

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 691

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO SPECIAL USE PERMITS, CONDITIONS AND PROCEDURES; AMENDING SECTION 67-6512, IDAHO CODE, TO REVISE PROVISIONS RELATING TO NOTICE; AMENDING SECTION 67-6512, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO EXCEPTIONS OR WAIVERS OF CERTAIN STANDARDS; DECLARING AN EMERGENCY, PROVIDING APPLICATION AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 67-6512, Idaho Code, be, and the same is hereby amended to read as follows:

67-6512. SPECIAL USE PERMITS, CONDITIONS, AND PROCEDURES. (a) As part of a zoning ordinance each governing board may provide by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for the processing of applications for special or conditional use permits. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed use, and when it is not in conflict with the plan. Denial of a special use permit or approval of a special use permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with requirements established thereby.

(b) Prior to granting a special use permit, at least one (1) public hearing in which interested persons shall have an opportunity to be heard shall be held. At least fifteen (15) days prior to the hearing, notice of the time and place, and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction. Each local government is encouraged to post such notice on its official websites, if one is maintained. Notice may also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice shall be posted on the premises not less than one (1) week prior to the hearing. Notwithstanding jurisdictional boundaries, notice shall also be provided to property owners or purchasers of record within the land being considered, three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the commission, provided that in all cases notice shall be provided individually by mail to property owners or purchasers of record within the land being considered and within three hundred (300) feet of the external boundaries of the land being considered and provided further that where a special use permit is requested by reason of height allowance that notice shall be

provided individually by mail to property owners or purchasers of record within no less than three (3) times the distance of the height of the allowed height of a structure when more than one hundred (100) feet and within no less than one (1) mile when the peak height of a structure in an unincorporated area is four hundred (400) feet or more and, when four hundred (400) feet or more, the structure's proposed location and height shall be stated in the notice. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board.

(c) When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site.

(d) Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those:

- (1) Minimizing adverse impact on other development;
- (2) Controlling the sequence and timing of development;
- (3) Controlling the duration of development;
- (4) Assuring that development is maintained properly;
- (5) Designating the exact location and nature of development;
- (6) Requiring the provision for on-site or off-site public facilities or services;
- (7) Requiring more restrictive standards than those generally required in an ordinance;
- (8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.

(e) Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects of the proposed special use. A special use permit shall not be considered as establishing a binding precedent to grant other special use permits. A special use permit is not transferable from one (1) parcel of land to another.

SECTION 2. That Section 67-6512, Idaho Code, be, and the same is hereby amended to read as follows:

67-6512. SPECIAL USE PERMITS, CONDITIONS, AND PROCEDURES. (a) As part of a zoning ordinance each governing board may provide by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for the processing of applications for special or conditional use permits. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed

1 use, and when it is not in conflict with the plan. Denial of a special use
 2 permit or approval of a special use permit with conditions unacceptable to
 3 the landowner may be subject to the regulatory taking analysis provided for
 4 by section 67-8003, Idaho Code, consistent with requirements established
 5 thereby.

6 (b) Prior to granting a special use permit, at least one (1) public
 7 hearing in which interested persons shall have an opportunity to be heard
 8 shall be held. At least fifteen (15) days prior to the hearing, notice of
 9 the time and place, and a summary of the proposal shall be published in the
 10 official newspaper or paper of general circulation within the jurisdiction.
 11 Each local government is encouraged to post such notice on its official
 12 websites, if one is maintained. Notice may also be made available to other
 13 newspapers, radio and television stations serving the jurisdiction for use
 14 as a public service announcement. Notice shall be posted on the premises not
 15 less than one (1) week prior to the hearing. Notwithstanding jurisdictional
 16 boundaries, notice shall also be provided to property owners or purchasers
 17 of record within the land being considered, three hundred (300) feet of the
 18 external boundaries of the land being considered, and any additional area
 19 that may be substantially impacted by the proposed special use as determined
 20 by the commission. Any property owner entitled to specific notice pursuant
 21 to the provisions of this subsection shall have a right to participate in
 22 public hearings before a planning commission, planning and zoning commis-
 23 sion or governing board.

24 (c) When notice is required to two hundred (200) or more property owners
 25 or purchasers of record, alternate forms of procedures which would provide
 26 adequate notice may be provided by local ordinance in lieu of mailed notice.
 27 In the absence of a locally adopted alternative notice procedure, sufficient
 28 notice shall be deemed to have been provided if the city or county provides
 29 notice through a display advertisement at least four (4) inches by two (2)
 30 columns in size in the official newspaper of the city or county at least fif-
 31 teen (15) days prior to the hearing date, in addition to site posting on all
 32 external boundaries of the site.

33 (d) Upon the granting of a special use permit, conditions may be at-
 34 tached to a special use permit including, but not limited to, those:

- 35 (1) Minimizing adverse impact on other development;
- 36 (2) Controlling the sequence and timing of development;
- 37 (3) Controlling the duration of development;
- 38 (4) Assuring that development is maintained properly;
- 39 (5) Designating the exact location and nature of development;
- 40 (6) Requiring the provision for on-site or off-site public facilities
 41 or services;
- 42 (7) Requiring more restrictive standards than those generally required
 43 in an ordinance;
- 44 (8) Requiring mitigation of effects of the proposed development upon
 45 service delivery by any political subdivision, including school dis-
 46 tricts, providing services within the planning jurisdiction.

47 (e) Prior to granting a special use permit, studies may be required of
 48 the social, economic, fiscal, and environmental effects of the proposed spe-
 49 cial use. A special use permit shall not be considered as establishing a

1 binding precedent to grant other special use permits. A special use permit
2 is not transferable from one (1) parcel of land to another.

3 (f) In addition to other processes permitted by this chapter, excep-
4 tions or waivers of standards, other than use, inclusive of the subject
5 matter addressed by section 67-6516, Idaho Code, in a zoning ordinance may
6 be permitted through issuance of a special use permit or by administrative
7 process specified by ordinance, subject to such conditions as may be imposed
8 pursuant to a local ordinance drafted to implement subsection (d) of this
9 section.

10 SECTION 3. An emergency existing therefor, which emergency is hereby
11 declared to exist, Section 2 of this act shall be in full force and effect on
12 and after passage and approval, and shall apply to all permits and approvals
13 granted prior to the effective date hereof. In addition, special use permits
14 that have been approved and for which all opportunities to appeal pursuant
15 to Title 67, Chapter 65, Idaho Code, have expired as of the effective date
16 hereof, are declared to be valid and of continuing force and effect. Pro-
17 vided however, that claims for damages including diminishment of value shall
18 not be extinguished or otherwise affected by the application of the provi-
19 sions of this section. Section 1 of this act shall be in full force and effect
20 on and after July 1, 2012.