

IN THE SENATE

SENATE BILL NO. 1138, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE LOCAL PLANNING ACT; AMENDING SECTION 67-6511, IDAHO CODE,
2 TO PROVIDE THAT OVERLAY ZONING DISTRICTS HAVE SPECIFIC STANDARDS, TO
3 PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION;
4 AMENDING SECTION 67-6522, IDAHO CODE, TO PROVIDE THAT IN NO EVENT SHALL
5 THE GOVERNING BOARD BY LOCAL ORDINANCE ENACT PROVISIONS THAT ABROGATE
6 THE STATUTORY AUTHORITY OF A PUBLIC HEALTH DISTRICT, STATE AND/OR FED-
7 ERAL AGENCY; AMENDING SECTION 67-6535, IDAHO CODE, TO ENUMERATE EXPRESS
8 STANDARDS REGARDING THE LOCAL PLANNING ACT, TO PROVIDE PROCEDURES FOR
9 RECONSIDERATION, TO PROVIDE STANDARDS FOR APPEAL AND TO MAKE A TECHNI-
10 CAL CORRECTION; AND AMENDING SECTIONS 31-1425 AND 31-3908A, IDAHO CODE,
11 TO PROVIDE CORRECT CODE REFERENCES.
12

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

14 SECTION 1. That Section 67-6511, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 67-6511. ZONING ORDINANCE. (1) Each governing board shall, by ordi-
17 nance adopted, amended, or repealed in accordance with the notice and hear-
18 ing procedures provided under section 67-6509, Idaho Code, establish within
19 its jurisdiction one (1) or more zones or zoning districts where appropri-
20 ate. The zoning districts shall be in accordance with the policies set forth
21 in the adopted comprehensive plan.

22 (a) Within a zoning district, the governing board shall where appro-
23 priate, establish standards to regulate and restrict the height, number
24 of stories, size, construction, reconstruction, alteration, repair or
25 use of buildings and structures; percentage of lot occupancy, size of
26 courts, yards, and open spaces; density of population; and the location
27 and use of buildings and structures. All standards shall be uniform for
28 each class or kind of buildings throughout each district, but the stan-
29 dards in one (1) district may differ from those in another district.

30 (b) Within an overlay zoning district, the governing board shall es-
31 tablish clear and objective standards for the overlay zoning district
32 while ensuring that application of such standards does not constitute a
33 regulatory taking pursuant to Idaho or federal law.

34 (2) Ordinances establishing zoning districts shall be amended as fol-
35 lows:

36 (a) Requests for an amendment to the zoning ordinance shall be submit-
37 ted to the zoning or planning and zoning commission which shall evalu-
38 ate the request to determine the extent and nature of the amendment re-
39 quested. Particular consideration shall be given to the effects of any
40 proposed zone change upon the delivery of services by any political sub-
41 division providing public services, including school districts, within
42 the planning jurisdiction. An amendment of a zoning ordinance appli-

1 cable to an owner's lands or approval of conditional rezoning or denial
2 of a request for rezoning may be subject to the regulatory taking analy-
3 sis provided for by section 67-8003, Idaho Code, consistent with the re-
4 quirements established thereby.

5 (b) After considering the comprehensive plan and other evidence gath-
6 ered through the public hearing process, the zoning or planning and
7 zoning commission may recommend and the governing board may adopt or
8 reject an ordinance amendment pursuant to the notice and hearing pro-
9 cedures provided in section 67-6509, Idaho Code, provided that in the
10 case of a zoning district boundary change, and notwithstanding juris-
11 dictional boundaries, additional notice shall be provided by mail to
12 property owners or purchasers of record within the land being consid-
13 ered, and within three hundred (300) feet of the external boundaries
14 of the land being considered, and any additional area that may be im-
15 pacted by the proposed change as determined by the commission. Notice
16 shall also be posted on the premises not less than one (1) week prior
17 to the hearing. When notice is required to two hundred (200) or more
18 property owners or purchasers of record, alternate forms of procedures
19 which would provide adequate notice may be provided by local ordinance
20 in lieu of posted or mailed notice. In the absence of a locally adopted
21 alternative notice procedure, sufficient notice shall be deemed to have
22 been provided if the city or county provides notice through a display
23 advertisement at least four (4) inches by two (2) columns in size in
24 the official newspaper of the city or county at least fifteen (15) days
25 prior to the hearing date, in addition to site posting on all external
26 boundaries of the site. Any property owner entitled to specific notice
27 pursuant to the provisions of this subsection shall have a right to par-
28 ticipate in public hearings before a planning commission, planning and
29 zoning commission or governing board subject to applicable procedures.

30 (c) The governing board shall analyze proposed changes to zoning or-
31 dinances to ensure that they are not in conflict with the policies of
32 the adopted comprehensive plan. If the request is found by the govern-
33 ing board to be in conflict with the adopted plan, or would result in
34 demonstrable adverse impacts upon the delivery of services by any po-
35 litical subdivision providing public services, including school dis-
36 tricts, within the planning jurisdiction, the governing board may re-
37 quire the request to be submitted to the planning or planning and zoning
38 commission or, in absence of a commission, the governing board may con-
39 sider an amendment to the comprehensive plan pursuant to the notice and
40 hearing procedures provided in section 67-6509, Idaho Code. After the
41 plan has been amended, the zoning ordinance may then be considered for
42 amendment pursuant to ~~section 67-6511~~ paragraph (b), Idaho Code of this
43 subsection.

44 (d) If a governing board adopts a zoning classification pursuant to a
45 request by a property owner based upon a valid, existing comprehensive
46 plan and zoning ordinance, the governing board shall not subsequently
47 reverse its action or otherwise change the zoning classification of
48 said property without the consent in writing of the current property
49 owner for a period of four (4) years from the date the governing board
50 adopted said individual property owner's request for a zoning clas-

1 sification change. If the governing body does reverse its action or
2 otherwise change the zoning classification of said property during the
3 above four (4) year period without the current property owner's consent
4 in writing, the current property owner shall have standing in a court of
5 competent jurisdiction to enforce the provisions of this section.

6 SECTION 2. That Section 67-6522, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 67-6522. COMBINING OF PERMITS -- PERMITS TO ASSESSOR. Where practi-
9 cal, the governing board or zoning or planning and zoning commission may com-
10 bine related permits for the convenience of applicants. State and federal
11 agencies should make every effort to combine or coordinate related permits
12 with the local governing board or commission. In no event shall the govern-
13 ing board by local ordinance enact provisions that abrogate the statutory
14 authority of a public health district, state and/or federal agency. Appro-
15 priate permits as defined by local ordinance shall be forwarded to the county
16 assessor.

17 SECTION 3. That Section 67-6535, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 67-6535. APPROVAL OR DENIAL OF ANY APPLICATION TO BE BASED UPON
20 EXPRESS STANDARDS AND TO BE IN WRITING. (1) The approval or denial of any
21 application required or authorized pursuant to this chapter shall be based
22 upon standards and criteria which shall be set forth in the comprehensive
23 plan, zoning ordinance or other appropriate ordinance or regulation of the
24 city or county. Such approval standards and criteria shall be set forth in
25 express terms in land use ordinances in order that permit applicants, in-
26 terested residents and decision makers alike may know the express standards
27 that must be met in order to obtain a requested permit or approval. Whenever
28 the nature of any decision standard or criterion allows, the decision shall
29 identify aspects of compliance or noncompliance with relevant approval
30 standards and criteria in the written decision.

31 (2) The approval or denial of any application required or authorized
32 pursuant to this chapter shall be in writing and accompanied by a reasoned
33 statement that explains the criteria and standards considered relevant,
34 states the relevant contested facts relied upon, and explains the rationale
35 for the decision based on the applicable provisions of the comprehensive
36 plan, relevant ordinance and statutory provisions, pertinent constitu-
37 tional principles and factual information contained in the record.

38 (a) Failure to identify the nature of compliance or noncompliance with
39 express approval standards or failure to explain compliance or noncom-
40 pliance with relevant decision criteria shall be grounds for invalida-
41 tion of an approved permit or site-specific authorization, or denial of
42 same, on appeal.

43 (b) Any applicant or affected person seeking judicial review of com-
44 pliance with the provisions of this section must first seek reconsid-
45 eration of the final decision within fourteen (14) days. Such written
46 request must identify specific deficiencies in the decision for which
47 reconsideration is sought. Upon reconsideration, the decision may be

1 affirmed, reversed or modified after compliance with applicable pro-
2 cedural standards. A written decision shall be provided to the appli-
3 cant or affected person within sixty (60) days of receipt of the request
4 for reconsideration or the request is deemed denied. A decision shall
5 not be deemed final for purposes of judicial review unless the process
6 required in this subsection has been followed. The twenty-eight (28)
7 day time frame for seeking judicial review is tolled until the date of
8 the written decision regarding reconsideration or the expiration of the
9 sixty (60) day reconsideration period, whichever occurs first.

10 (3) It is the intent of the legislature that decisions made pursuant to
11 this chapter should be founded upon sound reason and practical application
12 of recognized principles of law. In reviewing such decisions, the courts of
13 the state are directed to consider the proceedings as a whole and to evaluate
14 the adequacy of procedures and resultant decisions in light of practical
15 considerations with an emphasis on fundamental fairness and the essentials
16 of reasoned ~~decision-making~~ decision making. Only those whose challenge
17 to a decision demonstrates actual harm or violation of fundamental rights,
18 not the mere possibility thereof, shall be entitled to a remedy or reversal
19 of a decision. Every final decision rendered concerning a site-specific
20 land use request shall provide or be accompanied by notice to the applicant
21 regarding the applicant's right to request a regulatory taking analysis
22 pursuant to section 67-8003, Idaho Code. An applicant denied an application
23 or aggrieved by a final decision concerning matters identified in section
24 67-6521(1)(a), Idaho Code, may, within twenty-eight (28) days after all
25 remedies have been exhausted under local ordinance, seek judicial review
26 under the procedures provided by chapter 52, title 67, Idaho Code. An appeal
27 shall be from the final decision and not limited to issues raised in the re-
28 quest for reconsideration.

29 SECTION 4. That Section 31-1425, Idaho Code, be, and the same is hereby
30 amended to read as follows:

31 31-1425. EXEMPTIONS. (1) All public utilities, as defined in sec-
32 tion 61-129, Idaho Code, shall be exempt from taxation under the provisions
33 of this chapter and shall not be entitled to the privileges or protection
34 hereby provided without their consent in writing filed with the clerk of the
35 board of county commissioners. Provided however, the board of fire protec-
36 tion commissioners, may enter into an agreement with a public utility for
37 the purpose of affording the privileges or protection provided by the fire
38 protection district to all, or such portion, of the property of the public
39 utility as may be agreed upon between the parties and upon such terms and con-
40 ditions as may be mutually agreed upon between the parties to the agreement.

41 (2) The board of county commissioners, upon application and recommen-
42 dation of the board of fire protection commissioners, may, by an ordinance
43 enacted by not later than the second Monday of July, exempt all or a portion
44 of the unimproved real property within the district from taxation, and may
45 exempt all or a portion of the taxable personal property within the district
46 from taxation. Any ordinance of the board of county commissioners granting
47 an exemption from taxation under the provisions of this section must provide
48 that each category of property is treated uniformly. Notice of intent to
49 adopt an ordinance which exempts unimproved real property shall be provided

1 to property owners of record in substantially the same manner as required in
2 section 67-6511(2)(b), Idaho Code, as if the ordinance were making a zoning
3 district boundary change.

4 SECTION 5. That Section 31-3908A, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 31-3908A. EXEMPTIONS FROM TAXATION. The board of county commis-
7 sioners, upon application, may, by an ordinance enacted by not later than
8 the second Monday of July, exempt all or a portion of the unimproved real
9 property within the district from taxation, and may exempt all or a por-
10 tion of the taxable personal property within the district from taxation.
11 Any ordinance of the board of county commissioners granting an exemption
12 from taxation under the provisions of this section must provide that each
13 category of property is treated uniformly. Notice of intent to adopt an or-
14 dinance which exempts unimproved real property shall be provided to property
15 owners of record in substantially the same manner as required in section
16 67-6511(2)(b), Idaho Code, as if the ordinance were making a zoning district
17 boundary change.