

IN THE SENATE

SENATE BILL NO. 1040

BY LOCAL GOVERNMENT AND TAXATION COMMITTEE

AN ACT

1 RELATING TO CITIES; AMENDING SECTION 50-222, IDAHO CODE, TO PROVIDE THAT
2 CERTAIN ANNEXATIONS MAY EXTEND INTO AND BEYOND THE CITY AREA OF IMPACT;
3 AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
4

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

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

8 50-222. ANNEXATION BY CITIES. (1) Legislative intent. The legisla-
9 ture hereby declares and determines that it is the policy of the state of
10 Idaho that cities of the state should be able to annex lands which are reason-
11 ably necessary to assure the orderly development of Idaho's cities in order
12 to allow efficient and economically viable provision of tax-supported and
13 fee-supported municipal services, to enable the orderly development of pri-
14 vate lands which benefit from the cost-effective availability of municipal
15 services in urbanizing areas and to equitably allocate the costs of public
16 services in management of development on the urban fringe.

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

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

30 (a) Category A: Annexations wherein:

31 (i) All private landowners have consented to annexation. Annex-
32 ation where all landowners have consented may extend into and be-
33 beyond the city area of impact provided that the land is contiguous
34 to the city and that the comprehensive plan includes the area of
35 annexation;

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

41 (iii) The lands are those for which owner approval must be given
42 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, consent
23 to annex shall be valid only when evidenced by written instrument consenting
24 to annexation executed by the owner or the owner's authorized
25 agent. Written consent to annex lands must be recorded in the county
26 recorder's office to be binding upon subsequent purchasers, heirs, or
27 assigns of lands addressed in the consent. Lands need not be contiguous
28 or adjacent to the city limits at the time the landowner consents to annexation
29 for the property to be subject to a valid consent to annex; provided
30 however, no annexation of lands shall occur, irrespective of consent,
31 until such land becomes contiguous or adjacent to such city.

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

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

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

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

48 (a) Procedures for category A annexations: Lands lying contiguous or
49 adjacent to any city in the state of Idaho may be annexed by the city
50 if the proposed annexation meets the requirements of category A. Upon

1 determining that a proposed annexation meets such requirements, a city
2 may initiate the planning and zoning procedures set forth in chapter 65,
3 title 67, Idaho Code, to establish the comprehensive planning policies,
4 where necessary, and zoning classification of the lands to be annexed.

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

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

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

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

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

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

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

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

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

45 (iv) Compliance with the notice and hearing procedures governing
46 a zoning district boundary change as set forth in section 67-6511,
47 Idaho Code, on the question of whether the property should be
48 annexed and, if annexed, the zoning designation to be applied
49 thereto; provided however, the initial notice of public hearing
50 concerning the question of annexation and zoning shall be pub-

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

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

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

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

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

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

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

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

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

49 (C) The annexation is reasonably necessary for the orderly
50 development of the city;

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

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

8 (i) Compliance with the procedures governing category B annexa-
9 tions; and

10 (ii) Evidence of consent to annexation based upon the following
11 procedures:

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

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

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

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

1 If the report confirms that owners of a majority of the land
2 area have not consented to the annexation, the category C
3 annexation shall not be authorized.

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

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

19 SECTION 2. An emergency existing therefor, which emergency is hereby
20 declared to exist, this act shall be in full force and effect on and after
21 July 1, 2023.