

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 127, As Amended, As Amended

BY LOCAL GOVERNMENT COMMITTEE

AN ACT

RELATING TO LOCAL LAND USE PLANNING; REPEALING SECTION 67-6503, IDAHO CODE, RELATING TO PARTICIPATION OF LOCAL GOVERNMENTS; AMENDING CHAPTER 65, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-6503, IDAHO CODE, TO PROVIDE CERTAIN REQUIREMENTS FOR COUNTIES AND CITIES; AMENDING SECTION 67-6504, IDAHO CODE, TO REVISE PROVISIONS REGARDING A GOVERNING BOARD EXERCISING CERTAIN POWERS; AND AMENDING SECTION 67-6526, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES.

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

SECTION 1. That Section 67-6503, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 65, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-6503, Idaho Code, and to read as follows:

67-6503. PARTICIPATION OF LOCAL GOVERNMENTS. (1) If, after a public hearing, a county determines that the development of, or amendment to, a comprehensive plan is in the best interest of the county, it shall exercise one (1) of the options described in section 67-6504(a) or (b), Idaho Code.

(2) If a county determines that the development of a comprehensive plan is not in the best interest of the county, it shall cooperate with any city within that county, or its duly constituted planning commission, zoning commission, or planning and zoning commission with regard to the development of any comprehensive plan for that city. Furthermore, no county is exempt or excused from any mandate or restriction with regard to planning, zoning, or land use otherwise authorized or required by this chapter other than the requirement for a comprehensive plan pursuant to the provisions of this section.

(3) Every city shall exercise one (1) of the options described in section 67-6504(a) or (b), Idaho Code.

SECTION 3. That Section 67-6504, Idaho Code, be, and the same is hereby amended to read as follows:

67-6504. PLANNING AND ZONING COMMISSION -- CREATION -- MEMBERSHIP -- ORGANIZATION -- RULES -- RECORDS -- EXPENDITURES -- STAFF. A city council or board of county commissioners, hereafter referred to as a governing board, may exercise all of the powers required and authorized by this chapter in accordance with this chapter. ~~If a governing board chooses to exercise the powers required and authorized by this chapter it need not follow the procedural requirements established hereby solely for planning and zoning commissions. If a governing board does not elect to exercise the powers conferred by this chapter, it shall establish by ordinance adopted, amended,~~

1 ~~or repealed in accordance with the notice and hearing procedures provided~~
2 ~~in section 67-6509, Idaho Code, a planning commission and a zoning commis-~~
3 ~~sion or a planning and zoning commission acting in both capacities, which may~~
4 ~~act with the full authority of the governing board, excluding the authority~~
5 ~~to adopt ordinances or to finally approve land subdivisions. The powers of~~
6 ~~the board of county commissioners conferred by this chapter shall apply to~~
7 ~~the unincorporated area of the county. Legally authorized planning, zoning,~~
8 ~~or planning and zoning commissions existing prior to enactment of this chap-~~
9 ~~ter shall be considered to be duly constituted under this chapter. Within~~
10 ~~this chapter use of the term "planning and zoning commission" shall include~~
11 ~~the term "planning commission," "zoning commission" and "planning and zon-~~
12 ~~ing commission."~~

13 (a) If a governing board chooses to exercise the powers required and au-
14 thorized by this chapter, it need not follow the procedural requirements es-
15 tablished hereby solely for planning and zoning commissions.

16 (b) If a governing board does not elect to exercise the powers conferred
17 by this chapter, it shall establish by ordinance adopted, amended, or re-
18 pealed in accordance with the notice and hearing procedures provided in sec-
19 tion 67-6509, Idaho Code, a planning commission and a zoning commission or a
20 planning and zoning commission acting in both capacities, which may act with
21 the full authority of the governing board, excluding the authority to adopt
22 ordinances or to finally approve land subdivisions.

23 (c) Membership -- Each commission shall consist of not less than three
24 (3) nor more than twelve (12) voting members, all appointed by a mayor or
25 chairman of the county board of commissioners and confirmed by majority
26 vote of the governing board. An appointed member of a commission must have
27 resided in the county for at least two (2) years prior to his appointment, and
28 must remain a resident of the county during his service on the commission.

29 (1) Not more than one-third (1/3) of the members of any commission
30 appointed by the chairman of the board of county commissioners may re-
31 side within an incorporated city of one thousand five hundred (1,500)
32 or more population in the county; provided however, that any appoint-
33 ment from within an incorporated city with a population of one thousand
34 five hundred (1,500) or more must occur on a rotating basis between all
35 the incorporated cities with a population of one thousand five hundred
36 (1,500) or more within the county.

37 (2) At least one-half (1/2) of the members of any commission appointed
38 by the chairman of the board of county commissioners must reside out-
39 side the boundaries of any city's area of impact; provided however, if
40 the requirements of this paragraph cannot be met the following may oc-
41 cur: if a vacancy occurs for a commission member residing outside the
42 boundaries of any city's area of impact, after public notice of such va-
43 cancy on the commission and solicitation of applicants to fill the posi-
44 tion from outside the boundaries of any city's area of impact, and if the
45 governing board is unable to obtain applicants outside the boundaries
46 of any city's area of impact, then the governing board may appoint from
47 within a city's area of impact; provided however, that any appointment
48 occurring within a city's area of impact must occur on a rotating basis
49 between all the cities' areas of impact in the county.

1 (3) The ordinance establishing a commission to exercise the powers un-
2 der this chapter shall set forth the number of members to be appointed.
3 The term of office for members shall be not less than three (3) years,
4 nor more than six (6) years, and the length of term shall be prescribed
5 by ordinance. No person shall serve more than two (2) full consecutive
6 terms without specific concurrence by two-thirds (2/3) of the govern-
7 ing board adopted by motion and recorded in the minutes. Vacancies oc-
8 ccurring otherwise than through the expiration of terms shall be filled
9 in the same manner as the original appointment. Members may be removed
10 for cause by a majority vote of the governing board. Members shall be
11 selected without respect to political affiliation and may receive such
12 mileage and per diem compensation as provided by the governing board.
13 If a governing board exercises these powers, its members shall be enti-
14 tled to no additional mileage or per diem compensation.

15 (~~b~~d) Organization -- Each commission shall elect a chairman and cre-
16 ate and fill any other office that it may deem necessary. A commission may
17 establish subcommittees, advisory committees or neighborhood groups to ad-
18 vise and assist in carrying out the responsibilities under this chapter. A
19 commission may appoint nonvoting ex officio advisors as may be deemed neces-
20 sary.

21 (~~e~~e) Rules, Records, and Meetings -- Written organization papers or by-
22 laws consistent with this chapter and other laws of the state for the trans-
23 action of business of the commission shall be adopted. A record of meetings,
24 hearings, resolutions, studies, findings, permits and actions taken shall
25 be maintained. All meetings and records shall be open to the public. At
26 least one (1) regular meeting shall be held each month for not less than nine
27 (9) months in a year. A majority of currently appointed voting members of the
28 commission shall constitute a quorum.

29 (~~a~~f) Expenditures and Staff -- With approval of a governing board
30 through the legally required budgetary process, the commission may receive
31 and expend funds, goods, and services from the federal government or agen-
32 cies and instrumentalities of state or local governments or from civic and
33 private sources and may contract with these entities and provide informa-
34 tion and reports as necessary to secure aid. Expenditures by a commission
35 shall be within the amounts appropriated by a governing board. Within such
36 limits, any commission is authorized to hire or contract with employees and
37 technical advisors, including, but not limited to, planners, engineers,
38 architects and legal assistants.

39 SECTION 4. That Section 67-6526, Idaho Code, be, and the same is hereby
40 amended to read as follows:

41 67-6526. AREAS OF CITY IMPACT -- NEGOTIATION PROCEDURE. (a) The gov-
42 erning board of each county and each city therein shall adopt by ordinance
43 following the notice and hearing procedures provided in section 67-6509,
44 Idaho Code, a map identifying an area of city impact within the unincorpo-
45 rated area of the county. A separate ordinance providing for application of
46 plans and ordinances for the area of city impact shall be adopted. Subject
47 to the provisions of section 50-222, Idaho Code, an area of city impact must
48 be established before a city may annex adjacent territory. This separate
49 ordinance shall provide for one (1) of the following:

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

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

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

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

10 (b) If the requirements of section 67-6526(a), Idaho Code, have not
11 been met, either the city or the county may demand compliance with this
12 section by providing written notice to the other of said demand for compli-
13 ance. Once a demand has been made, the city shall select its representative
14 as hereinafter provided, within thirty (30) days of said demand, and the
15 process set forth in this subsection shall commence. The county commission-
16 ers for the county concerned, together with three (3) elected city officials
17 designated by the mayor of the city and confirmed by the council, shall,
18 within thirty (30) days after the city officials have been confirmed by the
19 council, select three (3) city or county residents. These nine (9) persons
20 shall, by majority vote, recommend to the city and county governing boards
21 an area of city impact together with plan and ordinance requirements. The
22 recommendations shall be submitted to the governing boards within one hun-
23 dred eighty (180) days after the selection of the three (3) members at large
24 and shall be acted upon by the governing boards within sixty (60) days of re-
25 ceipt. If the city or county fails to enact ordinances providing for an area
26 of city impact, plan, and ordinance requirements, either the city or county
27 may seek a declaratory judgment from the district court identifying the area
28 of city impact, and plan and ordinance requirements. In defining an area
29 of city impact, the following factors shall be considered: (1) trade area;
30 (2) geographic factors; and (3) areas that can reasonably be expected to be
31 annexed to the city in the future.

32 (c) If areas of city impact overlap, the cities involved shall negoti-
33 ate boundary adjustments to be recommended to the respective city councils.
34 If the cities cannot reach agreement, the board of county commissioners
35 shall, upon a request from either city, within thirty (30) days, recommend
36 adjustments to the areas of city impact which shall be adopted by ordinance
37 by the cities following the notice and hearing procedures provided in sec-
38 tion 67-6509, Idaho Code. If any city objects to the recommendation of the
39 board of county commissioners, the county shall conduct an election, sub-
40 ject to the provisions of section 34-106, Idaho Code, and establish polling
41 places for the purpose of submitting to the qualified electors residing in
42 the overlapping impact area, the question of which area of city impact the
43 electors wish to reside. The results of the election shall be conclusive
44 and binding, and no further proceedings shall be entertained by the board
45 of county commissioners, and the decision shall not be appealable by either
46 city involved. The clerk of the board of county commissioners shall by ab-
47 stract of the results of the election, certify that fact, record the same and
48 transmit copies of the original abstract of the result of the election to the
49 clerk of the involved cities.

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

7 (e) Prior to negotiation or renegotiation of areas of city impact,
8 plan, and ordinance requirements, the governing boards shall submit the
9 questions to the planning, zoning, or planning and zoning commission for
10 recommendation. Each commission shall have a reasonable time fixed by the
11 governing board to make its recommendations to the governing board. The gov-
12 erning boards shall undertake a review at least every ten (10) years of the
13 city impact plan and ordinance requirements to determine whether renegoti-
14 ations are in the best interests of the citizenry.

15 (f) This section shall not preclude growth and development in areas of
16 any county within the state of Idaho which are not within the areas of city
17 impact provided for herein.

18 (g) If the area of impact has been delimited pursuant to the provisions
19 of subsection (a) (1) of this section, persons living within the delimited
20 area of impact shall be entitled to representation on the planning, zoning,
21 or the planning and zoning commission of the city of impact. Such repre-
22 sentation shall as nearly as possible reflect the proportion of population
23 living within the city as opposed to the population living within the ar-
24 eas of impact for that city. To achieve such proportional representation,
25 membership of the planning, zoning or planning and zoning commission, may
26 exceed twelve (12) persons, notwithstanding the provisions of subsection
27 (a) of section 67-6504, Idaho Code. In instances where a city has combined
28 either or both of its planning and zoning functions with the county, rep-
29 resentation on the resulting joint planning, zoning or planning and zoning
30 commission shall as nearly as possible reflect the proportion of population
31 living within the impacted city, the area of city impact outside the city,
32 and the remaining unincorporated area of the county. Membership on such a
33 joint planning, zoning or planning and zoning commission may exceed twelve
34 (12) persons, notwithstanding the provisions of subsection (a) of section
35 67-6504, Idaho Code.