, the city must make express findings, to be set  
32 forth in the minutes of the city council meeting at which the an-  
33 nexation is approved, as follows:

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

37 (B) The annexation would be consistent with the public pur-  
38 poses addressed in the annexation plan prepared by the city;

39 (C) The annexation is reasonably necessary for the orderly  
40 development of the city;

41 (vii) Notwithstanding any other provision of this section, rail-  
42 road right-of-way property may be annexed pursuant to this sec-  
43 tion only when property within the city adjoins or will adjoin both  
44 sides of the right-of-way.

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

48 (i) Compliance with the procedures governing category B annexa-  
49 tions; and

1 (ii) Evidence of consent to annexation based upon the following  
2 procedures:

3 (A) Following completion of all procedures required for  
4 consideration of a category B annexation, but prior to en-  
5 actment of an annexation ordinance and upon an affirmative  
6 action by the city council, the city shall mail notice to  
7 all private landowners owning lands within the area to be  
8 annexed, exclusive of the owners of lands that are subject  
9 to a consent to annex which complies with subsection (4) (a)  
10 of this section defining consent. Such notice shall invite  
11 property owners to give written consent to the annexation,  
12 include a description of how that consent can be made and  
13 where it can be filed, and inform the landowners where the  
14 entire record of the subject annexation may be examined.  
15 Such mailed notice shall also include a legal description of  
16 the lands proposed for annexation and a simple map depicting  
17 the location of the subject lands.

18 (B) Each landowner desiring to consent to the proposed an-  
19 nexation must submit the consent in writing to the city clerk  
20 by a date specified in the notice, which date shall not be  
21 later than forty-five (45) days after the date of the mailing  
22 of such notice.

23 (C) After the date specified in the notice for receipt of  
24 written consent, the city clerk shall compile and present  
25 to the city council a report setting forth: (i) the total  
26 physical area sought to be annexed, and (ii) the total phys-  
27 ical area of the lands, as expressed in acres or square feet,  
28 whose owners have newly consented in writing to the annexa-  
29 tion, plus the area of all lands subject to a prior consent to  
30 annex which complies with subsection (4) (a) of this section  
31 defining consent. The clerk shall immediately report the  
32 results to the city council.

33 (D) Upon receiving such report, the city council shall re-  
34 view the results and may thereafter confirm whether consent  
35 was received from the owners of a majority of the land. The  
36 results of the report shall be reflected in the minutes of  
37 the city council. If the report as accepted by the city coun-  
38 cil confirms that owners of a majority of the land area have  
39 consented to annexation, the city council may enact an ordi-  
40 nance of annexation, which thereafter shall be published and  
41 become effective according to the terms of the ordinance.  
42 If the report confirms that owners of a majority of the land  
43 area have not consented to the annexation, the category C  
44 annexation shall not be authorized.

45 (6) The decision of a city council to annex and zone lands as a category  
46 B or category C annexation shall be subject to judicial review in accordance  
47 with the procedures provided in chapter 52, title 67, Idaho Code, and pur-  
48 suant to the standards set forth in section 67-5279, Idaho Code. Any such ap-  
49 peal shall be filed by an affected person in the appropriate district court  
50 no later than twenty-eight (28) days after the date of publication of the an-

1 nexation ordinance. All cases in which there may arise a question of the va-  
2 lidity of any annexation under this section shall be advanced as a matter of  
3 immediate public interest and concern, and shall be heard by the district  
4 court at the earliest practicable time.

5 (7) Annexation of noncontiguous municipal airfield. A city may annex  
6 land that is not contiguous to the city and is occupied by a municipally owned  
7 or operated airport or landing field. However, a city may not annex any other  
8 land adjacent to such noncontiguous facilities which is not otherwise annex-  
9 able pursuant to this section.

10 SECTION 3. This act shall be in full force and effect on and after July  
11 1, 2015. Any annexation pending a legal decision by a court currently con-  
12 sidering said annexation that overturns the ordinance to annex would become  
13 subject to this act.