

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 25

BY LOCAL GOVERNMENT COMMITTEE

AN ACT

RELATING TO ANNEXATION; AMENDING SECTION 50-222, IDAHO CODE, TO PROVIDE A REQUIREMENT REGARDING ANNEXATION OF CERTAIN AGRICULTURAL LAND AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 50-222, Idaho Code, be, and the same is hereby amended to read as follows:

50-222. ANNEXATION BY CITIES. (1) Legislative intent. The legislature hereby declares and determines that it is the policy of the state of Idaho that cities of the state should be able to annex lands which are reasonably necessary to assure the orderly development of Idaho's cities in order to allow efficient and economically viable provision of tax-supported and fee-supported municipal services, to enable the orderly development of private lands which benefit from the cost-effective availability of municipal services in urbanizing areas and to equitably allocate the costs of public services in management of development on the urban fringe.

(2) General authority. Cities have the authority to annex land into a city upon compliance with the procedures required in this section. In any annexation proceeding, all portions of highways lying wholly or partially within an area to be annexed shall be included within the area annexed unless expressly agreed between the annexing city and the governing board of the highway agency providing road maintenance at the time of annexation. Provided further, that said city council shall not have the power to declare such land, lots or blocks a part of said city if they will be connected to such city only by a shoestring or strip of land which comprises a railroad or highway right-of-way.

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

(a) Category A: Annexations wherein:

(i) All private landowners have consented to annexation. Annexation where all landowners have consented may extend beyond the city area of impact provided that the land is contiguous to the city and that the comprehensive plan includes the area of annexation;

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

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

1 (b) Category B: Annexations wherein:

2 (i) The subject lands contain less than one hundred (100) separate private ownerships and platted lots of record and where not
3 all such landowners have consented to annexation; or
4

5 (ii) The subject lands contain more than one hundred (100) separate private ownerships and platted lots of record and where
6 landowners owning more than fifty percent (50%) of the area of the
7 subject private lands have consented to annexation prior to the
8 commencement of the annexation process; or
9

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

16 (c) Category C: Annexations wherein the subject lands contain more
17 than one hundred (100) separate private ownerships and platted lots of
18 record and where landowners owning more than fifty percent (50%) of the
19 area of the subject private lands have not consented to annexation prior
20 to commencement of the annexation process.

21 (4) (a) Evidence of consent to annexation. For purposes of this section,
22 and unless excepted in paragraph (b) of this subsection ~~(4)~~,
23 consent to annex shall be valid only when evidenced by written instrument
24 consenting to annexation executed by the owner or the owner's
25 authorized agent. Written consent to annex lands must be recorded in
26 the county recorder's office to be binding upon subsequent purchasers,
27 heirs, or assigns of lands addressed in the consent. Lands need not be
28 contiguous or adjacent to the city limits at the time the landowner consents
29 to annexation for the property to be subject to a valid consent to
30 annex; provided however, no annexation of lands shall occur, irrespective
31 of consent, until such land becomes contiguous or adjacent to such
32 city.

33 (b) Exceptions to the requirement of written consent to annexation.
34 The following exceptions apply to the requirement of written consent
35 to annexation provided for in ~~subsection (4)~~ paragraph (a) of this
36 subsection:

37 (i) Enclaved lands: In category A annexations, no consent is necessary
38 for enclaved lands meeting the requirements of subsection
39 (3) (a) (ii) of this section;

40 (ii) Implied consent: In category B and C annexations, valid consent
41 to annex is implied for the area of all lands connected to a
42 water or wastewater collection system operated by the city if the
43 connection was requested in writing by the owner, or the owner's
44 authorized agent, or completed before July 1, 2008.

45 (5) Annexation procedures. Annexation of lands into a city shall follow
46 the procedures applicable to the category of lands as established by this
47 section. The implementation of any annexation proposal wherein the city
48 council determines that annexation is appropriate shall be concluded with
49 the passage of an ordinance of annexation.

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

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

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

13 (ii) The land is laid off into lots or blocks containing not more
14 than five (5) acres of land each, whether the same shall have been
15 or shall be laid off, subdivided or platted in accordance with any
16 statute of this state or otherwise, or whenever the owner or pro-
17 prietor or any person by or with his authority has sold or begun to
18 sell off such contiguous or adjacent lands by metes and bounds in
19 tracts not exceeding five (5) acres, or whenever the land is sur-
20 rounded by the city. Splits of ownership which occurred prior to
21 January 1, 1975, and which were the result of placement of public
22 utilities, public roads or highways, or railroad lines through the
23 property shall not be considered as evidence of an intent to de-
24 velop such land and shall not be sufficient evidence that the land
25 has been laid off or subdivided in lots or blocks. A single sale
26 after January 1, 1975, of five (5) acres or less to a family mem-
27 ber of the owner for the purpose of constructing a residence shall
28 not constitute a sale within the meaning of this section. For pur-
29 poses of this section, "family member" means a natural person or
30 the spouse of a natural person who is related to the owner by blood,
31 adoption or marriage within the first degree of consanguinity;

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

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

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

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

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

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

48 (iv) Compliance with the notice and hearing procedures governing
49 a zoning district boundary change as set forth in section 67-6511,
50 Idaho Code, on the question of whether the property should be

1 annexed and, if annexed, the zoning designation to be applied
 2 thereto; provided however, the initial notice of public hearing
 3 concerning the question of annexation and zoning shall be pub-
 4 lished in the official newspaper of the city and mailed by first
 5 class mail to every property owner with lands included in such
 6 annexation proposal not less than twenty-eight (28) days prior
 7 to the initial public hearing. All public hearing notices shall
 8 establish a time and procedure by which comments concerning the
 9 proposed annexation may be received in writing and heard and,
 10 additionally, public hearing notices delivered by mail shall in-
 11 clude a one (1) page summary of the contents of the city's proposed
 12 annexation plan and shall provide information regarding where the
 13 annexation plan may be obtained without charge by any property
 14 owner whose property would be subject to the annexation proposal.

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

18 (A) Property, owned by a county or any entity within the
 19 county, that is used as a fairgrounds area under the pro-
 20 visions of chapter 8, title 31, Idaho Code, or chapter 2,
 21 title 22, Idaho Code, must have the consent of a majority of
 22 the board of county commissioners of the county in which the
 23 property lies; and

24 (B) Property, owned by a nongovernmental entity, that is
 25 used to provide outdoor recreational activities to the pub-
 26 lic and that has been designated as a planned unit develop-
 27 ment of fifty (50) acres or more and does not require or uti-
 28 lize any city services must have the express written permis-
 29 sion of the nongovernmental entity owner; and

30 (C) Land, if five (5) acres or greater, actively devoted to
 31 agriculture, as defined in section 63-604(1), Idaho Code,
 32 regardless of whether it is surrounded or bounded on all
 33 sides by lands within a city, must have the express written
 34 permission of the owner.

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

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

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

47 (C) The annexation is reasonably necessary for the orderly
 48 development of the city;

49 (vii) Notwithstanding any other provision of this section, rail-
 50 road right-of-way property may be annexed pursuant to this sec-

1 tion only when property within the city adjoins or will adjoin both
2 sides of the right-of-way.

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

6 (i) Compliance with the procedures governing category B annexa-
7 tions; and

8 (ii) Evidence of consent to annexation based upon the following
9 procedures:

10 (A) Following completion of all procedures required for
11 consideration of a category B annexation, but prior to en-
12 actment of an annexation ordinance and upon an affirmative
13 action by the city council, the city shall mail notice to
14 all private landowners owning lands within the area to be
15 annexed, exclusive of the owners of lands that are subject
16 to a consent to annex which complies with subsection (4) (a)
17 of this section defining consent. Such notice shall invite
18 property owners to give written consent to the annexation,
19 include a description of how that consent can be made and
20 where it can be filed, and inform the landowners where the
21 entire record of the subject annexation may be examined.
22 Such mailed notice shall also include a legal description of
23 the lands proposed for annexation and a simple map depicting
24 the location of the subject lands.

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

30 (C) After the date specified in the notice for receipt of
31 written consent, the city clerk shall compile and present
32 to the city council a report setting forth: (i) the total
33 physical area sought to be annexed, and (ii) the total phys-
34 ical area of the lands, as expressed in acres or square feet,
35 whose owners have newly consented in writing to the annexa-
36 tion, plus the area of all lands subject to a prior consent to
37 annex which complies with subsection (4) (a) of this section
38 defining consent. The clerk shall immediately report the
39 results to the city council.

40 (D) Upon receiving such report, the city council shall re-
41 view the results and may thereafter confirm whether consent
42 was received from the owners of a majority of the land. The
43 results of the report shall be reflected in the minutes of
44 the city council. If the report as accepted by the city coun-
45 cil confirms that owners of a majority of the land area have
46 consented to annexation, the city council may enact an ordi-
47 nance of annexation, which thereafter shall be published and
48 become effective according to the terms of the ordinance.
49 If the report confirms that owners of a majority of the land

1 area have not consented to the annexation, the category C
2 annexation shall not be authorized.

3 (6) The decision of a city council to annex and zone lands as a category
4 B or category C annexation shall be subject to judicial review in accordance
5 with the procedures provided in chapter 52, title 67, Idaho Code, and pur-
6 suant to the standards set forth in section 67-5279, Idaho Code. Any such ap-
7 peal shall be filed by an affected person in the appropriate district court
8 no later than twenty-eight (28) days after the date of publication of the an-
9 nexation ordinance. All cases in which there may arise a question of the va-
10 lidity of any annexation under this section shall be advanced as a matter of
11 immediate public interest and concern, and shall be heard by the district
12 court at the earliest practicable time.

13 (7) Annexation of noncontiguous municipal airfield. A city may annex
14 land that is not contiguous to the city and is occupied by a municipally owned
15 or operated airport or landing field. However, a city may not annex any other
16 land adjacent to such noncontiguous facilities which is not otherwise annex-
17 able pursuant to this section.

18 SECTION 2. An emergency existing therefor, which emergency is hereby
19 declared to exist, this act shall be in full force and effect on and after its
20 passage and approval.