

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 148

BY LOCAL GOVERNMENT COMMITTEE

AN ACT

1 RELATING TO LOCAL LAND USE PLANNING; AMENDING SECTION 67-6502, IDAHO CODE,
2 TO PROVIDE THAT ONE PURPOSE OF LOCAL LAND USE PLANNING IS TO ENCOURAGE
3 THE PROTECTION OF LAND USES FOR THE PRODUCTION OF FOOD, FIBRE AND MINER-
4 ALS AS WELL AS THE ECONOMIC BENEFITS THEY PROVIDE TO THE COMMUNITY AND
5 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-6508, IDAHO CODE, TO
6 PROVIDE THAT THE COMPREHENSIVE PLAN SHALL CONSIDER THE COMPATIBILITY
7 OF LAND USES AND TO PROVIDE THAT AGRICULTURE SHALL BE ONE COMPONENT UPON
8 WHICH COMPREHENSIVE PLANS SHALL BE BASED; AMENDING SECTION 67-6511,
9 IDAHO CODE, TO PROVIDE THAT THE GOVERNING BOARD SHALL ANALYZE PROPOSED
10 CHANGES TO ZONING ORDINANCES TO ENSURE THAT THEY ARE NOT IN CONFLICT
11 WITH THE POLICIES OF THE COMPREHENSIVE PLAN; AND AMENDING SECTION
12 67-6512, IDAHO CODE, TO PROVIDE THAT LOCAL GOVERNMENTS ARE ENCOURAGED
13 TO POST NOTICES OF HEARINGS RELATING TO REQUESTS FOR SPECIAL USE PERMITS
14 ON THEIR OFFICIAL WEBSITES.
15

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

17 SECTION 1. That Section 67-6502, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 67-6502. PURPOSE. The purpose of this act shall be to promote the
20 health, safety, and general welfare of the people of the state of Idaho as
21 follows:

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

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

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

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

30 (e) To encourage the protection of prime agricultural, forestry, and
31 mining lands and land uses for production of food, fibre, and minerals, as
32 well as the economic benefits they provide to the community.

33 (f) To encourage urban and urban-type development within incorporated
34 cities.

35 (g) To avoid undue concentration of population and overcrowding of
36 land.

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

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

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

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

1 (1) To allow local school districts to participate in the community
2 planning and development process so as to address public school needs and
3 impacts on an ongoing basis.

4 SECTION 2. That Section 67-6508, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 67-6508. PLANNING DUTIES. It shall be the duty of the planning or plan-
7 ning and zoning commission to conduct a comprehensive planning process de-
8 signed to prepare, implement, and review and update a comprehensive plan,
9 hereafter referred to as the plan. The plan shall include all land within the
10 jurisdiction of the governing board. The plan shall consider previous and
11 existing conditions, trends, compatibility of land uses, desirable goals
12 and objectives, or desirable future situations for each planning component.
13 The plan with maps, charts, and reports shall be based on the following com-
14 ponents as they may apply to land use regulations and actions unless the plan
15 specifies reasons why a particular component is unneeded.

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

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

25 (c) School Facilities and Transportation -- An analysis of public
26 school capacity and transportation considerations associated with future
27 development.

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

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

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

38 (g) Hazardous Areas -- An analysis of known hazards as may result from
39 susceptibility to surface ruptures from faulting, ground shaking, ground
40 failure, landslides or mudslides; avalanche hazards resulting from de-
41 velopment in the known or probable path of snowslides and avalanches, and
42 floodplain hazards.

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

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

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

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

17 (l) Housing -- An analysis of housing conditions and needs; plans for
18 improvement of housing standards; and plans for the provision of safe, san-
19 itary, and adequate housing, including the provision for low-cost conven-
20 tional housing, the siting of manufactured housing and mobile homes in sub-
21 divisions and parks and on individual lots which are sufficient to maintain
22 a competitive market for each of those housing types and to address the needs
23 of the community.

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

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

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

34 (op) National Interest Electric Transmission Corridors -- After no-
35 tification by the public utilities commission concerning the likelihood of
36 a federally designated national interest electric transmission corridor,
37 prepare an analysis showing the existing location and possible routing
38 of high voltage transmission lines, including national interest electric
39 transmission corridors based upon the United States department of energy's
40 most recent national electric transmission congestion study pursuant to
41 sections 368 and 1221 of the energy policy act of 2005. "High-voltage trans-
42 mission lines" means lines with a capacity of one hundred fifteen thousand
43 (115,000) volts or more supported by structures of forty (40) feet or more in
44 height.

45 Nothing herein shall preclude the consideration of additional planning
46 components or subject matter.

47 SECTION 3. That Section 67-6511, Idaho Code, be, and the same is hereby
48 amended to read as follows:

1 67-6511. ZONING ORDINANCE. Each governing board shall, by ordinance
2 adopted, amended, or repealed in accordance with the notice and hearing pro-
3 cedures provided under section 67-6509, Idaho Code, establish within its ju-
4 risdiction one (1) or more zones or zoning districts where appropriate. The
5 zoning districts shall be in accordance with the policies set forth in the
6 adopted comprehensive plan.

7 Within a zoning district, the governing board shall where appropriate,
8 establish standards to regulate and restrict the height, number of stories,
9 size, construction, reconstruction, alteration, repair or use of buildings
10 and structures; percentage of lot occupancy, size of courts, yards, and open
11 spaces; density of population; and the location and use of buildings and
12 structures. All standards shall be uniform for each class or kind of build-
13 ings throughout each district, but the standards in one (1) district may
14 differ from those in another district.

15 Ordinances establishing zoning districts shall be amended as follows:

16 (a) Requests for an amendment to the zoning ordinance shall be submit-
17 ted to the zoning or planning and zoning commission which shall evaluate
18 the request to determine the extent and nature of the amendment requested.
19 Particular consideration shall be given to the effects of any proposed zone
20 change upon the delivery of services by any political subdivision providing
21 public services, including school districts, within the planning jurisdic-
22 tion. An amendment of a zoning ordinance applicable to an owner's lands or
23 approval of conditional rezoning or denial of a request for rezoning may be
24 subject to the regulatory taking analysis provided for by section 67-8003,
25 Idaho Code, consistent with the requirements established thereby.

26 (b) After considering the comprehensive plan and other evidence gath-
27 ered through the public hearing process, the zoning or planning and zoning
28 commission may recommend and the governing board may adopt or reject an or-
29 dinance amendment pursuant to the notice and hearing procedures provided in
30 section 67-6509, Idaho Code, provided that in the case of a zoning district
31 boundary change, and notwithstanding jurisdictional boundaries, additional
32 notice shall be provided by mail to property owners or purchasers of record
33 within the land being considered, and within three hundred (300) feet of the
34 external boundaries of the land being considered, and any additional area
35 that may be impacted by the proposed change as determined by the commission.
36 Notice shall also be posted on the premises not less than one (1) week prior
37 to the hearing. When notice is required to two hundred (200) or more property
38 owners or purchasers of record, alternate forms of procedures which would
39 provide adequate notice may be provided by local ordinance in lieu of posted
40 or mailed notice. In the absence of a locally adopted alternative notice
41 procedure, sufficient notice shall be deemed to have been provided if the
42 city or county provides notice through a display advertisement at least four
43 (4) inches by two (2) columns in size in the official newspaper of the city
44 or county at least fifteen (15) days prior to the hearing date, in addition
45 to site posting on all external boundaries of the site. Any property owner
46 entitled to specific notice pursuant to the provisions of this subsection
47 shall have a right to participate in public hearings before a planning com-
48 mission, planning and zoning commission or governing board subject to appli-
49 cable procedures.

1 (c) The governing board shall analyze proposed changes to zoning or-
2 dinances to ensure that they are not in conflict with the policies of the
3 adopted comprehensive plan. If the request is found by the governing board
4 to be in conflict with the adopted plan, or would result in demonstrable
5 adverse impacts upon the delivery of services by any political subdivision
6 providing public services, including school districts, within the planning
7 jurisdiction, the governing board may require the request to be submitted
8 to the planning or planning and zoning commission or, in absence of a com-
9 mission, the governing board may consider an amendment to the comprehensive
10 plan pursuant to the notice and hearing procedures provided in section
11 67-6509, Idaho Code. After the plan has been amended, the zoning ordinance
12 may then be considered for amendment pursuant to section 67-6511 (b), Idaho
13 Code.

14 (d) If a governing board adopts a zoning classification pursuant to a
15 request by a property owner based upon a valid, existing comprehensive plan
16 and zoning ordinance, the governing board shall not subsequently reverse its
17 action or otherwise change the zoning classification of said property with-
18 out the consent in writing of the current property owner for a period of four
19 (4) years from the date the governing board adopted said individual prop-
20 erty owner's request for a zoning classification change. If the governing
21 body does reverse its action or otherwise change the zoning classification
22 of said property during the above four (4) year period without the current
23 property owner's consent in writing, the current property owner shall have
24 standing in a court of competent jurisdiction to enforce the provisions of
25 this section.

26 SECTION 4. That Section 67-6512, Idaho Code, be, and the same is hereby
27 amended to read as follows:

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

42 (b) Prior to granting a special use permit, at least one (1) public
43 hearing in which interested persons shall have an opportunity to be heard
44 shall be held. At least fifteen (15) days prior to the hearing, notice of
45 the time and place, and a summary of the proposal shall be published in the
46 official newspaper or paper of general circulation within the jurisdiction.
47 Each local government is encouraged to post such notice on its official
48 websites, if one is maintained. Notice may also be made available to other
49 newspapers, radio and television stations serving the jurisdiction for use

1 as a public service announcement. Notice shall be posted on the premises not
2 less than one (1) week prior to the hearing. Notwithstanding jurisdictional
3 boundaries, notice shall also be provided to property owners or purchasers
4 of record within the land being considered, three hundred (300) feet of the
5 external boundaries of the land being considered, and any additional area
6 that may be substantially impacted by the proposed special use as determined
7 by the commission. Any property owner entitled to specific notice pursuant
8 to the provisions of this subsection shall have a right to participate in
9 public hearings before a planning commission, planning and zoning commis-
10 sion or governing board.

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

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

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

34 (e) Prior to granting a special use permit, studies may be required of
35 the social, economic, fiscal, and environmental effects of the proposed spe-
36 cial use. A special use permit shall not be considered as establishing a
37 binding precedent to grant other special use permits. A special use permit
38 is not transferable from one (1) parcel of land to another.