

MINUTES  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

- DATE:** Thursday, March 02, 2023
- 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** called to order the meeting of the Senate Local Government and Taxation Committee (Committee) at 3:00 p.m. He stated that the Committee would first hear testimony on each of the three annexation bills: **S 1040**, **S 1062**, and **S 1073**. At the conclusion of testimony each sponsor would be given an opportunity to make closing remarks. Following the closing remarks, the Committee would discuss and vote.
- S 1040** **Cities. Senator Okuniewicz** presented **S 1040**. He stated that the bill addressed the situation where an individual had a piece of property in an unincorporated county abutting or within the area of impact of two or more cities. **S 1040** provided that in that situation, the property owner made the decision as to which city he or she wanted to be annexed into. **Senator Okuniewicz** noted that neither **S 1062** nor **S 1073** allowed the property owner to make the decision.
- DISCUSSION:** **Senator Grow** asked how **S 1040** resolved a situation where landowner Y wanted to be annexed into city A and landowner Z wanted to be annexed into city B. **Senator Okuniewicz** responded that you could not skip over unincorporated land. Each of those properties would have to be within or touching two areas of impact.
- Vice Chairman Schroeder** asked which city in Senator Grow's scenario the language, "may extend into or beyond the city area of impact," referred to. **Senator Okuniewicz** responded that the two areas of impact had to overlap. **Vice Chairman Schroeder** asked whether **S 1040** only addressed a situation where there were overlapping areas of impact and not where there were two abutting areas of impact and the landowner was in the middle. **Senator Okuniewicz** replied that the language referred to a situation where the property was partially within an area of impact, and partially beyond it or outside of the area of impact. **S 1040** addressed both the situation where the landowner was in the middle of two overlapping areas of impact and where the property was partially within one area of impact and extended beyond it.
- Chairman Ricks** stated that his understanding of the bill was that in a situation where there were two competing cities, the property owner had the choice of being annexed by either city. **Senator Okuniewicz** explained that the property owner had the choice only if his or her land touched both cities area of impact or city boundaries.

**TESTIMONY:** **Kelley Packer**, Executive Director of the Idaho Association of Cities, spoke in opposition to **S 1040**. She stated that Idaho law did not permit overlapping areas of impact. Idaho law required cities to negotiate an area of impact with the county commissioners. If the two cities could not reach an agreement, the law provided that either city could request recommendations from the county commissioners. If the city objected to the county commissioners' recommendations, the matter would go before the voters in the overlapping area in the next election to decide which city they wanted to be annexed to. The results of the election were binding and not appealable by either city. **Ms. Packer** further noted that there were already processes in statute that resolved these issues.

**Travis Hunter**, owner of Boise Hunter Homes, spoke in favor of **S 1040**. The bill addressed the situation where the property owner's only option under current law was to be annexed into city B, which he or she was adjacent to, and could not be annexed by city A although he or she was within city A's area of impact (Attachment 1).

**DISCUSSION:** **Senator Grow** asked Mr. Hunter what happened if the property owner wanted city services. **Mr. Hunter** answered that if the property did not touch either city A or B, the property owner could not be annexed by either city. **Senator Grow** then asked whether, if the property were touching one city, the property could be annexed by that city. **Mr. Hunter** responded that, although the only option was to be annexed by city B which was adjacent to the property, the property couldn't be annexed by city B because it was within city A's area of impact.

**S 1062** **Cities. Representative Young** presented **S 1062**. She noted that this bill did not conflict with either **S 1040** or **S 1073** and stated she was willing to amend **S 1062** to incorporate aspects of those bills. **S 1062** eliminated category C in existing law regarding forced annexation. Category B in existing law was maintained, but incorporated a portion of current category C requirements. Current category A regarding voluntary annexations was included under exceptions in **S 1062**.

**Representative Young** provided an outline of **S 1062** and the changes that were made. First, this bill required written consent. She explained that utilities and other city services could obtain written consent when a request for services was made. Second, they amended the definition of an enclave which would permit an involuntary annexation. The number of parcels required for an enclave was reduced from 100 to 30. **S 1062** clarified that enclave was a collection of properties within the city's boundaries. The final substantive change required approval for a category B annexation of 50 percent of the geographic area in addition to two thirds of property owners.

**DISCUSSION:** **Senator Rabe** asked whether the definitions in this bill were consistent with other areas of statute. **Representative Young** explained that the definitions were consistent with those in the Land Use Handbook.

**TESTIMONY:** **Field Herrington**, Deputy City Attorney for the city of Post Falls, spoke in opposition to **S 1062**. He expressed a concern regarding the change from category A annexations to landowner initiated annexations which eliminated the ability of the city to initiate a voluntary annexation. The city would be forced to use the more stringent requirements normally associated with categories B and C annexations. In addition, the reduction of the number of parcels required for an enclave made it difficult to annex an enclave of parcels that were surrounded on all sides by the city and benefitted from city services. The definition of enclave was also unclear. Were cities prevented from annexing more than 30 parcels at a time from a larger enclave or did it allow annexations of smaller enclaves only where the entire enclave could be annexed at one time?

**Jarom Wagoner**, mayor of the city of Caldwell, testified in favor of **S 1062**. He felt current annexation law was confusing.

**DISCUSSION:** **Vice Chairman Schroeder** asked Mr. Wagoner whether Post Falls had any property outside the city limits that were receiving city services. **Mr. Wagoner** replied that they did. He further stated that he believed this bill still provided for annexation of such properties.

**Chairman Ricks** asked whether **S 1062** would have changed how Middleton and Star dealt with the overlap of areas of impact. **Mr. Wagoner** replied that he didn't think so.

**TESTIMONY:** **Kelley Packer**, Executive Director of the Idaho Association of Cities, testified in opposition to **S 1062**. She stated that current annexation law was drafted as a collaborative effort by cities, counties, builders, real estate developers and other stakeholders. The rewrite of annexation law would throw out years of experience and case law under existing law.

**Representative Young** responded to several of the opposing arguments. She stated that she would be happy to change the term "landowner initiated" to "consensual annexation." Regarding the question about whether an enclave of 30 parcels that was part of a larger enclave could be forcibly annexed, she clarified that **S 1062** did not permit that. An enclave had to be surrounded on all sides by the city.

### **S 1073**

**Planning and Zoning. Senator Lakey** presented **S 1073**. He explained that **S 1073** emphasized the fact that the city had jurisdiction within the city limits and the counties had jurisdiction outside city limits and areas of impact which, by their nature, were outside city limits. **S 1073** established a process whereby cities and counties worked together to establish or modify an area of impact. The county commissioners conducted a public hearing on the proposed establishment or modification of an area of impact. These decisions were legislative. Current law provided criteria to be considered and evaluated when deciding on where to establish an area of impact. This bill added to that criteria and required consideration of where anticipated growth was to occur, geographic factors such as topography and rivers, transportation and infrastructure, and access to sewer and water. **S 1073** required cities to review an area of impact every five years. An area of impact could not extend more than one mile beyond city boundaries. The area of impact between different cities could not overlap. A city could annex outside its area of impact, but could not extend into an abutting city's area of impact with certain exceptions. If a city had not reviewed its area of impact within five years, it could be crossed by the adjacent city. A city could also cross another city's area of impact with consent of that city. If an individual property owner lived on one side of the area of impact and wanted to be annexed into another city on the other side of the boundary, they could request annexation by that city. If that city supported their desire to be annexed, the city could go to the county commissioners that are over that area of impact and apply to have a site specific modification. The annexation process was under county jurisdiction. The county ordinance and the County Comprehensive Land Use plan applied. However, **S 1073** also provided that the county could adopt specific ordinances and specific comprehensive plan provisions regarding an area of impact for a particular city. If a city disagreed with the county decision, they could ask the county commissioners for reconsideration. If the county commissioners declined to do that, this bill provided an opportunity for the city to go to district court and have a court review that decision. And if the county commissioners didn't follow requirements regarding notice and procedure, the court was required to remand it back to the county to redo their hearings. If the court found that the county acted arbitrarily or capriciously or abused their discretion, they could remand it back to the county to fix it, or they could establish the area of impact themselves. **S 1073** also provided that the prevailing party would be awarded their attorney's fees. The court process was expedited and mirrored

the existing process for annexation under Title 50, Chapter two. Finally, this bill required that areas of impact be brought into compliance by July 1, 2024. It also allowed for a staggered approach. If a city's area of impact extended beyond one mile, they could modify that impact area back to two miles until they had the next review. **Senator Lakey** proposed that **S 1073** be sent to the 14th order of business to amend the date for compliance with this bill to July 1, 2024.

**DISCUSSION:** **Senator Bernt** asked who made the decision regarding annexation. **Senator Lakey** responded that the decision regarding annexation, with the exception of abutting impact areas, was made by the city. **Senator Bernt** asked what happened if a city had invested in a sewer system that extended beyond the one or two mile limit. **Senator Lakey** explained that under those circumstances, the city likely met the criteria for including that in their area of impact.

**Senator Adams** asked Senator Lakey to further discuss how **S 1073** provided for individual property rights. **Senator Lakey** explained that there was a process for a property owner to ask to be annexed by a city, though the decision was the city's. **Senator Adams** asked whether **S 1073** prevented double annexation. **Senator Lakey** replied that a city could not annex across an area of impact.

**Senator Just** asked whether the one or two mile limit allowed parcels to be divided or geographic areas to be split. **Senator Lakey** replied that an area of impact could not divide a parcel and geographic features were part of the consideration when establishing an area of impact.

**TESTIMONY:** **Rodney Ashby**, Director of the Nampa Planning and Zoning Department, spoke in favor of **S 1073**. He stated that the bill strengthened the ability of cities to do land use planning. It prevented a city from annexing into another city's area of impact. **S 1073** encouraged collaboration between the cities and counties. It established a one mile limit for areas of impact while creating an alternative to that.

**Morgan Treasure**, Economic Director for the city of Kuna, testified in support of **S 1073**. The bill prevented conflicts between cities and counties. It clarified the process for annexation. And **S 1073** was the result of input from many stakeholders.

**Seth Grigg**, Director of the Idaho Association of Counties, spoke in support of **S 1073**. He felt it was a broader approach than either **S 1040** or **S 1062**. It was consistent with statute and case law with respect to jurisdiction of cities and counties. A city had jurisdiction within the city. A county had jurisdiction outside the city limits. Finally, **S 1073** gave to counties the authority regarding areas of impact.

**John Beacham**, Public Works Director for the city of Post Falls, testified in opposition to **S 1073**. He argued that the bill allowed a county Board of Commissioners to disregard a negotiated boundary and gave them the final authority over areas of impact. **S 1073** precluded judicial review of the county's decision except where there were abutting areas of impact. Finally, the bill negatively affected individual property rights and required an individual who wanted to be annexed to a city to make the request to the city who then went to the county to request modification of their area of impact on behalf of the individual.

**DISCUSSION:** **Vice Chairman Schroeder** asked Mr. Beacham whether he correctly understood him say that a county could unilaterally establish an area of impact 100 feet outside the city limits thus precluding annexations. He noted that Idaho Code § 50-222(1) stated that annexation may occur outside an established area of impact, but not within another city's area of impact. **Mr. Beacham** clarified that he referred to Idaho Code § 50-222(3)(c) which provided that a landowner who was outside an area of impact and wanted to be annexed could request a city to make a request to the county for annexation on behalf of the landowner.

**Chairman Ricks** noted that the Committee had received several letters from cities and asked Kelley Packer, Executive Director of the Idaho Association of Cities whether they were endorsing **S 1073**.

**TESTIMONY:** **Kelley Packer** stated that the Idaho Association of Cities decided to stay neutral on all three annexation bills.

**Ken Burgess**, with Veritas Advisors and representing the Idaho Home Builders Association, testified in support of **S 1073**. It addressed the broader issues regarding annexation. **S 1073** established a limit on an area of impact of one mile beyond the city limits and created an expectation of services within the five year period for review of the area of impact. It prohibited overlapping areas of impact and established a process for resolution when they did. Finally, **S 1073** established a process whereby a property owner could request annexation.

**Mary Huff**, Planning Director for Owyhee County, but representing herself, stated that she largely supported **S 1073**, but expressed several concerns. First, **S 1073** struck language in current law that required a subsequent hearing if the county Board of Commissioners made a substantive change to the area of impact. She appreciated that the bill required the initiating party to pay the expenses, but it wasn't clear whether a county or city could establish a fee for an individual landowner who requested annexation.

**Joe Stear**, mayor of Kuna, spoke in favor of **S 1073**. He appreciated the collaborative effort in drafting the bill.

**DISCUSSION:** **Vice Chairman Schroeder and Senators Bernt, Grow, Cook, Just, Rabe and Grow** expressed their support for **S 1073**. **Senator Adams** stated that he supported sending **S 1062** to the 14th order for amendment to include some of the provisions of **S 1073**. **S 1040** and **S 1062** were held in committee.

**MOTION:** **Vice Chairman Schroeder** moved to send **S 1073** to the **14th order of business** for possible amendment. **Senator Rabe** seconded the motion. The motion to send **S 1073** to the **14th order of business** for possible amendment passed by **voice vote**.

**ADJOURNED:** There being no further business at this time, **Chairman Ricks** adjourned the meeting at 5:35 p.m.

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Senator Ricks  
Chair

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Meg Lawless  
Secretary