



Doug Ricks, Chair
Committee Members
Senate Local Government and Taxation Committee
Idaho State Legislature
P.O. Box 83720
Boise, ID 83720-0081

RE: Letter of Opposition to S1073

Dear Chairman Ricks and Committee Members:

I am writing to you in my capacity as the President of the Idaho Chapter of the American Planning Association (APA Idaho). APA Idaho represents more than 280 local planning officials, private-sector planners, and planning commission members statewide. We are an organization of the technicians, professionals, and policy and decision makers who represent the public interest in carrying out the authority vested with local government under Idaho's Local Land Use Planning Act (LLUPA), Title 67, Chapter 65 of the Idaho Statutes. Many of our members represent cities and counties. We have sent a copy of S1073 to our membership and our legislative committee has reviewed the bill in detail. Based on that review, we wish to express our opposition to S1073 as currently written and offer a recommended path forward to address the concerns with Areas of City Impact.

We were encouraged last year when Senator Lakey stated he would work on a bill that would address the issue of overlapping Areas of City Impact, and he has accomplished that objective. However, we were surprised to read that the bill went beyond this original objective, making more extensive changes that would eliminate area of city impact agreements and leave a boundary as the only matter to negotiate. These additional parts of the bill should be held for further consideration.

It is apparent that several sections of Idaho Code need to be evaluated and modified to further clarify the annexation process. This is evident by three proposed senate bills on the topic. However, bills S1073, S1040 and S1062 are all fundamentally in conflict with one another. We recommend that an Interim Committee is formed to carefully analyze all applicable sections of Idaho Code and come up with a new bill that clarifies the annexation process, requirements and procedures for negotiating ACI boundaries, and the roles of counties and cities, without creating the conflicts that are inherent in S1073. The Interim Committee needs to include experienced planners from APA Idaho and Idaho Municipal Attorneys representatives, as we are the groups that work most closely with annexations, ACI boundaries, and LLUPA.

In the spirit of a commitment to work to resolve these other concerns with the bill, we offer the following comments. Included are a summary of the bill's potential outcomes, followed by a section of specific comments on the text of S1073.

The proposed amendments would:

- Create conflicts with other sections of Idaho Code
- Create conflict with long-range planning procedures, which impacts capital improvement plans, impact fees, water rights, etc.
- Force comprehensive plan boundaries to be arbitrary and potentially overlapping with other cities' planning areas
- Remove an existing collaborative process and forces a judicial review process
- Remove Planning & Zoning Commission's important role in the process
- Create confusing and conflicting procedures and public hearing noticing timelines
- Create uncertainty of vested rights if an existing boundary is automatically "nullified"
- S1073 conflicts with S1040 and S1062

Specific Comments

1. This bill proposes to upend decades of cooperative agreements between all 200 cities and their respective 44 counties on how a city's impact area is managed. The original intent of the bill was to provide standards on how to manage overlapping areas of impact and to prohibit annexation into another city's area of impact. This bill can be limited to just those standards without requiring every impact area in Idaho to be redrawn within one year and gutting the ability for cities and counties to share power by applying "...any mutually agreed plan and ordinances.." as provided by the current law. One of the hallmarks of the Local Land Use Planning Act was the requirement for cities and counties to actually meet and negotiate an area of impact while still respecting each entity's legal authorities. This bill replaces negotiation among elected officials with a judicial review process where ultimately a judge, rather than election by local property owners, may dictate an impact area boundary.

2. Between 2010 and 2020, the population of Idaho increased by over 271,000 people with 82 percent of that growth occurring within Idaho cities. Idaho cities are working within their available resources to accommodate new growth while still providing essential city services. This bill would divert their work to unnecessarily engaging in a wholesale redrawing of a boundary and agreement with a county, when in many cases, the city and county are in complete agreement with the current arrangement.

3. The removal of the requirement in 67-6509 to have a second hearing if the governing board makes a material change to the boundary at their first hearing, particularly if a boundary was enlarged beyond what was shown in the hearing notice, may have an unintended consequence of failing to inform property owners that their property was now included in an impact area. The change to §67-6509 is not just affecting the ACI issues, but final decisions for zone changes, land use text amendments, comprehensive plan updates, wherein material changes could be

made without sufficient notice to the public of these changes. Trust in our government institutions could be further eroded if citizens affected by a material change are not given an opportunity to voice their opinions.

4. In section 67-6526(4), the bill proposes to limit the impact area to only an area where the city will annex in the next 5 years. While the bill recognizes that cities plan for areas much larger, limiting the impact area will reduce the area where the city can procure necessary water rights for the future and plan and budget for water and sewer infrastructure.

A city is given a much longer time frame to plan for their expected water needs. Idaho Code, 43-202B (8) defines a city's Reasonable Anticipated Future Needs (RAFN) as follows:

“Reasonably anticipated future needs” refers to future uses of water by a municipal provider for municipal purposes within a service area which, on the basis of population and other planning data, are reasonably expected to be required within the planning horizon of each municipality within the service area not inconsistent with comprehensive land use plans approved by each municipality. Reasonably anticipated future needs shall not include uses of water within areas overlapped by conflicting comprehensive land use plans.”

Thus, the water rights a city needs to grow may be located outside of an area of impact (but within the city's planning area) and would be vulnerable to appropriation by other city or use.

5. How are the required 5-year reviews coordinated? Should the county take the lead and send their review to each city? If neither the county or the city initiates the review, can a resident file for judicial review?

6. We note a possible drafting error in that the language in 67-6526(1)(c) and 67-6526(3)(c) are redundant and conflicts with the language in 50-222 in that it gives a role to counties in Category A annexation requests while intending to do so only in case where the annexation request is within another city's impact area.

7. The Local Land Use Planning Act in section 67-6507, Idaho Code, states “As part of the planning process, a planning or zoning commission **shall provide for** citizen meetings, hearings, surveys, or other methods, to obtain advice on the planning process, plan, and implementation.” An impact area boundary is implementation of the comprehensive plan, and it would seem prudent to obtain a recommendation from their statutorily required public outreach on a proposed impact area boundary that would implement the comprehensive plan.

8. Do the first city and county representatives need to be residents? We note the use of the word “representative” vs. “residents”. City residents are also county residents. Is it intended that the county resident live in the unincorporated area? This “committee of 4” is an excellent opportunity to involve a planning and zoning commissioner from the city and the county.

9. Section 67-6526(3)(d) requires the county to make a final decision within ninety (90) days of submission of a city's request, or the city may petition the court. It would seem prudent to allow a mutually agreed upon extension if the county has initiated the process but due to some circumstance beyond their control, they will miss the 90-day deadline. What is evidence of a "final decision" – the signing of a written statement or the publication of the ordinance?

10. Section 67-6526(4)(a) provides criteria for defining an area of impact. The criteria should look at the boundary from a perspective of lands to be included but also lands that should be excluded. If there are larger active agricultural lands and industries that would be negatively impacted by proximity to new growth or would impede the extension of public water and sewer (e.g., long-term hop field leases, CAFOs, etc.), they should be considered to be kept outside of an impact area. Also, what is meant by "public service district"? Is this referring to those agencies that are political subdivisions as defined in Idaho Code and are referenced in the noticing provisions of 67-6509(1)?

11. Section 67-6526(4)(b) uses the term "very likely"? What evidence is needed to determine "very likely"?

12. Section 67-6526(4)(f) requires the board of county commissioners provide the city with written notice at least fourteen (14) days in advance of any county public hearings involving land within that city's area of impact. The notice of the city's should be consistent with the procedures in section 67-6509 which require a 15-day notice to political subdivisions, not 14 days. Cities would not be given any notification of administrative level land use decisions that may affect the future placement of infrastructure. This provision also does not allow the county to adopt different timelines within the county ordinance, thus overriding many existing timelines in existing ACI agreements.

13. Can a county require a recommendation from their planning and zoning commission as part of special provisions in the county code? Also, section 67-6526(4)(h) repeats, with different verbiage, part of section 67-6526(1)(b). Is this a drafting error?

14. Why are there different timelines than those in section 67-6535(2)(b) that already prescribe the procedure for filing a request for reconsideration for planning and zoning decisions? The timelines should be consistent unless there is a good reason to deviate from existing standards.

15. Buried in section 67-6526(5)(a)(1) is the sentence "Decisions regarding areas of city impact boundaries that do not abut each other are not subject to judicial review." This would provide no recourse to a city if a county disregards the criteria for establishing an impact boundary as long as a proposed boundary doesn't abut another city's boundary. Second, what tools does the judicial branch have to draw a boundary? Should they have access to county assessor data to ensure the criteria are met?

16. Section 67-6526(6) provides a strict deadline of exactly one year for a county to reestablish a boundary for each city in the county or existing boundaries are nullified. Rural counties with limited staff may have 8 or 9 cities to work with and hold hearings, and possibly have to go to judicial review with multiple cities. This “one size fits all” portends chaos in many counties in Idaho at a time when they are grappling with growth issues. Perhaps this deadline could apply only in case where either the city or the county wishes to redraw the boundary. Also, questions of vested rights may be raised upon “nullification” of an impact area. The bill could provide more clarity on this important issue of the status of pending development applications within impact areas.

As noted above, we urge you to limit this bill to the resolving of overlapping impact areas and hold the bill to allow for more work with an Interim Committee that includes experienced planners from APA Idaho and Idaho Municipal Attorneys representatives.

Thank you for your consideration of our comments.

Questions regarding this position can be sent to Hilary Patterson, APA Idaho President, Patricia Nilsson, APA Idaho Legislative Committee Co-Chair, or Jonathan Spendlove, APA Idaho Legislative Co-Chair (hpatterson@cdaid.org; pnilssonidaho@gmail.com; JSpendlove@tfid.org)

Sincerely yours,



Hilary Patterson
APA Idaho President

cc:

Senator Lakey
APA Idaho Legislative Committee and Members
Seth Gregg, Idaho Association of Counties
Kelley Packer, Association of Idaho Cities
Idaho Municipal Attorneys Inc.
Idaho Prosecuting Attorneys Association