

Email of November 6, 2023, forwarding the email of March 22, 2023, as sent. The sender's email address, phone number and website are redacted. Nothing else is changed.

RE: 2023 SENATE BILL 1062 - Esurance of Direct Judicial Review

From: Brian Rogers <[REDACTED]>

To: JYoung@house.idaho.gov; JVanOrden@senate.idaho.gov

Date: Monday, November 6, 2023, 10:16 AM Pacific (18:16 UTC)

To: Representative Julianne Young, Senator Julie VanOrden

I would appreciate your input on the below. I believe that judicial review is required for these Idaho state codes as did Judge Bakes.

Thanks,

Brian Rogers

[REDACTED]

[REDACTED]

["Intelligence removes complexity."](#) - Me

From: Brian Rogers

Sent: Wednesday, March 22, 2023 8:31 PM

To: JYoung@house.idaho.gov; JVanOrden@senate.idaho.gov

Subject: 2023 SENATE BILL 1062 - Esurance of Direct Judicial Review

To: Representative Julianne Young, Senator Julie VanOrden

I am reaching out to you regarding the 2023 legislative session S1062 and would like to commend you on working on addressing the confusion and legal conflict that Id. 50-222 has caused.

Having read through case law, I believe that it is crucial to amend the newly proposed changes to clarify 50-222 (5)(a) in this specific sentence.

Page 3 lines 18 - 23

Upon determining that a proposed annexation meets the requirements of this subsection, a city may initiate the planning and zoning procedures set forth in chapter 65, title 67, Idaho Code, to establish the comprehensive planning policies, where necessary, and zoning classification of the lands to be annexed.

In reviewing *Burt v. City of Idaho Falls*, 665 P. 2d 1075 - Idaho: Supreme Court 1983, the dissenting Justice Bakes made it clear that not being able to have a judicial review for legislative action is dangerous.

BAKES, Justice, dissenting:

The majority errs in two respects. First, the majority holds that the city council's actions in annexing and changing the zoning of the parcel of land in question, and in amending the comprehensive plan, were legislative rather than quasi-judicial in nature. Second, the majority holds that "such [legislative] actions are not subject to direct judicial review." Ante at 1078. Both holdings are inconsistent with the standards recently adopted and applied by this Court in *Cooper v. Board of County Comm'rs of Ada County*, 101 Idaho 407, 614 P.2d 947 (1980).

...

The majority, in holding that legislative actions are "shielded from direct judicial review" has insulated legislative actions of local zoning bodies. Under today's pronouncement, even a landowner whose land has been directly and adversely affected by a legislative decision of the zoning authority has no right to appeal that decision. **The power of zoning authorities to render legislative decisions is now one that may be exercised virtually unchecked by judicial review of those decisions. (bold added)** Because I feel that this result is totally inconsistent with this Court's previous decisions regarding judicial review of legislative decisions of zoning bodies, I dissent from the majority's opinion.

Unfortunately, this case has set a precedent that judicial review is not required for annexations in Idaho as of 1983. The consequences of this have been profound throughout Idaho and have caused a constitutional imbalance, as Justice Bakes clearly articulates.

I ask that the S1062 be modified to ensure that ANY form of annexation is not held only to the planning and zoning requirements but includes the ability to have judicial review. As an affected landowner, it is concerning that the judicial branch of the three parts of the government does not have the right to hear legislative cases.

Respectfully,

Brian Rogers

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"Intelligence removes complexity." - Me