

IN THE SENATE

SENATE BILL NO. 1073, As Amended, As Amended

BY LOCAL GOVERNMENT AND TAXATION COMMITTEE

AN ACT

1 RELATING TO PLANNING AND ZONING; AMENDING SECTION 67-6509, IDAHO CODE, TO
2 REVISE PROVISIONS REGARDING COMPREHENSIVE PLANS; AMENDING SECTION
3 67-6526, IDAHO CODE, TO REVISE PROVISIONS REGARDING AREAS OF CITY IM-
4 PACT; AMENDING SECTION 50-222, IDAHO CODE, TO REVISE PROVISIONS REGARD-
5 ING ANNEXING AN AREA OF IMPACT; AND DECLARING AN EMERGENCY AND PROVIDING
6 AN EFFECTIVE DATE.
7

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

9 SECTION 1. That Section 67-6509, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 67-6509. RECOMMENDATION AND ADOPTION, AMENDMENT, AND REPEAL OF THE
12 PLAN. ~~(a)~~ (1) The planning or planning and zoning commission, prior to rec-
13 ommending the plan, amendment, or repeal of the plan to the governing board,
14 shall conduct at least one (1) public hearing in which interested persons
15 shall have an opportunity to be heard. At least fifteen (15) days prior to
16 the hearing, notice of the time and place and a summary of the plan to be
17 discussed shall be published in the official newspaper or paper of general
18 circulation within the jurisdiction. The commission shall also make avail-
19 able a notice to other papers, radio, and television stations serving the
20 jurisdiction for use as a public service announcement. Notice of intent to
21 adopt, repeal, or amend the plan shall be sent to all political subdivisions
22 providing services within the planning jurisdiction, including school dis-
23 tricts and the manager or person in charge of the local public airport, at
24 least fifteen (15) days prior to the public hearing scheduled by the com-
25 mission. Following the commission hearing, if the commission recommends a
26 material change to the proposed amendment to the plan which was considered at
27 the hearing, it shall give notice of its proposed recommendation and conduct
28 another public hearing concerning the matter if the governing board will
29 not conduct a subsequent public hearing concerning the proposed amendment.
30 If the governing board will conduct a subsequent public hearing, notice of
31 the planning and zoning commission recommendation shall be included in the
32 notice of public hearing provided by the governing board. A record of the
33 hearings, findings made, and actions taken by the commission shall be main-
34 tained by the city or county.

35 ~~(b)~~ (2) The governing board, as provided by local ordinance, prior to
36 adoption, amendment, or repeal of the plan, may conduct at least one (1) pub-
37 lic hearing, in addition to the public hearing(s) conducted by the commis-
38 sion, using the same notice and hearing procedures as the commission. The
39 governing board shall not hold a public hearing, give notice of a proposed
40 hearing, nor take action upon the plan, amendments, or repeal until recom-
41 mendations have been received from the commission. ~~Following consideration~~
42 ~~by the governing board, if the governing board makes a material change in~~

1 ~~the recommendation or alternative options contained in the recommendation~~
 2 ~~by the commission concerning adoption, amendment or repeal of a plan, fur-~~
 3 ~~ther notice and hearing shall be provided before the governing board adopts,~~
 4 ~~amends or repeals the plan.~~

5 ~~(e)~~ (3) No plan shall be effective unless adopted by resolution by the
 6 governing board. A resolution enacting or amending a plan or part of a plan
 7 may be adopted, amended, or repealed by definitive reference to the specific
 8 plan document. A copy of the adopted or amended plan shall accompany each
 9 adopting resolution and shall be kept on file with the city clerk or county
 10 clerk.

11 ~~(d)~~ (4) Any person may petition the commission or, in absence of a com-
 12 mission, the governing board, for a plan amendment at any time, unless the
 13 governing board has established by resolution a minimum interval between
 14 consideration of requests to amend, which interval shall not exceed six (6)
 15 months. The commission may recommend amendments to the comprehensive plan
 16 and to other ordinances authorized by this chapter to the governing board at
 17 any time.

18 SECTION 2. That Section 67-6526, Idaho Code, be, and the same is hereby
 19 amended to read as follows:

20 67-6526. AREAS OF CITY IMPACT -- ~~NEGOTIATION PROCEDURE.~~ ~~(a) The gov-~~
 21 ~~erning board of each county and each city therein shall adopt by ordinance~~
 22 ~~following the notice and hearing procedures provided in section 67-6509,~~
 23 ~~Idaho Code, a map identifying an area of city impact within the unincorpo-~~
 24 ~~rated area of the county. A separate ordinance providing for application of~~
 25 ~~plans and ordinances for the area of city impact shall be adopted. Subject~~
 26 ~~to the provisions of section 50-222, Idaho Code, an~~ (1) Legislative findings
 27 and intent.

28 (a) The legislature finds that areas of impact are properly under the
 29 jurisdiction of the county because the elected representatives of citi-
 30 zens in areas of impact are county officials, not city officials. While
 31 cities should receive notice of, and may provide input on, applications
 32 brought to the county in an area of impact, cities do not govern or con-
 33 trol decisions on those applications. County commissioners make the
 34 final determination regarding area of impact boundaries within their
 35 county.

36 (b) An area of impact is where growth and development are expected to
 37 occur. Areas of impact should be planned for growth and development and
 38 should not be used to stop growth and development that conforms to ap-
 39 plicable plans and ordinances. Areas of impact should be established,
 40 modified, or confirmed based upon the ability and likelihood of a city
 41 or cities to annex lands within that area of impact in the near future.
 42 A city may adopt a comprehensive plan and conduct infrastructure, cap-
 43 ital improvement, and other planning activities that extend beyond its
 44 current area of impact. Counties and cities shall review their area of
 45 impact boundaries at least every five (5) years to determine if modifi-
 46 cations are needed or to confirm existing boundaries and may pursue mod-
 47 ification of an established area of impact more frequently than every
 48 five (5) years.

1 (c) Prior to conducting the public hearings required under this chapter
 2 to establish, modify, or confirm an area of impact, cities and counties
 3 should work together to develop a proposed area of impact to be consid-
 4 ered at the public hearing. Where impact areas abut, landowners inside
 5 the current area of impact of a city that desire to be annexed into an-
 6 other city may propose annexation with the desired city. If that city
 7 is willing to annex such landowners' property, that city may apply to
 8 the board of county commissioners with jurisdiction over the land to be
 9 annexed for a limited modification of the area of impact boundary as to
 10 that specific property or properties. The board of county commission-
 11 ers shall then make a determination on the application in accordance
 12 with the criteria established pursuant to this section.

13 (d) Category A annexations, as defined in section 50-222, Idaho Code,
 14 may occur outside an established area of impact and do not require
 15 county approval, but no annexation may occur within another city's area
 16 of impact except as provided in section 50-222(3)(a)(i)2., Idaho Code.

17 (e) Decisions regarding the establishment, modification, or confir-
 18 mation of areas of impact are legislative actions and are not subject
 19 to judicial review or challenge except as provided in subsection (5) of
 20 this section.

21 (2) Establishing an area of impact.

22 (a) Following the notice and hearing procedures provided in section
 23 67-6509, Idaho Code, and in accordance with the provisions of subsec-
 24 tion (4) of this section, the board of county commissioners of each
 25 county shall adopt by ordinance a map identifying the area of impact
 26 within the unincorporated area of the county for each city located in
 27 the county. Written notice of the hearing to be conducted under this
 28 subsection shall be provided by the county to each owner of property
 29 located within a proposed area of impact. If notice is also published
 30 pursuant to section 67-6509, Idaho Code, individual property owners
 31 may not challenge the proceeding on the basis that they did not actu-
 32 ally receive notice by mail. The cost of the notice shall be reimbursed
 33 to the county by the city whose area of impact is under consideration.
 34 The board of county commissioners is not required to receive a recom-
 35 mendation from the planning and zoning commission prior to enacting an
 36 ordinance establishing an area of impact. An area of city impact must
 37 be established before a city may annex adjacent territory pursuant to
 38 the provisions of section 50-222, Idaho Code. This separate ordinance
 39 shall provide for one (1) of the following:

40 (1) Application of the city plan and ordinances adopted under this
 41 chapter to the area of city impact; or

42 (2) Application of the county plan and ordinances adopted under this
 43 chapter to the area of city impact; or

44 (3) Application of any mutually agreed upon plan and ordinances adopted
 45 under this chapter to the area of city impact.

46 Areas of city impact, together with plan and ordinance requirements,
 47 may cross county boundaries by agreement of the city and county concerned if
 48 the city is within three (3) miles of the adjoining county.

49 (b) If the requirements of section 67-6526(a), Idaho Code, have not
 50 been met, either the city or the county may demand compliance with this

1 section by providing written notice to the other of said demand for compli-
2 ance. Once a demand has been made, the city shall select its representative
3 as hereinafter provided, within thirty (30) days of said demand, and the
4 process set forth in this subsection shall commence. The county commission-
5 ers for the county concerned, together with three (3) elected city officials
6 designated by the mayor of the city and confirmed by the council, shall,
7 within thirty (30) days after the city officials have been confirmed by the
8 council, select three (3) city or county residents. These nine (9) persons
9 shall, by majority vote, recommend to the city and county governing boards
10 an area of city impact together with plan and ordinance requirements. The
11 recommendations shall be submitted to the governing boards within one hun-
12 dred eighty (180) days after the selection of the three (3) members at large
13 and shall be acted upon by the governing boards within sixty (60) days of re-
14 ceipt. If the city or county fails to enact ordinances providing for an area
15 of city impact, plan, and ordinance requirements, either the city or county
16 may seek a declaratory judgment from the district court identifying the area
17 of city impact, and plan and ordinance requirements. In defining an area
18 of city impact, the following factors shall be considered: (1) trade area;
19 (2) geographic factors; and (3) areas that can reasonably be expected to be
20 annexed to the city in the future.

21 (b) If the requirements of paragraph (a) of this subsection are not
22 met in establishing an area of impact, the city may demand compliance
23 with this subsection by providing notice to the board of county com-
24 missioners of the demand for compliance. Once a demand has been made,
25 a recommendation committee shall be established. The city and county
26 shall each select a representative to participate on the committee
27 within thirty (30) days of the demand for compliance and the process set
28 forth in this paragraph shall commence.

29 (i) The city and county representatives having been selected,
30 they shall in turn select a city resident and a county resident to
31 serve on the recommending committee. Meetings of the recommend-
32 ing committee may be hosted by the city or county and shall be con-
33 ducted in accordance with Idaho open meeting laws. These four (4)
34 persons shall, by majority vote, provide a written recommendation
35 to the board of county commissioners for an area of impact. The
36 written recommendation shall be submitted to the governing boards
37 within one hundred eighty (180) days after the selection of the
38 recommending committee members.

39 (ii) If the board of county commissioners fails to enact an or-
40 dinance providing for an area of impact within ninety (90) days
41 of receipt of the committee recommendation or expiration of the
42 one hundred eighty (180) days for the committee to make its rec-
43 ommendation, the city may file a petition with the district court
44 to identify the area of impact pursuant to subsection (5) of this
45 section and in accordance with other applicable provisions of this
46 section.

47 ~~(c) If areas of city impact overlap, the cities involved shall negoti-~~
48 ~~ate boundary adjustments to be recommended to the respective city councils.~~
49 ~~If the cities cannot reach agreement, the board of county commissioners~~
50 ~~shall, upon a request from either city, within thirty (30) days, recommend~~

1 adjustments to the areas of city impact which shall be adopted by ordinance
2 by the cities following the notice and hearing procedures provided in sec-
3 tion 67-6509, Idaho Code. If any city objects to the recommendation of the
4 board of county commissioners, the county shall conduct an election, sub-
5 ject to the provisions of section 34-106, Idaho Code, and establish polling
6 places for the purpose of submitting to the qualified electors residing in
7 the overlapping impact area, the question of which area of city impact the
8 electors wish to reside. The results of the election shall be conclusive
9 and binding, and no further proceedings shall be entertained by the board
10 of county commissioners, and the decision shall not be appealable by either
11 city involved. The clerk of the board of county commissioners shall by ab-
12 stract of the results of the election, certify that fact, record the same and
13 transmit copies of the original abstract of the result of the election to the
14 clerk of the involved cities.

15 (3) Modification or confirmation of area of impact boundaries.

16 (a) Modification or confirmation of an existing area of impact boundary
17 may be initiated by a city or cities or the county. If a county is ini-
18 tiating a modification or confirmation of an area of impact, the county
19 shall provide at least thirty (30) days written notice to the applicable
20 city or cities of the hearing on the proposed modification or confirma-
21 tion. Any modifications to or confirmation of an area of impact bound-
22 ary must be adopted by an ordinance approved by the board of county com-
23 missioners of the applicable county, following the notice and hearing
24 procedures provided in section 67-6509, Idaho Code, and in accordance
25 with the requirements for defining an area of impact as set forth in sub-
26 section (4) of this section. At least fifteen (15) days prior to the
27 hearing, written notice of the hearing to be conducted under this para-
28 graph shall be provided by the county to each owner of property located
29 within the portion of the area of impact that is proposed to be modi-
30 fied. If notice is also published pursuant to section 67-6509, Idaho
31 Code, individual property owners may not challenge the proceeding on
32 the basis that they did not actually receive notice by mail. If the mod-
33 ification or confirmation is proposed by a city, then the cost of the
34 notice shall be reimbursed to the county by such city. If the county
35 is pursuing the modification or confirmation, then the cost of notifi-
36 cation shall be borne by the county. The board of county commissioners
37 is not required to receive a recommendation from the planning and zon-
38 ing commission prior to enacting an ordinance modifying or confirming
39 an area of impact.

40 (b) Where areas of city impact abut each other and adjustments are being
41 proposed, or where areas of impact are proposed to abut each other, the
42 cities involved shall negotiate boundary adjustments to be recommended
43 to the respective city councils. The city council of each city must
44 approve the area of impact or modifications thereto to be proposed to
45 the board of county commissioners. These decisions by the city councils
46 are proposals and not subject to judicial review or challenge. If the
47 cities with impact area boundaries that abut or are proposed to abut
48 each other reach agreement on the proposed boundaries or adjustments
49 thereto, the requested boundaries or adjustments shall be collectively
50 submitted by the cities to the county for consideration in accordance

1 with paragraph (a) of this subsection. If the cities cannot reach
2 agreement, then any or all of the cities involved may submit their re-
3 quests to the board of county commissioners for consideration pursuant
4 to paragraph (a) of this subsection. In either case, the county shall
5 conduct at least one (1) consolidated public hearing where it considers
6 all of such requests together.

7 (c) Where impact areas abut, owners of property inside the current area
8 of impact of a city who wish to have their property annexed by another
9 city may coordinate with the desired city regarding a request for an im-
10 impact area boundary adjustment specific to that property or properties.
11 If such city wants to annex said property or properties, that city may
12 submit a written request to the board of county commissioners with ju-
13 risdiction over such property or properties for an impact area boundary
14 adjustment specific to that property or properties. The county shall
15 timely consider the request in accordance with the provisions of this
16 subsection.

17 (d) The county may accept, reject, or modify a city's requested modi-
18 fication or confirmation regarding an impact area boundary, but if the
19 county does not make a final decision on the request within ninety (90)
20 days of submission of the request, the city may petition the court to
21 make a determination on the request pursuant to subsection (5) of this
22 section.

23 (4) Provisions applicable to areas of city impact.

24 (a) In defining an initial area of impact or in modifying or confirming
25 an existing area of impact, the criteria set forth in this subsection
26 shall be considered:

27 (i) Anticipated commercial and residential growth;

28 (ii) Geographic factors;

29 (iii) Transportation infrastructure and systems, including con-
30 nectivity;

31 (iv) Areas where municipal or public sewer and water are expected
32 to be provided within five (5) years; and

33 (v) Other public service district boundaries.

34 (b) In addition to the criteria set forth in paragraph (a) of this sub-
35 section, an impact area shall not exceed the areas that are very likely
36 to be annexed to the city within the next five (5) years. Except as oth-
37 erwise provided in this paragraph, an area of impact shall not extend
38 more than one (1) mile from existing city limits. An impact area bound-
39 ary shall not divide county recognized parcels of land. If only a por-
40 tion of a recognized parcel falls within the one (1) mile limit, then the
41 boundary may extend beyond one (1) mile on that parcel so that it encom-
42 passes the entire parcel. Adjustments to an area of impact may be pro-
43 posed and considered at any time following the initial establishment of
44 the area of impact.

45 (c) Areas of city impact may cross county boundaries only by approval of
46 the governing board of county commissioners after following the proce-
47 dures and complying with the requirements for modification or confirma-
48 tion of an area of impact boundary.

49 (d) Areas of city impact shall not overlap.

1 (e) The applicable county's comprehensive plan and zoning and subdivi-
2 sion ordinances shall apply in the area of impact. The county may adopt
3 individual county comprehensive plan and zoning and subdivision ordi-
4 nance provisions regarding an area of impact.

5 (f) Following adoption of an area of impact, the board of county com-
6 missioners shall provide the city with written notice at least fifteen
7 (15) days in advance of any county public hearings held pursuant to this
8 chapter or to chapter 13, title 50, Idaho Code, involving land within
9 that city's area of impact.

10 ~~(d) Areas of city impact, plan, and ordinance requirements shall remain~~
11 ~~fixed until both governing boards agree to renegotiate. In the event the~~
12 ~~city and county cannot agree, the judicial review process of subsection (b)~~
13 ~~of this section shall apply. Renegotiations shall begin within thirty (30)~~
14 ~~days after written request by the city or county and shall follow the proce-~~
15 ~~dures for original negotiation provided in this section.~~

16 ~~(e) Prior to negotiation or renegotiation of areas of city impact,~~
17 ~~plan, and ordinance requirements, the governing boards shall submit the~~
18 ~~questions to the planning, zoning, or planning and zoning commission for~~
19 ~~recommendation. Each commission shall have a reasonable time fixed by the~~
20 ~~governing board to make its recommendations to the governing board. The gov-~~
21 ~~erning boards shall undertake a review at least every ten (10) years of the~~
22 ~~city impact plan and ordinance requirements to determine whether renegoti-~~
23 ~~ations are in the best interests of the citizenry.~~

24 (g) Areas of city impact shall remain fixed until modifications are
25 made pursuant to subsection (3) of this section.

26 (h) Prior to considering a request to establish, modify, or confirm an
27 area of impact, the governing boards may, but are not required to, sub-
28 mit the request to the planning, zoning, or planning and zoning commis-
29 sion for recommendation. Each commission shall have a reasonable time
30 fixed by its governing board in compliance with all required timelines
31 set forth in this section to make its recommendation to the governing
32 board. The county and the city shall undertake a review of the area of
33 impact at least once every five (5) years and shall consider whether ad-
34 justments are in the best interests of the citizenry.

35 ~~(f) (i) This section shall not preclude annexation or other growth and~~
36 ~~development in areas of any county within the state of Idaho which are~~
37 ~~not within the areas of city impact provided for herein.~~

38 (j) The county's decision establishing, modifying, or confirming the
39 boundaries for an area of city impact shall be made in writing and shall
40 contain the reasoning of the board of county commissioners, including
41 application of the facts relied upon by the commissioners and the appli-
42 cation of the pertinent requirements and criteria to establish or mod-
43 ify an area of impact.

44 ~~(g) (k) If the area of impact has been delimited pursuant to the pro-~~
45 ~~visions of subsection (a)(1) of this section properly established,~~
46 ~~persons living within the delimited area of impact shall be entitled~~
47 ~~to representation on the planning, zoning, or the planning and zoning~~
48 ~~commission of the city of impact. Such representation shall as nearly~~
49 ~~as possible reflect the proportion of population living within the~~
50 ~~city as opposed to the population living within the areas of impact for~~

1 that city. To achieve such proportional representation, membership
2 of the planning, zoning or planning and zoning commission, may exceed
3 twelve (12) persons, notwithstanding the provisions of subsection (a)
4 of section 67-6504, Idaho Code. In instances where a city has combined
5 either or both of its planning and zoning functions with the county,
6 representation on the resulting joint planning, zoning or planning and
7 zoning commission shall as nearly as possible reflect the proportion
8 of population living within the impacted city, the area of city impact
9 outside the city, and the remaining unincorporated area of the county.
10 Membership on such a joint planning, zoning or planning and zoning com-
11 mission may exceed twelve (12) persons, notwithstanding the provisions
12 of ~~subsection (a) of~~ section 67-6504(a), Idaho Code.

13 (5) Petitions for review of establishment, modification, or confirma-
14 tion of area of impact. The decisions by the board of county commission-
15 ers regarding the establishment, modification, or confirmation of areas of
16 city impact are legislative actions and are not subject to judicial review,
17 declaratory action, or other legal challenge, except as specifically pro-
18 vided in this subsection.

19 (a) (i) If a county has not complied with the provisions of subsec-
20 tion (2) or (3) of this section, the city seeking the establish-
21 ment, modification, or confirmation of an area of impact may peti-
22 tion the district court to establish, modify, or confirm an area of
23 impact that meets the criteria and requirements of subsection (4)
24 of this section in accordance with the procedures provided in this
25 subsection. If the modification of an area of impact boundary in-
26 volves areas of city impact boundaries that abut each other or that
27 are proposed to abut each other, then any city whose area of impact
28 abuts or is proposed to abut another city's area of impact bound-
29 ary may file a petition challenging the county's determination re-
30 garding only those boundaries that abut or that are proposed to
31 abut each other. Any petition regarding a proposed area of impact
32 or portion thereof that is subject to challenge must be filed in
33 the county in which the proposed area of impact or portion thereof
34 is located.

35 (ii) Before a city may file a petition for review of a proposed
36 area of impact decision made by the county, it must first file a
37 request for reconsideration with the board of county commission-
38 ers. Such request must be filed within fourteen (14) days of the
39 issuance of the written decision by the board of county commis-
40 sioners and must specify deficiencies in the decision of the board
41 of county commissioners. Filing a timely request for reconsider-
42 ation is a prerequisite to the city having standing to file a peti-
43 tion with the district court. The county shall act upon and issue a
44 written decision on the request for reconsideration within thirty
45 (30) days of receipt of the request or the request shall be deemed
46 denied. A petition challenging the decision of the county must be
47 filed by the city within twenty-eight (28) days after the issuance
48 of a decision by the county on the request for reconsideration or
49 expiration of the thirty (30) day period for the county to act on
50 the request.

1 (b) When filing a petition challenging the decision of the board of
2 county commissioners with the clerk of the court, the petitioners shall
3 pay a fee of one hundred dollars (\$100), which fee shall be in full for
4 all clerk's fees except the regular fees provided by law for appeals.
5 The court shall fix a time for the hearing on the petition to be held
6 no less than thirty (30) days and no more than ninety (90) days from
7 the filing of the petition. The petitioners shall serve or cause to
8 be served a copy of the petition and notice of the hearing on the board
9 of county commissioners or county clerk and the mayor or city clerk of
10 such other city whose area of impact boundary is in question pursuant to
11 paragraph (a) of this subsection at least twenty (20) days before the
12 date of the hearing.

13 (c) The petitioner or petitioners shall also cause notice to be pub-
14 lished once a week in two (2) consecutive weekly issues in a newspaper
15 published in the city or cities and the county or counties who were
16 served pursuant to paragraph (b) of this subsection. If no newspaper
17 is published in said cities or counties, the petitioners shall cause
18 notice to be posted in at least three (3) conspicuous places in said city
19 or cities and county or counties. The notice shall state: the time and
20 place of the hearing; the purpose of the petition; and the location and
21 description or map depicting the area of impact to be established, modi-
22 fied, or confirmed.

23 (d) No petition, objection, or reply authorized under this subsection
24 need be verified.

25 (e) The hearing on a petition filed pursuant to this subsection shall be
26 held within the county in which the area of impact or portion thereof is
27 situated. The regular district court reporter shall reduce to writing
28 the testimony and evidence introduced in the same manner as in a trial of
29 civil actions. The judge of the court, either before or after the hear-
30 ing, may view the lands pertaining to the proposed area of impact, lands
31 on the outside of the city or cities in the same vicinity in which the
32 lands sought to be included in the area of impact are situated, and other
33 lands within the corporate limits of the city that might in any way be
34 affected by the granting of the petition. The judge may consider such
35 modifications as the judge finds in connection with the evidence intro-
36 duced at the hearing, in making and arriving at a final decision and de-
37 termination of the matter.

38 (f) (i) If the court finds that the board of county commission-
39 ers did not follow the notice and hearing requirements provided
40 in this subsection, the court shall remand the matter back to the
41 board of county commissioners to comply with the requirements and
42 issue a new decision. If the court finds that the decision of the
43 board of county commissioners was not arbitrary, capricious, or
44 an abuse of discretion, the court shall affirm the decision of the
45 commissioners. If the court finds that the decision of the board
46 of county commissioners was arbitrary, capricious, or an abuse of
47 discretion, the court may remand the matter to the board of county
48 commissioners to correct its decision or the court may determine
49 the appropriate boundaries of the area of impact in question be-
50 fore it. It shall not be necessary for the judge of the court to

1 make written findings of fact or conclusions of law unless the
2 court establishes the area of impact boundary. The court may award
3 attorney's fees and costs to the prevailing party in such an action
4 only if it finds that the other party or parties acted without a
5 reasonable basis in fact or law.

6 (ii) If the court establishes the area of impact boundary, such
7 boundary shall become the area of impact boundary as of the date of
8 the decree establishing the boundary. Within twenty (20) days af-
9 ter the filing of the decree, the petitioner shall file or cause to
10 be filed with the county recorder and with the city clerk a certi-
11 fied copy of the decree. The board of county commissioners shall
12 adopt an ordinance consistent with the court decree within thirty
13 (30) days of the entry of the decree or be subject to contempt and
14 other sanctions or actions deemed appropriate by the court.

15 (g) Any city or county aggrieved by the decision of the court may ap-
16 peal from the decision and judgment to the supreme court. The procedure
17 of the appeal shall be the same as the procedure for appeals from final
18 judgment in civil actions.

19 (6) Cities and counties shall review their existing areas of city im-
20 pect and shall reestablish the areas in conformance with the provisions of
21 this section by December 31, 2024. Failure to timely conduct such review
22 and reestablishment shall nullify the current area of impact boundaries and
23 require the city and county to go through the process set forth in subsec-
24 tion (2) of this section. In this initial establishment, the area of impact
25 boundaries that, as of December 31, 2023, are not more than two (2) miles from
26 the existing city limits may remain in place. An area of impact that extends
27 beyond two (2) miles from the city limits must be redrawn to be no further
28 than two (2) miles from the city limits in this initial review. Existing ar-
29 reas of city impact that overlap must be brought into full compliance with the
30 provisions of this section during this initial review. Subsequent modifica-
31 tions of the area of impact occurring after this initial review shall fully
32 comply with the provisions of this section.

33 SECTION 3. That Section 50-222, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 50-222. ANNEXATION BY CITIES. (1) Legislative intent. The legisla-
36 ture hereby declares and determines that it is the policy of the state of
37 Idaho that cities of the state should be able to annex lands which are reason-
38 ably necessary to assure the orderly development of Idaho's cities in order
39 to allow efficient and economically viable provision of tax-supported and
40 fee-supported municipal services, to enable the orderly development of pri-
41 vate lands which benefit from the cost-effective availability of municipal
42 services in urbanizing areas and to equitably allocate the costs of public
43 services in management of development on the urban fringe.

44 (2) General authority. Cities have the authority to annex land into a
45 city upon compliance with the procedures required in this section. In any
46 annexation proceeding, all portions of highways lying wholly or partially
47 within an area to be annexed shall be included within the area annexed unless
48 expressly agreed between the annexing city and the governing board of the
49 highway agency providing road maintenance at the time of annexation. Pro-

1 vided further, that said city council shall not have the power to declare
 2 such land, lots or blocks a part of said city if they will be connected to such
 3 city only by a shoestring or strip of land which comprises a railroad or high-
 4 way right-of-way.

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

8 (a) Category A: Annexations wherein:

9 (i) All private landowners have consented to annexation.

10 1. Annexation where all landowners have consented may
 11 extend beyond the ~~city~~ annexing city's area of impact, pro-
 12 vided that the land is contiguous to the city and ~~that~~ the
 13 annexing city's comprehensive plan includes the area of
 14 annexation in its future land use map adopted by the city
 15 pursuant to section 67-6508 (e), Idaho Code.

16 2. Where abutting areas of city impact have been estab-
 17 lished, modified, or confirmed pursuant to section 67-6526,
 18 Idaho Code, a city may not undertake a category A annexation
 19 into another city's area of impact unless either: five (5)
 20 years have passed since the most recent ordinance or court
 21 judgment establishing, modifying, or confirming the abut-
 22 ting impact area boundary or portion thereof was adopted;
 23 or the city council for the city in whose area of impact the
 24 annexation is sought consents to the annexation. Any such
 25 consent must be reflected in the minutes of the city council
 26 meeting wherein the consent was granted;

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

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

34 (b) Category B: Annexations wherein:

35 (i) The subject lands contain less than one hundred (100) sepa-
 36 rate private ownerships and platted lots of record and where not
 37 all such landowners have consented to annexation; or

38 (ii) The subject lands contain more than one hundred (100) sepa-
 39 rate private ownerships and platted lots of record and where
 40 landowners owning more than fifty percent (50%) of the area of the
 41 subject private lands have consented to annexation prior to the
 42 commencement of the annexation process; or

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

49 (c) Category C: Annexations wherein the subject lands contain more
 50 than one hundred (100) separate private ownerships and platted lots of

1 record and where landowners owning more than fifty percent (50%) of the
2 area of the subject private lands have not consented to annexation prior
3 to commencement of the annexation process.

4 (4) (a) Evidence of consent to annexation. For purposes of this sec-
5 tion, and unless excepted in paragraph (b) of this subsection, consent
6 to annex shall be valid only when evidenced by written instrument con-
7 senting to annexation executed by the owner or the owner's authorized
8 agent. Written consent to annex lands must be recorded in the county
9 recorder's office to be binding upon subsequent purchasers, heirs, or
10 assigns of lands addressed in the consent. Lands need not be contiguous
11 or adjacent to the city limits at the time the landowner consents to an-
12 nexation for the property to be subject to a valid consent to annex; pro-
13 vided however, no annexation of lands shall occur, irrespective of con-
14 sent, until such land becomes contiguous or adjacent to such city.

15 (b) Exceptions to the requirement of written consent to annexation.
16 The following exceptions apply to the requirement of written consent to
17 annexation provided for in paragraph (a) of this subsection:

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

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

26 (5) Annexation procedures. Annexation of lands into a city shall fol-
27 low the procedures applicable to the category of lands as established by this
28 section. The implementation of any annexation proposal wherein the city
29 council determines that annexation is appropriate shall be concluded with
30 the passage of an ordinance of annexation.

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

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

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

43 (ii) The land is laid off into lots or blocks containing not more
44 than five (5) acres of land each, whether the same shall have been
45 or shall be laid off, subdivided or platted in accordance with any
46 statute of this state or otherwise, or whenever the owner or pro-
47 prietor or any person by or with his authority has sold or begun to
48 sell off such contiguous or adjacent lands by metes and bounds in
49 tracts not exceeding five (5) acres, or whenever the land is sur-
50 rounded by the city. Splits of ownership which occurred prior to

1 January 1, 1975, and which were the result of placement of public
2 utilities, public roads or highways, or railroad lines through the
3 property shall not be considered as evidence of an intent to de-
4 velop such land and shall not be sufficient evidence that the land
5 has been laid off or subdivided in lots or blocks. A single sale
6 after January 1, 1975, of five (5) acres or less to a family mem-
7 ber of the owner for the purpose of constructing a residence shall
8 not constitute a sale within the meaning of this section. For pur-
9 poses of this section, "family member" means a natural person or
10 the spouse of a natural person who is related to the owner by blood,
11 adoption or marriage within the first degree of consanguinity;

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

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

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

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

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

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

28 (iv) Compliance with the notice and hearing procedures governing
29 a zoning district boundary change as set forth in section 67-6511,
30 Idaho Code, on the question of whether the property should be
31 annexed and, if annexed, the zoning designation to be applied
32 thereto; provided however, the initial notice of public hearing
33 concerning the question of annexation and zoning shall be pub-
34 lished in the official newspaper of the city and mailed by first
35 class mail to every property owner with lands included in such
36 annexation proposal not less than twenty-eight (28) days prior
37 to the initial public hearing. All public hearing notices shall
38 establish a time and procedure by which comments concerning the
39 proposed annexation may be received in writing and heard and,
40 additionally, public hearing notices delivered by mail shall in-
41 clude a one (1) page summary of the contents of the city's proposed
42 annexation plan and shall provide information regarding where the
43 annexation plan may be obtained without charge by any property
44 owner whose property would be subject to the annexation proposal.

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

48 (A) Property owned by a county or any entity within the
49 county that is used as a fairgrounds area under the provi-
50 sions of chapter 8, title 31, Idaho Code, or chapter 2, title

1 22, Idaho Code, must have the consent of a majority of the
2 board of county commissioners of the county in which the
3 property lies;

4 (B) Property owned by a nongovernmental entity that is used
5 to provide outdoor recreational activities to the public,
6 and that has been designated as a planned unit development of
7 fifty (50) acres or more and does not require or utilize any
8 city services, must have the express written permission of
9 the nongovernmental entity owner;

10 (C) Land, if five (5) acres or greater, actively devoted to
11 agriculture, as defined in section 63-604(1), Idaho Code,
12 regardless of whether it is surrounded or bounded on all
13 sides by lands within a city, must have the express written
14 permission of the owner; and

15 (D) Land, if five (5) acres or greater, actively devoted to
16 forest land, as defined in section 63-1701, Idaho Code, re-
17 gardless of whether it is surrounded or bounded on all sides
18 by lands within a city, must have the express written permis-
19 sion of the owner.

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

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

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

32 (C) The annexation is reasonably necessary for the orderly
33 development of the city;

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

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

41 (i) Compliance with the procedures governing category B annexa-
42 tions; and

43 (ii) Evidence of consent to annexation based upon the following
44 procedures:

45 (A) Following completion of all procedures required for
46 consideration of a category B annexation, but prior to en-
47 actment of an annexation ordinance and upon an affirmative
48 action by the city council, the city shall mail notice to
49 all private landowners owning lands within the area to be
50 annexed, exclusive of the owners of lands that are subject

1 to a consent to annex which complies with subsection (4) (a)
2 of this section defining consent. Such notice shall invite
3 property owners to give written consent to the annexation,
4 include a description of how that consent can be made and
5 where it can be filed, and inform the landowners where the
6 entire record of the subject annexation may be examined.
7 Such mailed notice shall also include a legal description of
8 the lands proposed for annexation and a simple map depicting
9 the location of the subject lands.

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

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

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

37 (6) The decision of a city council to annex and zone lands as a category
38 B or category C annexation shall be subject to judicial review in accordance
39 with the procedures provided in chapter 52, title 67, Idaho Code, and pur-
40 suant to the standards set forth in section 67-5279, Idaho Code. Any such ap-
41 peal shall be filed by an affected person in the appropriate district court
42 no later than twenty-eight (28) days after the date of publication of the
43 annexation ordinance. All cases in which there may arise a question of the
44 validity of any annexation under this section shall be advanced as a matter
45 of immediate public interest and concern and shall be heard by the district
46 court at the earliest practicable time.

47 (7) Annexation of noncontiguous municipal airfield. A city may annex
48 land that is not contiguous to the city and is occupied by a municipally owned
49 or operated airport or landing field. However, a city may not annex any other

1 land adjacent to such noncontiguous facilities which is not otherwise annex-
2 able pursuant to this section.

3 SECTION 4. An emergency existing therefor, which emergency is hereby
4 declared to exist, this act shall be in full force and effect on and after
5 July 1, 2023.