

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 130, As Amended

BY LOCAL GOVERNMENT COMMITTEE

AN ACT

1 RELATING TO ANNEXATION; AMENDING SECTION 50-222, IDAHO CODE, TO REVISE A  
2 PROVISION REGARDING GENERAL AUTHORITY, TO REVISE PROVISIONS REGARDING  
3 ANNEXATION CLASSIFICATIONS, TO REVISE PROVISIONS REGARDING EVIDENCE  
4 OF CONSENT TO ANNEXATION, TO REVISE PROVISIONS REGARDING ANNEXATION  
5 PROCEDURES, TO REMOVE PROVISIONS REGARDING ANNEXATION PROCEDURES, TO  
6 REVISE A PROVISION REGARDING JUDICIAL REVIEW, TO PROVIDE FOR EXPRESS  
7 WRITTEN PERMISSION OF A LANDOWNER IN CERTAIN INSTANCES, AND TO MAKE  
8 TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.  
9

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

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

13 50-222. ANNEXATION BY CITIES. (1) Legislative intent. The legisla-  
14 ture hereby declares and determines that it is the policy of the state of  
15 Idaho that cities of the state should be able to annex lands ~~which that~~ are  
16 reasonably necessary to assure the orderly development of Idaho's cities in  
17 order to allow efficient and economically viable provision of tax-supported  
18 and fee-supported municipal services, to enable the orderly development of  
19 private lands ~~which that~~ benefit from the cost-effective availability of mu-  
20 nicipal services in urbanizing areas and to equitably allocate the costs of  
21 public services in management of development on the urban fringe.

22 (2) General authority. Cities have the authority to annex land into a  
23 city upon compliance with the procedures required in this section. In any  
24 annexation proceeding, all portions of highways lying wholly or partially  
25 within an area to be annexed shall be included within the area annexed unless  
26 expressly agreed between the annexing city and the governing board of the  
27 highway agency providing road maintenance at the time of annexation. Pro-  
28 vided further, that said city council shall not have the power to declare  
29 such land, lots or blocks a part of said city if they will be connected to such  
30 city only by ~~a shoestring or strip of land which comprises~~ a railroad or high-  
31 way right-of-way excluding those rights-of-way that are located immediately  
32 adjacent to such land, lots, or blocks being proposed for annexation and that  
33 are no more than one hundred fifty (150) feet in width.

34 (3) Annexation classifications. Annexations shall be classified and  
35 processed according to the standards for each respective category set forth  
36 herein. The ~~three~~ two (32) categories of annexation are:

37 (a) Category A: Annexations wherein:

38 (i) All private landowners have consented to annexation. Annex-  
39 ation where all landowners have consented may extend beyond the  
40 city area of impact provided that the land is contiguous to the  
41 city as described in subsection (2) of this section and that the  
42 comprehensive plan includes the area of annexation;

1 (ii) Any residential enclaved lands of less than ~~one hundred (100)~~  
 2 ~~privately-owned~~ fifty (50) privately owned parcels, irrespective  
 3 ~~of surface area, which that~~ are surrounded on all sides by land  
 4 within a city ~~or which are bounded on all sides by lands within a~~  
 5 ~~city and by the boundary of the city's area of impact; or~~

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

8 (b) Category B: Annexations wherein:

9 (i) The subject lands contain less than ~~one hundred twenty-five~~  
 10 ~~(10025)~~ separate private ownerships and platted lots of record and  
 11 where not all such landowners have consented to annexation; or

12 (ii) The subject lands contain more than ~~one hundred twenty-five~~  
 13 ~~(10025)~~ separate private ownerships and platted lots of record and  
 14 where landowners owning more than ~~fifty~~ sixty percent (~~50~~60%) of  
 15 the area of the subject private lands have consented to annexation  
 16 prior to the commencement of the annexation process; or

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

23 ~~(c) Category C: Annexations wherein the subject lands contain more~~  
 24 ~~than one hundred (100) separate private ownerships and platted lots of~~  
 25 ~~record and where landowners owning more than fifty percent (50%) of the~~  
 26 ~~area of the subject private lands have not consented to annexation prior~~  
 27 ~~to commencement of the annexation process.~~

28 (4) (a) Evidence of consent to annexation. For purposes of this sec-  
 29 tion, and unless excepted in paragraph (b) of this subsection ~~(4)~~,  
 30 consent to annex shall be valid only when evidenced by written instru-  
 31 ment consenting to annexation executed by the owner or the owner's  
 32 authorized agent. Written consent to annex lands must be recorded in  
 33 the county recorder's office to be binding upon subsequent purchasers,  
 34 heirs, or assigns of lands addressed in the consent. Lands need not be  
 35 contiguous or adjacent to the city limits at the time the landowner con-  
 36 sents to annexation for the property to be subject to a valid consent to  
 37 annex; provided however, no annexation of lands shall occur, irrespec-  
 38 tive of consent, until such land becomes contiguous or adjacent to such  
 39 city.

40 (b) Exceptions to the requirement of written consent to annexation.  
 41 The following exceptions apply to the requirement of written consent  
 42 to annexation provided for in ~~subsection (4)~~ paragraph (a) of this  
 43 subsection:

44 (i) Enclaved lands: In category A annexations, no consent is nec-  
 45 essary for enclaved lands meeting the requirements of subsection  
 46 (3) (a) (ii) of this section;

47 (ii) Implied consent: ~~In category B and C annexations, v~~Valid  
 48 consent to annex is implied for the area of all lands connected  
 49 to a water or wastewater collection system operated by the city  
 50 ~~if the connection was requested in writing by the owner, or the~~

1 ~~owner's authorized agent, or completed before July 1, 2008. Such~~  
2 ~~lands shall not include properties that are utilizing a city's wa-~~  
3 ~~ter or wastewater collection system and that possess written con-~~  
4 ~~sent from that city excluding that property from annexation once~~  
5 ~~contiguous to city boundaries.~~

6 (5) Annexation procedures. Annexation of lands into a city shall fol-  
7 low the procedures applicable to the category of lands as established by this  
8 section. The implementation of any annexation proposal wherein the city  
9 council determines that annexation is appropriate shall be concluded with  
10 the passage of an ordinance of annexation.

11 (a) Procedures for category A annexations: Lands lying contiguous or  
12 adjacent to any city in the state of Idaho may be annexed by the city  
13 if the proposed annexation meets the requirements of category A. Upon  
14 determining that a proposed annexation meets such requirements, a city  
15 may initiate the planning and zoning procedures set forth in chapter 65,  
16 title 67, Idaho Code, to establish the comprehensive planning policies,  
17 where necessary, and zoning classification of the lands to be annexed.  
18 For category A annexations listed in subsection (3) (a) (ii) of this sec-  
19 tion, the initial notice of public hearing concerning the question of  
20 annexation and zoning shall be mailed by first class mail to every prop-  
21 erty owner with lands included in such annexation proposal not less than  
22 sixty (60) calendar days prior to the initial public hearing.

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

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

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

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

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

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

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

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

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

14 (iv) Compliance with the notice and hearing procedures governing  
15 a zoning district boundary change as set forth in section 67-6511,  
16 Idaho Code, on the question of whether the property should be  
17 annexed and, if annexed, the zoning designation to be applied  
18 thereto; provided however, the initial notice of public hearing  
19 concerning the question of annexation and zoning shall be pub-  
20 lished in the official newspaper of the city and mailed by first  
21 class mail to every property owner with lands included in such  
22 annexation proposal not less than ~~twenty-eight~~ sixty (2860) days  
23 prior to the initial public hearing. All public hearing notices  
24 shall establish a time and procedure by which comments concerning  
25 the proposed annexation may be received in writing and heard and,  
26 additionally, public hearing notices delivered by mail shall in-  
27 clude a one (1) page summary of the contents of the city's proposed  
28 annexation plan and shall provide information regarding where the  
29 annexation plan may be obtained without charge by any property  
30 owner whose property would be subject to the annexation proposal.

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

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

40 (B) Property, owned by a nongovernmental entity, that is  
41 used to provide outdoor recreational activities to the pub-  
42 lic and that has been designated as a planned unit develop-  
43 ment of fifty (50) acres or more and that does not require or  
44 utilize any city services must have the express written per-  
45 mission of the nongovernmental entity owner.

46 (vi) After considering the written and oral comments of property  
47 owners whose land would be annexed and other affected persons,  
48 the city council may proceed with the enactment of an ordinance  
49 of annexation and zoning. In the course of the consideration of  
50 any such ordinance, the city must make express findings, to be set

1           forth in the minutes of the city council meeting at which the an-  
2           nexation is approved, as follows:

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

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

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

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

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

17           ~~(i) Compliance with the procedures governing category B annexa-~~  
18           ~~tions; and~~

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

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

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

41           ~~(C) After the date specified in the notice for receipt of~~  
42           ~~written consent, the city clerk shall compile and present~~  
43           ~~to the city council a report setting forth: (i) the total~~  
44           ~~physical area sought to be annexed, and (ii) the total phys-~~  
45           ~~ical area of the lands, as expressed in acres or square feet,~~  
46           ~~whose owners have newly consented in writing to the annexa-~~  
47           ~~tion, plus the area of all lands subject to a prior consent to~~  
48           ~~annex which complies with subsection (4) (a) of this section~~  
49           ~~defining consent. The clerk shall immediately report the~~  
50           ~~results to the city council.~~

1           ~~(D) Upon receiving such report, the city council shall re-~~  
2 ~~view the results and may thereafter confirm whether consent~~  
3 ~~was received from the owners of a majority of the land. The~~  
4 ~~results of the report shall be reflected in the minutes of~~  
5 ~~the city council. If the report as accepted by the city coun-~~  
6 ~~cil confirms that owners of a majority of the land area have~~  
7 ~~consented to annexation, the city council may enact an ordi-~~  
8 ~~nance of annexation, which thereafter shall be published and~~  
9 ~~become effective according to the terms of the ordinance.~~  
10 ~~If the report confirms that owners of a majority of the land~~  
11 ~~area have not consented to the annexation, the category C~~  
12 ~~annexation shall not be authorized.~~

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

23           (7) Except for those lands listed as implied consent in subsection  
24 (4) (b) (ii) of this section, all land, if five (5) acres or greater, that is  
25 either actively devoted to agriculture, as defined in section 63-604(1),  
26 Idaho Code, or forest land, as defined in section 63-1701(4), Idaho Code, re-  
27 gardless of the category of annexation or whether it is surrounded or bounded  
28 on all sides by lands within a city, must have the express written permission  
29 of the landowner.

30           (8) Annexation of noncontiguous municipal airfield. A city may annex  
31 land that is not contiguous to the city and is occupied by a municipally owned  
32 or operated airport or landing field. However, a city may not annex any other  
33 land adjacent to such noncontiguous facilities which is not otherwise annex-  
34 able pursuant to this section.

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