

LEGISLATURE OF THE STATE OF IDAHO
Sixty-fifth Legislature Second Regular Session - 2020

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 451

BY LOCAL GOVERNMENT COMMITTEE

AN ACT

RELATING TO ANNEXATION; AMENDING SECTION 50-222, IDAHO CODE, TO PROVIDE REQUIREMENTS REGARDING ANNEXATION OF CERTAIN FOREST 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 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 (ii) The subject lands contain more than one hundred (100) separate private ownerships and platted lots of record and where
5 landowners owning more than fifty percent (50%) of the area of the
6 subject private lands have consented to annexation prior to the
7 commencement of the annexation process; or

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

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

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

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

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

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

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

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

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

(v) In addition to the standards set forth elsewhere in this section, annexation of the following lands must meet the following requirements:

(A) Property~~r~~ owned by a county or any entity within the county~~r~~ that is used as a fairgrounds area under the provisions of chapter 8, title 31, Idaho Code, or chapter 2, title 22, Idaho Code, must have the consent of a majority of the board of county commissioners of the county in which the property lies;

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

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

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

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

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

(B) The annexation would be consistent with the public purposes addressed in the annexation plan prepared by the city;

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

(vii) Notwithstanding any other provision of this section, railroad right-of-way property may be annexed pursuant to this section only when property within the city adjoins or will adjoin both sides of the right-of-way.

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

(i) Compliance with the procedures governing category B annexations; and

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

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

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

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

(D) Upon receiving such report, the city council shall review the results and may thereafter confirm whether consent was received from the owners of a majority of the land. The results of the report shall be reflected in the minutes of the city council. If the report as accepted by the city council confirms that owners of a majority of the land area have consented to annexation, the city council may enact an ordinance of annexation, which thereafter shall be published and 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 an-
10 nexation ordinance. All cases in which there may arise a question of the va-
11 lidity of any annexation under this section shall be advanced as a matter of
12 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 its
21 passage and approval.