

IN THE SENATE

SENATE BILL NO. 1403

BY JUDICIARY AND RULES 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 IMPACT;
4 AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
5

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

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

9 67-6509. RECOMMENDATION AND ADOPTION, AMENDMENT, AND REPEAL OF THE
10 PLAN. ~~(a)~~ (1) The planning or planning and zoning commission, prior to rec-
11 ommending the plan, amendment, or repeal of the plan to the governing board,
12 shall conduct at least one (1) public hearing in which interested persons
13 shall have an opportunity to be heard. At least fifteen (15) days prior to
14 the hearing, notice of the time and place and a summary of the plan to be
15 discussed shall be published in the official newspaper or paper of general
16 circulation within the jurisdiction. The commission shall also make avail-
17 able a notice to other papers, radio, and television stations serving the
18 jurisdiction for use as a public service announcement. Notice of intent to
19 adopt, repeal, or amend the plan shall be sent to all political subdivisions
20 providing services within the planning jurisdiction, including school dis-
21 tricts and the manager or person in charge of the local public airport, at
22 least fifteen (15) days prior to the public hearing scheduled by the com-
23 mission. Following the commission hearing, if the commission recommends a
24 material change to the proposed amendment to the plan ~~which~~ that was con-
25 sidered at the hearing, it shall give notice of its proposed recommendation
26 and conduct another public hearing concerning the matter if the governing
27 board will not conduct a subsequent public hearing concerning the proposed
28 amendment. If the governing board will conduct a subsequent public hear-
29 ing, notice of the planning and zoning commission recommendation shall be
30 included in the notice of public hearing provided by the governing board. A
31 record of the hearings, findings made, and actions taken by the commission
32 shall be maintained by the city or county.

33 ~~(b)~~ (2) The governing board, as provided by local ordinance, prior to
34 adoption, amendment, or repeal of the plan, may conduct at least one (1) pub-
35 lic hearing, in addition to the public hearing~~(s)~~ or hearings conducted by
36 the commission, using the same notice and hearing procedures as the commis-
37 sion. The governing board shall not hold a public hearing, give notice of a
38 proposed hearing, nor take action upon the plan, amendments, or repeal un-
39 til recommendations have been received from the commission. ~~Following con-~~
40 ~~sideration by the governing board, if the governing board makes a material~~
41 ~~change in the recommendation or alternative options contained in the rec-~~
42 ~~ommendation by the commission concerning adoption, amendment or repeal of~~

1 a plan, further notice and hearing shall be provided before the governing
2 board adopts, amends or repeals the plan.

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

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

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

18 67-6526. AREAS OF CITY IMPACT -- ~~NEGOTIATION PROCEDURE.~~ (1) ~~(a) The~~
19 ~~governing board of each county and each city therein shall adopt by ordinance~~
20 ~~following the notice and hearing procedures provided in section 67-6509,~~
21 ~~Idaho Code, a map identifying an area of city impact within the unincorpo-~~
22 ~~rated area of the county. A separate ordinance providing for application of~~
23 ~~plans and ordinances for the area of city impact shall be adopted. Subject~~
24 ~~to the provisions of section 50-222, Idaho Code, an Legislative findings and~~
25 ~~intent.~~

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

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

47 (c) Prior to conducting the public hearings required under this chapter
48 to establish, modify, or confirm an area of impact, cities and counties

1 should work together to develop a proposed area of impact to be consid-
2 ered at the public hearing.

3 (d) Decisions regarding the establishment, modification, or confir-
4 mation of areas of impact are legislative actions and are not subject
5 to judicial review or challenge except as provided in subsection (5) of
6 this section.

7 (2) Establishing an area of impact.

8 (a) Following the notice and hearing procedures provided in section
9 67-6509, Idaho Code, and in accordance with the provisions of subsec-
10 tion (4) of this section, the board of county commissioners of each
11 county shall adopt by ordinance a map identifying the area of impact
12 within the unincorporated area of the county for each city located in
13 the county. Written notice of the hearing to be conducted under this
14 subsection shall be provided by the county to each owner of property
15 located within a proposed area of impact. If notice is also published
16 pursuant to section 67-6509, Idaho Code, individual property owners
17 may not challenge the proceeding on the basis that they did not actu-
18 ally receive notice by mail. The cost of the notice shall be reimbursed
19 to the county by the city whose area of impact is under consideration.
20 The board of county commissioners is not required to receive a recom-
21 mendation from the planning and zoning commission prior to enacting an
22 ordinance establishing an area of impact. An area of city impact must
23 be established before a city may annex adjacent territory pursuant to
24 the provisions of section 50-222, Idaho Code. This separate ordinance
25 shall provide for one (1) of the following:

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

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

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

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

35 (b) If the requirements of section 67-6526(a), Idaho Code, have not
36 been met, either the city or the county may demand compliance with this
37 section by providing written notice to the other of said demand for compli-
38 ance. Once a demand has been made, the city shall select its representative
39 as hereinafter provided, within thirty (30) days of said demand, and the
40 process set forth in this subsection shall commence. The county commission-
41 ers for the county concerned, together with three (3) elected city officials
42 designated by the mayor of the city and confirmed by the council, shall,
43 within thirty (30) days after the city officials have been confirmed by the
44 council, select three (3) city or county residents. These nine (9) persons
45 shall, by majority vote, recommend to the city and county governing boards
46 an area of city impact together with plan and ordinance requirements. The
47 recommendations shall be submitted to the governing boards within one hun-
48 dred eighty (180) days after the selection of the three (3) members at large
49 and shall be acted upon by the governing boards within sixty (60) days of re-
50 ceipt. If the city or county fails to enact ordinances providing for an area

1 of city impact, plan, and ordinance requirements, either the city or county
2 may seek a declaratory judgment from the district court identifying the area
3 of city impact, and plan and ordinance requirements. In defining an area
4 of city impact, the following factors shall be considered: (1) trade area;
5 (2) geographic factors; and (3) areas that can reasonably be expected to be
6 annexed to the city in the future.

7 (b) If the requirements of paragraph (a) of this subsection are not
8 met in establishing an area of impact, the city may demand compliance
9 with this subsection by providing notice to the board of county com-
10 missioners of the demand for compliance. Once a demand has been made,
11 a recommendation committee shall be established. The city and county
12 shall each select a representative to participate on the committee
13 within thirty (30) days of the demand for compliance and the process set
14 forth in this paragraph shall commence.

15 (i) After the city and county representatives have been se-
16 lected, they shall in turn select another city representative
17 living within the applicable city and another county representa-
18 tive living in the county and not within any city to serve on the
19 recommending committee. Meetings of the recommending committee
20 may be hosted by the city or county and shall be conducted in accor-
21 dance with Idaho open meetings law. These four (4) persons shall,
22 by majority vote, provide a written recommendation to the board
23 of county commissioners for an area of impact. The written rec-
24 ommendation shall be submitted to the governing boards within one
25 hundred eighty (180) days after the selection of the recommending
26 committee members.

27 (ii) If the board of county commissioners fails to enact an or-
28 dinance providing for an area of impact within ninety (90) days
29 of receipt of the committee recommendation or expiration of the
30 one hundred eighty (180) days for the committee to make its rec-
31 ommendation, the city may file a petition with the district court
32 to identify the area of impact pursuant to subsection (5) of this
33 section and in accordance with other applicable provisions of this
34 section.

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

1 ~~transmit copies of the original abstract of the result of the election to the~~
2 ~~clerk of the involved cities.~~

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

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

28 (b) Where areas of impact abut each other and adjustments are being
29 proposed, or where areas of impact are proposed to abut each other, the
30 cities involved shall negotiate boundary adjustments to be recommended
31 to the respective city councils. The city council of each city must
32 approve the area of impact or modifications thereto to be proposed to
33 the board of county commissioners. These decisions by the city councils
34 are proposals and not subject to judicial review or challenge. If the
35 cities with impact area boundaries that abut or are proposed to abut
36 each other reach agreement on the proposed boundaries or adjustments
37 thereto, the requested boundaries or adjustments shall be collectively
38 submitted by the cities to the county for consideration in accordance
39 with paragraph (a) of this subsection. If the cities cannot reach
40 agreement, then any or all of the cities involved may submit their re-
41 quests to the board of county commissioners for consideration pursuant
42 to paragraph (a) of this subsection. In either case, the county shall
43 conduct at least one (1) consolidated public hearing where it considers
44 all such requests together.

45 (c) The county may accept, reject, or modify a city's requested modi-
46 fication or confirmation regarding an impact area boundary, but if the
47 county does not make a final decision on the request within ninety (90)
48 days of submission of the request, the city may petition the court to
49 make a determination on the request pursuant to subsection (5) of this
50 section.

1 (4) Provisions applicable to areas of impact.

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

5 (i) Anticipated commercial and residential growth;

6 (ii) Geographic factors;

7 (iii) Transportation infrastructure and systems, including con-
8 nectivity;

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

11 (v) Other public service district boundaries.

12 (b) In addition to the criteria set forth in paragraph (a) of this
13 subsection, an area of impact shall not exceed the areas that are very
14 likely to be annexed to the city within the next five (5) years. Except
15 as otherwise provided in this paragraph, an area of impact shall not
16 extend more than two (2) miles from existing city limits. An area of
17 impact boundary shall not divide county recognized parcels of land.
18 If only a portion of a recognized parcel falls within the two (2) mile
19 limit, then the boundary may extend beyond two (2) miles on that parcel
20 so that it encompasses the entire parcel. Adjustments to an area of
21 impact may be proposed and considered at any time following the initial
22 establishment of the area of impact.

23 (c) Areas of impact may cross county boundaries only by approval of the
24 governing board of county commissioners after following the procedures
25 and complying with the requirements for modification or confirmation of
26 an area of impact boundary.

27 (d) Areas of impact shall not overlap.

28 (e) The applicable county's comprehensive plan and zoning and subdivi-
29 sion ordinances shall apply in the area of impact. The county may adopt
30 individual county comprehensive plan and zoning and subdivision ordi-
31 nance provisions regarding a specific area of impact.

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

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

43 ~~(e) Prior to negotiation or renegotiation of areas of city impact,~~
44 ~~plan, and ordinance requirements, the governing boards shall submit the~~
45 ~~questions to the planning, zoning, or planning and zoning commission for~~
46 ~~recommendation. Each commission shall have a reasonable time fixed by the~~
47 ~~governing board to make its recommendations to the governing board. The gov-~~
48 ~~erning boards shall undertake a review at least every ten (10) years of the~~
49 ~~city impact plan and ordinance requirements to determine whether renegoti-~~
50 ~~ations are in the best interests of the citizenry.~~

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

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

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

15 (j) The county's decision establishing, modifying, or confirming the
16 boundaries for an area of impact shall be made in writing and shall con-
17 tain the reasoning of the board of county commissioners, including ap-
18 plication of the facts relied upon by the commissioners and the applica-
19 tion of the pertinent requirements and criteria to establish or modify
20 an area of impact.

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

40 (5) Petitions for review of establishment, modification, or confirma-
41 tion of area of impact. The decisions by the board of county commissioners
42 regarding the establishment, modification, or confirmation of areas of
43 impact are legislative actions and are not subject to judicial review,
44 declaratory action, or other legal challenge, except as specifically pro-
45 vided in this subsection.

46 (a) (i) If a county has not complied with the provisions of subsec-
47 tion (2) or (3) of this section, the city seeking the establish-
48 ment, modification, or confirmation of an area of impact may pe-
49 tition the district court to establish, modify, or confirm an area
50 of impact that meets the criteria and requirements of subsection

1 (4) of this section in accordance with the procedures provided in
2 this subsection. If the modification of an area of impact boundary
3 involves areas of impact boundaries that abut each other or that
4 are proposed to abut each other, then any city whose area of impact
5 abuts or is proposed to abut another area of impact boundary may
6 file a petition challenging the county's determination regarding
7 only those boundaries that abut or that are proposed to abut each
8 other. Any petition regarding a proposed area of impact or portion
9 thereof that is subject to challenge must be filed in the county in
10 which the proposed area of impact or portion thereof is located.

11 (ii) Before a city may file a petition for review of an area of im-
12 impact decision made by the county, as provided in paragraph (a) (i)
13 of this subsection, it must first file a request for reconsider-
14 ation with the board of county commissioners. Such request must
15 be filed within fourteen (14) days of the issuance of the writ-
16 ten decision by the board of county commissioners and must specify
17 deficiencies in the decision of the board of county commission-
18 ers. Filing a timely request for reconsideration is a prerequi-
19 site to the city having standing to file a petition with the dis-
20 trict court. The county shall act on and issue a written decision
21 on the request for reconsideration within thirty (30) days of re-
22 ceipt of the request or the request shall be deemed denied. A pe-
23 tition challenging the decision of the county must be filed by the
24 city within twenty-eight (28) days after the issuance of a deci-
25 sion by the county on the request for reconsideration or expira-
26 tion of the thirty (30) day period for the county to act on the re-
27 quest.

28 (b) When filing a petition challenging the decision of the board of
29 county commissioners with the clerk of the court, the petitioner shall
30 pay a fee of one hundred dollars (\$100), which fee shall be in full for
31 all clerk's fees except the regular fees provided by law for appeals.
32 The court shall fix a time for the hearing on the petition to be held no
33 less than thirty (30) days and no more than ninety (90) days from the
34 filing of the petition. The petitioner shall serve or cause to be served
35 a copy of the petition and notice of the hearing on the board of county
36 commissioners or county clerk and the mayor or city clerk of such other
37 city whose area of impact boundary is in question pursuant to paragraph
38 (a) of this subsection at least twenty (20) days before the date of the
39 hearing.

40 (c) No petition, objection, or reply authorized under this subsection
41 need be verified.

42 (d) The hearing on a petition filed pursuant to this subsection shall be
43 held within the county in which the area of impact or portion thereof is
44 situated. The regular district court reporter shall reduce to writing
45 the testimony and evidence introduced in the same manner as in a trial of
46 civil actions. The judge of the court, either before or after the hear-
47 ing, may view the lands pertaining to the proposed area of impact, lands
48 on the outside of the city or cities in the same vicinity in which the
49 lands sought to be included in the area of impact are situated, and other
50 lands within the corporate limits of the city that might in any way be

1 affected by the granting of the petition. The judge may consider such
2 modifications as the judge finds in connection with the evidence intro-
3 duced at the hearing, in making and arriving at a final decision and de-
4 termination of the matter.

5 (e) (i) If the court finds that the board of county commission-
6 ers did not follow the notice and hearing requirements provided
7 in this subsection, the court shall remand the matter back to the
8 board of county commissioners to comply with the requirements and
9 issue a new decision. If the court finds that the decision of the
10 board of county commissioners was not arbitrary, capricious, or
11 an abuse of discretion, the court shall affirm the decision of
12 the board of commissioners. If the court finds that the decision
13 of the board of county commissioners was arbitrary, capricious,
14 or an abuse of discretion, the court may remand the matter to the
15 board of county commissioners to correct its decision or the court
16 may determine the appropriate boundaries of the area of impact in
17 question before it. It shall not be necessary for the judge of the
18 court to make written findings of fact or conclusions of law unless
19 the court establishes the area of impact boundary. The court may
20 award attorney's fees and costs to the prevailing party in such an
21 action only if it finds that the other party or parties acted with-
22 out a reasonable basis in fact or law.

23 (ii) If the court establishes the area of impact boundary, such
24 boundary shall become the area of impact boundary as of the date of
25 the decree establishing the boundary. Within twenty (20) days af-
26 ter the filing of the decree, the petitioner shall file or cause to
27 be filed with the county recorder and with the city clerk a certi-
28 fied copy of the decree. The board of county commissioners shall
29 adopt an ordinance consistent with the court decree within thirty
30 (30) days of the entry of the decree or be subject to contempt and
31 other sanctions or actions deemed appropriate by the court.

32 (f) Any city or county aggrieved by the decision of the court may ap-
33 peal from the decision and judgment to the supreme court. The procedure
34 of the appeal shall be the same as the procedure for appeals from final
35 judgment in civil actions.

36 (6) Cities and counties shall review their existing areas of impact
37 and shall reestablish the areas in conformance with the provisions of this
38 section by December 31, 2025. Failure to timely conduct such review and
39 reestablishment shall nullify the current area of impact boundaries and re-
40 quire the city and county to go through the process set forth in subsection
41 (2) of this section.

42 SECTION 3. An emergency existing therefor, which emergency is hereby
43 declared to exist, this act shall be in full force and effect on and after
44 July 1, 2024.