

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 604, As Amended

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO ANNEXATION; AMENDING SECTION 50-222, IDAHO CODE, TO PROVIDE A REQUIREMENT REGARDING ANNEXATION OF CERTAIN AGRICULTURAL LAND AND TO MAKE TECHNICAL CORRECTIONS.

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

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

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

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

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

(a) Category A: Annexations wherein:

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

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

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

1 (b) Category B: Annexations wherein:

2 (i) The subject lands contain less than one hundred (100) separate private ownerships and platted lots of record and where not  
3 all such landowners have consented to annexation; or  
4

5 (ii) The subject lands contain more than one hundred (100) separate private ownerships and platted lots of record and where  
6 landowners owning more than fifty percent (50%) of the area of the  
7 subject private lands have consented to annexation prior to the  
8 commencement of the annexation process; or  
9

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 (iv) Compliance with the notice and hearing procedures governing  
49 a zoning district boundary change as set forth in section 67-6511,  
50 Idaho Code, on the question of whether the property should be

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

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

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

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

30 (C) Land, if five (5) acres or greater, actively devoted to  
 31 agriculture, as defined in section 63-604(1), Idaho Code,  
 32 regardless of whether it is surrounded or bounded on all  
 33 sides by lands within a city, must have the express written  
 34 permission of the owner.

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

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

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

47 (C) The annexation is reasonably necessary for the orderly  
 48 development of the city;

49 (vii) Notwithstanding any other provision of this section, rail-  
 50 road right-of-way property may be annexed pursuant to this sec-

1           tion only when property within the city adjoins or will adjoin both  
2           sides of the right-of-way.

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

6           (i) Compliance with the procedures governing category B annexa-  
7           tions; and

8           (ii) Evidence of consent to annexation based upon the following  
9           procedures:

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

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

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

40           (D) Upon receiving such report, the city council shall re-  
41           view the results and may thereafter confirm whether consent  
42           was received from the owners of a majority of the land. The  
43           results of the report shall be reflected in the minutes of  
44           the city council. If the report as accepted by the city coun-  
45           cil confirms that owners of a majority of the land area have  
46           consented to annexation, the city council may enact an ordi-  
47           nance of annexation, which thereafter shall be published and  
48           become effective according to the terms of the ordinance.  
49           If the report confirms that owners of a majority of the land

1                   area have not consented to the annexation, the category C  
2                   annexation shall not be authorized.

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

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