

IN THE SENATE

SENATE BILL NO. 1370

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO WATER; AMENDING SECTION 31-3805, IDAHO CODE, TO REVISE PROVI-
2 SIONS REGARDING THE DELIVERY OF WATER WITHIN SUBDIVISIONS; AMENDING
3 SECTION 31-3806, IDAHO CODE, TO REVISE PROVISIONS REGARDING CERTAIN
4 CIVIL ACTIONS; AMENDING SECTION 67-6508, IDAHO CODE, TO PROVIDE FOR
5 CONSIDERATION OF GROUND WATER WHEN AMENDING, REPEALING, OR ADOPTING A
6 COMPREHENSIVE PLAN; AMENDING SECTION 67-6537, IDAHO CODE, TO PROVIDE A
7 CODE REFERENCE; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE
8 DATE.
9

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

11 SECTION 1. That Section 31-3805, Idaho Code, be, and the same is hereby
12 amended to read as follows:

13 31-3805. DELIVERY OF WATER WITHIN SUBDIVISIONS. (1) ~~When either a sub-~~
14 ~~division within the meaning of chapter 13, title 50, Idaho Code, or a sub-~~
15 ~~division subject to a more restrictive county or city zoning ordinance is~~
16 ~~proposed within the state of Idaho, and The provisions of this section shall~~
17 ~~apply to any proposed subdivision within the state of Idaho, as defined in~~
18 ~~chapter 13, title 50, Idaho Code, or a subdivision subject to a more restric-~~
19 ~~tive county or city zoning ordinance.~~

20 (2) Except as otherwise provided in subsections (3) and (4) of this sec-
21 tion relating to water for irrigation, water for each subdivision lot in a
22 subdivision having ten (10) or more lots that are smaller than five (5) acres
23 shall be supplied by a shared well or public water system. If subdivisions
24 lie within the service area of a municipal provider or within one (1) mile of
25 the service area of a municipal provider, then the shared well or public wa-
26 ter system shall be designed to meet requirements of that municipal provider
27 and be planned to integrate with and connect to the municipal provider's sys-
28 tem when appropriate. The municipal provider shall be consulted in the de-
29 sign of the shared well or public water system to ensure proper integration.
30 Upon connection to the municipal provider's system, the water rights associ-
31 ated with the subdivision's shared well or public water system shall be con-
32 veyed to the municipal provider.

33 (3) If all or any part of said a subdivision would be is located within
34 the boundaries of an existing irrigation district or other, canal company,
35 ditch association, or like similar irrigation water delivery entity, here-
36 inafter called "irrigation entity" for the purposes of this chapter, and
37 such subdivision is entitled to receive water from the irrigation entity,
38 and the irrigation entity's distribution system is capable of delivering the
39 water to the subdivision, no subdivision plat or amendment to a subdivision
40 plat or any other plat or map recognized by the city or county for the divi-
41 sion of land will be accepted, approved, and recorded unless:

1 ~~(a) The water rights appurtenant and the assessment obligation of the~~
 2 ~~lands in said subdivision which are within the irrigation entity have~~
 3 ~~been transferred from said lands or excluded from an irrigation entity~~
 4 ~~by the owner thereof; or by the person, firm or corporation filing the~~
 5 ~~subdivision plat or amendment to a subdivision plat or any other plat or~~
 6 ~~map recognized by the city or county for the division of land; or~~

7 ~~(b) The owner or person, firm or corporation the owner or entity fil-~~
 8 ~~ing the subdivision plat or amendment to a subdivision plat or any other~~
 9 ~~plat or map recognized by the city or county for the division of land has~~
 10 ~~provided for underground tile or other like satisfactory underground~~
 11 ~~conduit for lots of one (1) acre or less, or a suitable system for lots~~
 12 ~~of more than one (1) acre which will deliver water to those landowners~~
 13 ~~within the subdivision who are also within the irrigation entity, with~~
 14 ~~the following appropriate approvals: the irrigation of lots within the~~
 15 ~~subdivision using the water provided by the irrigation entity.~~

16 ~~(i) For proposed subdivisions within the incorporated limits of~~
 17 ~~a city, the irrigation system must be approved by the city zoning~~
 18 ~~authority or the city council, as provided by city ordinance, with~~
 19 ~~the advice of the irrigation entity charged with the delivery of~~
 20 ~~water to said lands.~~

21 ~~(ii) For proposed subdivisions located outside incorporated~~
 22 ~~cities but within a negotiated area of city impact pursuant to~~
 23 ~~chapter 65, title 67, Idaho Code, or within one (1) mile outside~~
 24 ~~the incorporated limits of any city, both city and county zoning~~
 25 ~~authorities and city council and county commissions must approve~~
 26 ~~such irrigation system in accordance with section 50-1306, Idaho~~
 27 ~~Code. In addition, the irrigation entity charged with the deliv-~~
 28 ~~ery of water to said lands must be advised regarding the irrigation~~
 29 ~~system.~~

30 ~~(iii) For proposed subdivisions located outside an area of city~~
 31 ~~impact in counties with a zoning ordinance, the delivery system~~
 32 ~~must be approved by the appropriate county zoning authority, and~~
 33 ~~the county commission with the advice of the irrigation entity~~
 34 ~~charged with the delivery of water to said lands.~~

35 ~~(iv) For proposed subdivisions located outside an area of city im-~~
 36 ~~act in counties without a zoning ordinance, such irrigation sys-~~
 37 ~~tem must be approved by the board of county commissioners with the~~
 38 ~~advice of the irrigation entity charged with the delivery of water~~
 39 ~~to said lands.~~

40 (4) For subdivisions using water provided by an irrigation entity, as
 41 required in subsection (3) of this section, the subdivision plat or amend-
 42 ment to a subdivision plat or any other plat or map shall include a descrip-
 43 tion of the system used to deliver irrigation water from the irrigation en-
 44 tity's point of delivery to the individual lots, subject to the provisions of
 45 this subsection.

46 (a) The irrigation entity shall be consulted in the design of all irri-
 47 gation systems.

48 (b) For subdivisions within the incorporated limits of a city, the
 49 irrigation system must be approved by the city zoning authority or the
 50 city council, as provided by city ordinance.

1 (c) For proposed subdivisions located outside an incorporated city,
 2 the irrigation system must be approved by the board of county commis-
 3 sioners.

4 ~~(2) (a) In the event that the provisions of either subsection (1) (a)~~
 5 ~~or (1) (b) of this section have not been complied with, the assessments~~
 6 ~~of the irrigation entity for operation, maintenance, construction, and~~
 7 ~~other valid charges permitted by statute shall in no way be affected.~~
 8 ~~Any person, firm or corporation or any other person offering such lots~~
 9 ~~in such subdivision for sale, or selling such lot shall, prior to the~~
 10 ~~sale, advise the purchaser in writing as follows:~~

11 ~~(i) That suitable water deliveries have not been provided; and~~

12 ~~(ii) That the purchaser of the lot must remain subject to all as-~~
 13 ~~essments levied by the irrigation entity; and~~

14 ~~(iii) That the individual purchaser shall be responsible to pay~~
 15 ~~such legal assessments; and~~

16 ~~(iv) That the assessments are a lien on the land within the irriga-~~
 17 ~~tion entity; and~~

18 ~~(v) That the purchaser may at a future date petition the appropri-~~
 19 ~~ate irrigation entity for exclusion from the irrigation district.~~

20 ~~(b) A disclosure statement executed by the purchasers and duly acknowl-~~
 21 ~~edged, containing the representations required in this subsection of~~
 22 ~~this section, shall be obtained by the seller at the time of receipt of~~
 23 ~~the earnest money from the purchaser, and affixed to the proposed sales~~
 24 ~~contract and a copy thereof shall be forwarded to the appropriate irri-~~
 25 ~~gation entity.~~

26 (5) For subdivisions receiving water from an irrigation entity as pro-
 27 vided in subsection (3) of this section, the subdivision plat description
 28 shall state:

29 (a) That the subdivision or a portion of it is located within the ser-
 30 vice area of the irrigation entity and provide the name and contact in-
 31 formation for the irrigation entity;

32 (b) That an approved system for the delivery of irrigation water to lots
 33 within the subdivision has been provided;

34 (c) That the purchaser of the lot shall remain subject to all assess-
 35 ments levied by the irrigation entity; and

36 (d) That unpaid irrigation entity assessments are a lien on the land
 37 within the irrigation entity.

38 SECTION 2. That Section 31-3806, Idaho Code, be, and the same is hereby
 39 amended to read as follows:

40 31-3806. CIVIL ACTION TO ENFORCE. (1) If the owner of the property of
 41 or the person, firm or corporation or entity filing the subdivision plat or
 42 amendment to a subdivision plat or any other plat or map recognized by the
 43 city or county for the division of land fails to comply with either subsec-
 44 tion (1) or (2) of the provisions of section 31-3805, Idaho Code, prior to
 45 sale of the lots in the subdivision to purchasers, the owner of the property,
 46 or the person, firm or corporation or entity filing the subdivision plat or
 47 amendment to a subdivision plat or any other plat or map recognized by the
 48 city or county for the division of land shall be liable to any purchaser for
 49 the costs of the lot's exclusion plus all assessments due and owing or the ac-

1 ~~tual cost of installation of an irrigation delivery system not to exceed one~~
 2 ~~thousand five hundred dollars (\$1,500) per lot all costs required to bring~~
 3 ~~each subdivision lot into compliance with the provisions of section 31-3805,~~
 4 ~~Idaho Code.~~ The purchaser shall have a right to enforce this obligation in a
 5 civil action and the purchaser shall have the right to elect exclusion or in-
 6 stallation of the system in such action.

7 ~~(2) Any person, firm or corporation who shall omit, neglect or refuse to~~
 8 ~~provide the purchaser or the irrigation entity within whose boundaries the~~
 9 ~~land is located, a copy of the disclosure statement required by subsection~~
 10 ~~(2) of section 31-3805, Idaho Code:~~

11 ~~(a) Shall be liable to the purchaser as provided in subsection (1) of~~
 12 ~~this section.~~

13 ~~(b) Shall be liable to the irrigation entity for its reasonable ex-~~
 14 ~~penditure, including employee time, of locating the purchaser and providing~~
 15 ~~the information required in the form and for advising affected pur-~~
 16 ~~chasers of the lack of a water delivery system and for any assessments on~~
 17 ~~the property that are past due at the time of discovery of the violation.~~
 18 ~~The irrigation entity affected shall have a right to claim such expenses~~
 19 ~~in a civil action.~~

20 ~~(3) (2) In any civil action filed under subsection (1) or (2) of this~~
 21 ~~section, the prevailing party shall be awarded its reasonable costs and at-~~
 22 ~~torney's fees. The purchaser and irrigation entity shall have two (2) years~~
 23 ~~from the date of discovery of the violation to initiate any legal action.~~

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

26 67-6508. PLANNING DUTIES. (1) It shall be the duty of the planning or
 27 planning and zoning commission to conduct a comprehensive planning process
 28 designed to prepare, implement, and review and update a comprehensive plan,
 29 hereafter referred to as the plan. The plan shall include all land within the
 30 jurisdiction of the governing board. The plan shall consider previous and
 31 existing conditions, trends, compatibility of land uses, desirable goals
 32 and objectives, or desirable future situations for each planning component.
 33 The plan with maps, charts, and reports shall be based on the following com-
 34 ponents as they may apply to land use regulations and actions unless the plan
 35 specifies reasons why a particular component is unneeded.

36 (a) Property Rights -- An analysis of provisions which may be necessary
 37 to ensure that land use policies, restrictions, conditions and fees do
 38 not violate private property rights, adversely impact property values
 39 or create unnecessary technical limitations on the use of property and
 40 analysis as prescribed under the declarations of purpose in chapter 80,
 41 title 67, Idaho Code.

42 (b) Population -- A population analysis of past, present, and future
 43 trends in population including such characteristics as total popula-
 44 tion, age, sex, and income.

45 (c) School Facilities and Transportation -- An analysis of public
 46 school capacity and transportation considerations associated with fu-
 47 ture development.

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

1 (e) Land Use -- An analysis of natural land types, existing land covers
2 and uses, and the intrinsic suitability of lands for uses such as agri-
3 culture, forestry, mineral exploration and extraction, preservation,
4 recreation, housing, commerce, industry, and public facilities. A map
5 shall be prepared indicating suitable projected land uses for the ju-
6 risdiction.

7 (f) Natural Resources -- An analysis of the uses of rivers and other wa-
8 ters, forests, range, soils, harbors, fisheries, wildlife, minerals,
9 thermal waters, beaches, watersheds, and shorelines.

10 (g) Hazardous Areas -- An analysis of known hazards as may result from
11 susceptibility to surface ruptures from faulting, ground shaking,
12 ground failure, landslides or mudslides; avalanche hazards result-
13 ing from development in the known or probable path of snowslides and
14 avalanches, and floodplain hazards.

15 (h) Public Services, Facilities, and Utilities -- An analysis show-
16 ing general plans for sewage, drainage, power plant sites, utility
17 transmission corridors, water supply, fire stations and fire fighting
18 equipment, health and welfare facilities, libraries, solid waste dis-
19 posal sites, schools, public safety facilities and related services.
20 The plan may also show locations of civic centers and public buildings.

21 (i) Transportation -- An analysis, prepared in coordination with the
22 local jurisdiction(s) having authority over the public highways and
23 streets, showing the general locations and widths of a system of major
24 traffic thoroughfares and other traffic ways, and of streets and the
25 recommended treatment thereof. This component may also make recommen-
26 dations on building line setbacks, control of access, street naming and
27 numbering, and a proposed system of public or other transit lines and
28 related facilities including rights-of-way, terminals, future corri-
29 dors, viaducts and grade separations. The component may also include
30 port, harbor and other related transportation facilities.

31 (j) Recreation -- An analysis showing a system of recreation areas,
32 including parks, parkways, trailways, river bank greenbelts, beaches,
33 playgrounds, and other recreation areas and programs.

34 (k) Special Areas or Sites -- An analysis of areas, sites, or structures
35 of historical, archeological, architectural, ecological, wildlife, or
36 scenic significance.

37 (l) Housing -- An analysis of housing conditions and needs; plans for
38 improvement of housing standards; and plans for the provision of safe,
39 sanitary, and adequate housing, including the provision for low-cost
40 conventional housing, the siting of manufactured housing and mobile
41 homes in subdivisions and parks and on individual lots which are suffi-
42 cient to maintain a competitive market for each of those housing types
43 and to address the needs of the community.

44 (m) Community Design -- An analysis of needs for governing landscaping,
45 building design, tree planting, signs, and suggested patterns and stan-
46 dards for community design, development, and beautification.

47 (n) Agriculture -- An analysis of the agricultural base of the area in-
48 cluding agricultural lands, farming activities, farming-related busi-
49 nesses and the role of agriculture and agricultural uses in the commu-
50 nity.

1 (o) Implementation -- An analysis to determine actions, programs,
 2 budgets, ordinances, or other methods including scheduling of public
 3 expenditures to provide for the timely execution of the various compo-
 4 nents of the plan.

5 (p) National Interest Electric Transmission Corridors -- After noti-
 6 fication by the public utilities commission concerning the likelihood
 7 of a federally designated national interest electric transmission cor-
 8 ridor, prepare an analysis showing the existing location and possible
 9 routing of high voltage transmission lines, including national in-
 10 terest electric transmission corridors based upon the United States
 11 department of energy's most recent national electric transmission con-
 12 gestion study pursuant to sections 368 and 1221 of the energy policy act
 13 of 2005. "High-voltage transmission lines" means lines with a capacity
 14 of one hundred fifteen thousand (115,000) volts or more supported by
 15 structures of forty (40) feet or more in height.

16 (q) Public Airport Facilities -- An analysis prepared with assistance
 17 from the Idaho transportation department division of aeronautics, if
 18 requested by the planning and zoning commission, and the manager or
 19 person in charge of the local public airport identifying, but not lim-
 20 ited to, facility locations, the scope and type of airport operations,
 21 existing and future planned airport development and infrastructure
 22 needs, and the economic impact to the community.

23 (2) When considering amending, repealing, or adopting a comprehen-
 24 sive plan, the local governing board shall consider the effect the proposed
 25 amendment, repeal, or adoption of the comprehensive plan would have on the
 26 source, quantity, and quality of ground water in the area.

27 (3) Nothing herein in this section shall preclude the consideration of
 28 additional planning components or subject matter.

29 SECTION 4. That Section 67-6537, Idaho Code, be, and the same is hereby
 30 amended to read as follows:

31 67-6537. USE OF SURFACE AND GROUND WATER. (1) The intent of this sec-
 32 tion is to encourage the use of surface water for irrigation. All applicants
 33 proposing to make land use changes shall be required to use surface water,
 34 where reasonably available, as the primary water source for irrigation, as
 35 required by section 31-3805, Idaho Code. Surface water shall be deemed rea-
 36 sonably available if:

37 (a) A surface water right is, or reasonably can be made, appurtenant to
 38 the land;

39 (b) The land is entitled to distribution of surface water from an irri-
 40 gation district, canal company, ditch users association, or other irri-
 41 gation delivery entity, and the entity's distribution system is capable
 42 of delivering the water to the land; or

43 (c) An irrigation district, canal company, or other irrigation deliv-
 44 ery entity has sufficient available surface water rights to apportion
 45 or allocate to the land and has a distribution system capable of deliv-
 46 ering the water to the land.

47 (2) Consistent with sections 42-108 and 42-222, Idaho Code, any change
 48 in the nature of use of surface water provided by an irrigation delivery
 49 entity must be authorized by the entity holding the water right(s) for the

1 available surface water. Nothing in this section shall alter the authority
2 and discretion of irrigation delivery entities to apportion, allocate and
3 distribute surface water, or for municipalities, counties, or water and
4 sewer districts to pass ordinances or regulations to promote the use of sur-
5 face water for irrigation.

6 (3) Nothing in this section shall be construed to override or amend any
7 provision of title 42 or 43, Idaho Code, or impair any rights acquired there-
8 under.

9 (4) When considering amending, repealing or adopting a comprehensive
10 plan, the local governing board shall consider the effect the proposed
11 amendment, repeal or adoption of the comprehensive plan would have on the
12 source, quantity and quality of ground water in the area.

13 SECTION 5. An emergency existing therefor, which emergency is hereby
14 declared to exist, this act shall be in full force and effect on and after
15 July 1, 2024.