

IN THE SENATE

SENATE BILL NO. 1345

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO JUDICIAL REVIEW; AMENDING SECTION 31-1506, IDAHO CODE, TO RE-  
2 VISE PROVISIONS REGARDING JUDICIAL REVIEW OF DECISIONS OF BOARDS OF  
3 COUNTY COMMISSIONERS AND TO SPECIFY PROCEDURAL PROVISIONS; AMEND-  
4 ING SECTION 31-3411, IDAHO CODE, TO REVISE A CODE REFERENCE; AMENDING  
5 SECTION 67-6519, IDAHO CODE, TO REVISE A CODE REFERENCE; AMENDING SEC-  
6 TION 67-6520, IDAHO CODE, TO REVISE A CODE REFERENCE; AMENDING SECTION  
7 67-6521, IDAHO CODE, TO SPECIFY PROCEDURAL PROVISIONS REGARDING JUDI-  
8 CIAL REVIEW OF CERTAIN LOCAL GOVERNMENT DECISIONS; AND AMENDING SECTION  
9 67-6535, IDAHO CODE, TO REVISE A CODE REFERENCE AND TO MAKE TECHNICAL  
10 CORRECTIONS.  
11

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

13 SECTION 1. That Section 31-1506, Idaho Code, be, and the same is hereby  
14 amended to read as follows:

15 31-1506. JUDICIAL REVIEW OF BOARD DECISIONS. (1) Unless otherwise  
16 provided by law, judicial review of any final act, order or proceeding of the  
17 board ~~as provided in chapter 52, title 67, Idaho Code,~~ shall be initiated by  
18 any person aggrieved thereby within ~~the same time and in the same manner as~~  
19 ~~provided in chapter 52, title 67, Idaho Code,~~ for judicial review of actions  
20 twenty-eight (28) days after the date of the written decision of the final  
21 act, order or proceeding.

22 (2) The board shall keep a record.

23 (3) The court shall not substitute its judgment for that of the board as  
24 to the weight of the evidence on questions of fact.

25 (4) Review by the court shall be conducted without a jury and shall be  
26 confined to the board's record.

27 (5) The court shall affirm the board's decision unless the court finds  
28 the decision, and any findings, inferences and conclusions were:

29 (a) In violation of constitutional or statutory provisions;

30 (b) In excess of the statutory authority of the board;

31 (c) Made upon unlawful procedure; or

32 (d) Arbitrary, capricious or an abuse of discretion.

33 If the board's decision is not affirmed, it shall be set aside, in whole or in  
34 part, and remanded for further proceedings as necessary.

35 (6) Notwithstanding the provisions of subsection (5) of this section,  
36 a board's decision shall be affirmed unless substantial rights of the appel-  
37 lant have been prejudiced.

38 (7) A person is not entitled to judicial review of a board decision un-  
39 til that person has exhausted all administrative remedies required.

40 (8) The filing of the petition for review does not itself stay the ef-  
41 fectiveness or enforcement of the board decision. The board may grant, or  
42 the reviewing court may order, a stay upon appropriate terms.

1       (9) Venue for judicial review of final board actions shall be in the  
2 district court of the county governed by the board.

3       SECTION 2. That Section 31-3411, Idaho Code, be, and the same is hereby  
4 amended to read as follows:

5       31-3411. NOTICE OF APPEAL. The applicant has the right to appeal the  
6 decision of the board. Such appeal shall be filed with the clerk of the  
7 board, in writing, within thirty (30) days of the date of the board's denial.  
8 If the appeal is denied by the board, the applicant shall be entitled to judi-  
9 cial review of the appeal decision of the board, by filing a complaint with  
10 the district court within thirty (30) days of the date of the final written  
11 decision of the board. Proceedings under this chapter shall be conducted  
12 in substantially the same manner provided in ~~the administrative procedures~~  
13 ~~act, chapter 52, title 67, section 31-1506,~~ Idaho Code.

14       SECTION 3. That Section 67-6519, Idaho Code, be, and the same is hereby  
15 amended to read as follows:

16       67-6519. APPLICATION GRANTING PROCESS. (1) As part of ordinances re-  
17 quired or authorized under this chapter, a procedure shall be established  
18 for processing in a timely manner applications for zoning changes, subdivi-  
19 sions, variances, special use permits and such other applications required  
20 or authorized pursuant to this chapter for which a reasonable fee may be  
21 charged.

22       (2) Where the commission hears an application, the commission shall  
23 have a reasonable time fixed by the governing board to examine the applica-  
24 tion before the commission makes its decision on the application or makes  
25 its recommendation to the governing board. Each commission or governing  
26 board shall establish by rule a time period within which a recommendation  
27 or decision must be made. Provided however, any application which relates  
28 to a public school facility shall receive priority consideration and shall  
29 be reviewed for approval, denial or recommendation by the commission or the  
30 governing board at the earliest reasonable time, regardless of the timing  
31 of its submission relative to other applications which are not related to  
32 public school facilities.

33       (3) When considering an application which relates to a public school  
34 facility, the commission shall specifically review the application for the  
35 effect it will have on increased vehicular, bicycle and pedestrian volumes  
36 on adjacent roads and highways. To ensure that the state highway system or  
37 the local highway system can satisfactorily accommodate the proposed school  
38 project, the commission shall request the assistance of the Idaho trans-  
39 portation department if state highways are affected, or the local highway  
40 district with jurisdiction if the affected roads are not state highways. The  
41 Idaho transportation department, the appropriate local highway jurisdic-  
42 tion, or both as determined by the commission, shall review the application  
43 and shall report to the commission on the following issues as appropri-  
44 ate: the land use master plan; school bus plan; access safety; pedestrian  
45 plan; crossing guard plan; barriers between highways and school; location  
46 of school zone; need for flashing beacon; need for traffic control sig-  
47 nal; anticipated future improvements; speed on adjacent highways; traffic

1 volumes on adjacent highways; effect upon the highway's level of service;  
 2 need for acceleration or deceleration lanes; internal traffic circula-  
 3 tion; anticipated development on surrounding undeveloped parcels; zoning  
 4 in the vicinity; access control on adjacent highways; required striping  
 5 and signing modifications; funding of highway improvements to accommodate  
 6 development; proposed highway projects in the vicinity; and any other issues  
 7 as may be considered appropriate to the particular application.

8 (4) Whenever a governing board or zoning or planning and zoning commis-  
 9 sion grants or denies an application, it shall specify:

10 (a) The ordinance and standards used in evaluating the application;

11 (b) The reasons for approval or denial; and

12 (c) The actions, if any, that the applicant could take to obtain ap-  
 13 proval.

14 Every final decision rendered shall provide or be accompanied by notice  
 15 to the applicant regarding the applicant's right to request a regulatory  
 16 taking analysis pursuant to section 67-8003, Idaho Code. An applicant de-  
 17 nied an application or aggrieved by a final decision concerning matters  
 18 identified in section 67-6521(1)(a), Idaho Code, may within twenty-eight  
 19 (28) days after all remedies have been exhausted under local ordinance seek  
 20 judicial review under the procedures provided by this chapter 52, ~~title 67,~~  
 21 ~~Idaho Code.~~

22 SECTION 4. That Section 67-6520, Idaho Code, be, and the same is hereby  
 23 amended to read as follows:

24 67-6520. HEARING EXAMINERS. (1) Hearing examiners include profes-  
 25 sionally trained or licensed staff planners, attorneys, engineers, or  
 26 architects. If authorized by local ordinance adopted, amended, or repealed  
 27 in accordance with the notice and hearing procedures provided in section  
 28 67-6509, Idaho Code, hearing examiners may be appointed by a governing board  
 29 or zoning or planning and zoning commission for hearing applications for  
 30 subdivisions, special use permits, variances and requests for rezoning  
 31 which are in accordance with the plan. Notice, hearing, and records before  
 32 the examiner shall be as provided in this chapter for the zoning or planning  
 33 and zoning commission. Whenever a hearing examiner hears an application, he  
 34 may, pursuant to local ordinance, grant or deny the application or submit a  
 35 recommendation to the governing board or zoning or planning and zoning com-  
 36 mission. His decision or recommendation shall specify:

37 (a) The ordinance and standards used in evaluating the application;

38 (b) The reasons for the recommendation or decision; and

39 (c) The actions, if any, that the applicant could take to obtain an ap-  
 40 proval.

41 (2) Every final decision shall provide or be accompanied by notice to  
 42 the applicant regarding the applicant's right to request a regulatory taking  
 43 analysis pursuant to section 67-8003, Idaho Code. An applicant denied an ap-  
 44 plication or aggrieved by a final decision concerning matters identified in  
 45 section 67-6521(1)(a), Idaho Code, may within twenty-eight (28) days after  
 46 all appellate remedies have been exhausted under local ordinance seek judi-  
 47 cial review as provided by this chapter 52, ~~title 67,~~ ~~Idaho Code.~~

1 SECTION 5. That Section 67-6521, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 67-6521. ACTIONS BY AFFECTED PERSONS.

4 (1) (a) As used herein, an affected person shall mean one having a bona  
5 fide interest in real property which may be adversely affected by:

6 (i) The approval, denial or failure to act upon an application for  
7 a subdivision, variance, special use permit and such other similar  
8 applications required or authorized pursuant to this chapter;

9 (ii) The approval of an ordinance first establishing a zoning dis-  
10 trict upon annexation or the approval or denial of an application  
11 to change the zoning district applicable to specific parcels or  
12 sites pursuant to section 67-6511, Idaho Code; or

13 (iii) An approval or denial of an application for conditional re-  
14 zoning pursuant to section 67-6511A, Idaho Code.

15 (b) Any affected person may at any time prior to final action on an  
16 application required or authorized under this chapter, if no hearing  
17 has been held on the application, petition the commission or governing  
18 board in writing to hold a hearing pursuant to section 67-6512, Idaho  
19 Code; provided however, that if twenty (20) affected persons petition  
20 for a hearing, the hearing shall be held.

21 (c) After a hearing, the commission or governing board may:

22 (i) Grant or deny an application; or

23 (ii) Delay such a decision for a definite period of time for fur-  
24 ther study or hearing. Each commission or governing board shall  
25 establish by ordinance or resolution a time period within which a  
26 recommendation or decision must be made.

27 (d) Every final decision rendered shall provide or be accompanied by  
28 notice to the applicant regarding the applicant's right to request a  
29 regulatory taking analysis pursuant to section 67-8003, Idaho Code. An  
30 affected person aggrieved by a final decision concerning matters iden-  
31 tified in section 67-6521(1)(a), Idaho Code, may within twenty-eight  
32 (28) days after all remedies have been exhausted under local ordinances  
33 seek judicial review as ~~provided by chapter 52, title 67, Idaho Code,~~  
34 and:

35 (i) The court shall not substitute its judgment for that of the  
36 local government as to the weight of the evidence on questions of  
37 fact.

38 (ii) The local government shall base its final decision solely  
39 on the record, and the court shall affirm the local government's  
40 decision unless the court finds that the local government's deci-  
41 sion, findings, inferences and conclusions were:

42 1. In violation of constitutional or statutory provisions;

43 2. In excess of the statutory authority of the board;

44 3. Made upon unlawful procedure; or

45 4. Arbitrary, capricious or an abuse of discretion.

46 If the local government's decision is not affirmed, it shall be set  
47 aside, in whole or in part, and remanded for further proceedings as  
48 necessary.

1            (iii) Notwithstanding the provisions of subparagraph (ii) of this  
 2 paragraph, local government decisions shall be affirmed unless  
 3 substantial rights of the appellant have been prejudiced.

4            (iv) A person is not entitled to judicial review of a local govern-  
 5 ment decision until that person has exhausted all administrative  
 6 remedies required.

7            (v) The filing of the petition for review does not itself stay the  
 8 effectiveness or enforcement of the local government decision.  
 9 The local government may grant, or the reviewing court may order, a  
 10 stay upon appropriate terms.

11           (vi) Venue for judicial review of final board decisions shall be  
 12 in the district court of the county governed by the board.

13           (2) (a) Authority to exercise the regulatory power of zoning in land  
 14 use planning shall not simultaneously displace coexisting eminent do-  
 15 main authority granted under section 14, article I, of the constitution  
 16 of the state of Idaho and chapter 7, title 7, Idaho Code.

17           (b) An affected person claiming "just compensation" for a perceived  
 18 "taking," the basis of the claim being that a final action restricting  
 19 private property development is actually a regulatory action by local  
 20 government deemed "necessary to complete the development of the mate-  
 21 rial resources of the state," or necessary for other public uses, may  
 22 seek a judicial determination of whether the claim comes within de-  
 23 fined provisions of section 14, article I, of the constitution of the  
 24 state of Idaho relating to eminent domain. Under these circumstances,  
 25 the affected person is exempt from the provisions of subsection (1) of  
 26 this section and may seek judicial review through an inverse condem-  
 27 nation action specifying neglect by local government to provide "just  
 28 compensation" under the provisions of section 14, article I, of the con-  
 29 stitution of the state of Idaho and chapter 7, title 7, Idaho Code.

30           SECTION 6. That Section 67-6535, Idaho Code, be, and the same is hereby  
 31 amended to read as follows:

32           67-6535. APPROVAL OR DENIAL OF ANY APPLICATION TO BE BASED UPON EX-  
 33 PRESS STANDARDS AND TO BE IN WRITING. (1) The approval or denial of any  
 34 application required or authorized pursuant to this chapter shall be based  
 35 upon standards and criteria which shall be set forth in the comprehensive  
 36 plan, zoning ordinance or other appropriate ordinance or regulation of the  
 37 city or county. Such approval standards and criteria shall be set forth in  
 38 express terms in land use ordinances in order that permit applicants, in-  
 39 terested residents and decision-makers alike may know the express standards  
 40 that must be met in order to obtain a requested permit or approval. Whenever  
 41 the nature of any decision standard or criterion allows, the decision shall  
 42 identify aspects of compliance or noncompliance with relevant approval  
 43 standards and criteria in the written decision.

44           (2) The approval or denial of any application required or authorized  
 45 pursuant to this chapter shall be in writing and accompanied by a reasoned  
 46 statement that explains the criteria and standards considered relevant,  
 47 states the relevant contested facts relied upon, and explains the rationale  
 48 for the decision based on the applicable provisions of the comprehensive

1 plan, relevant ordinance and statutory provisions, pertinent constitu-  
2 tional principles and factual information contained in the record.

3 (a) Failure to identify the nature of compliance or noncompliance with  
4 express approval standards or failure to explain compliance or noncom-  
5 pliance with relevant decision criteria shall be grounds for invalida-  
6 tion of an approved permit or site-specific authorization, or denial of  
7 same, on appeal.

8 (b) Any applicant or affected person seeking judicial review of com-  
9 pliance with the provisions of this section must first seek reconsid-  
10 eration of the final decision within fourteen (14) days. Such written  
11 request must identify specific deficiencies in the decision for which  
12 reconsideration is sought. Upon reconsideration, the decision may be  
13 affirmed, reversed or modified after compliance with applicable pro-  
14 cedural standards. A written decision shall be provided to the appli-  
15 cant or affected person within sixty (60) days of receipt of the request  
16 for reconsideration or the request is deemed denied. A decision shall  
17 not be deemed final for purposes of judicial review unless the process  
18 required in this subsection has been followed. The twenty-eight (28)  
19 day time frame for seeking judicial review is tolled until the date of  
20 the written decision regarding reconsideration or the expiration of the  
21 sixty (60) day reconsideration period, whichever occurs first.

22 (3) It is the intent of the legislature that decisions made pursuant to  
23 this chapter should be founded upon sound reason and practical application  
24 of recognized principles of law. In reviewing such decisions, the courts of  
25 the state are directed to consider the proceedings as a whole and to evaluate  
26 the adequacy of procedures and resultant decisions in light of practical  
27 considerations with an emphasis on fundamental fairness and the essentials  
28 of reasoned decision-making. Only those whose challenge to a decision  
29 demonstrates actual harm or violation of fundamental rights, not the mere  
30 possibility thereof, shall be entitled to a remedy or reversal of a decision.  
31 Every final decision rendered concerning a site-specific land use request  
32 shall provide or be accompanied by notice to the applicant regarding the  
33 applicant's right to request a regulatory taking analysis pursuant to sec-  
34 tion 67-8003, Idaho Code. An applicant denied an application or aggrieved  
35 by a final decision concerning matters identified in section 67-6521(1) (a),  
36 Idaho Code, may, within twenty-eight (28) days after all remedies have been  
37 exhausted under local ordinance, seek judicial review under the procedures  
38 provided by this chapter 52, ~~title 67, Idaho Code~~. An appeal shall be from  
39 the final decision and not limited to issues raised in the request for recon-  
40 sideration.