

# Urban Renewal 101

Presented by Ryan P. Armbruster and Meghan S. Conrad

Elam & Burke, PA

June 22, 2017

Pocatello Regional Airport -  
Road and Utility Upgrades



URBAN RENEWAL AGENCY AUTHORITY  
STATUTES ▪ LIMITATIONS ▪ POWERS ▪ FINANCING

# Urban Renewal Agency Authority

- Local Economic Development Act, Title 50, Chapter 29, Idaho Code
- Idaho Urban Renewal Law of 1965, Title 50, Chapter 20, Idaho Code
- Separate and distinct legal entity with independent authority— *Yick Kong v. BRA*, (entirely lay person board) *Hart v. Rexburg URA* (mix of lay persons and council members). These two Idaho Supreme Court decisions also authorize urban renewal agencies to incur long term debt without the necessity of a public vote (2/3 majority) as required of other public entities; Article VIII, § 3 of the Idaho Constitution.
- Models throughout the state vary widely; though with HB606, may become more uniform.

# Limitations On Urban Renewal Agencies

- An urban renewal agency is constitutionally prohibited from funding real property improvements to privately owned property (which includes non-profit entities) and granting funds to private entities (again, including non-profit entities). An urban renewal agency can fund real property improvements to real property owned by another public entity (either local, state, or federal) and may grant funds to another public entity.
- Urban renewal agencies may only expend public funds for the benefit of the public. The agency should be very cautious in considering funding improvements to private property or formally participating with private entities as a partner, joint venturer, etc. Funding could be ultimately deemed a loan or grant or gift of public funds to the private property owner and thus a violation of the Idaho Constitution. [Art. VIII, § 4, Art. XII, § 4, Idaho Constitution]

## Limitations, Continued

- Idaho does not permit its urban renewal agencies to grant tax money to private interests for development or to lend its credit to back loans to private interests.
- \*\*\*Never specifically interpreted by the Idaho Supreme Court; issue has never been squarely before the Court

No county, city, town, township, board of education, or school district, or other subdivision, shall lend, or pledge the credit or faith thereof directly or indirectly, in any manner, to, or in aid of any individual, association or corporation, for any amount or for any purpose whatever, or become responsible for any debt, contract or liability of any individual, association or corporation in or out of this state.

Idaho Constitution, Art. 8, § 4  
(emphasis added).

## Limitations, Continued

- The Idaho Supreme Court has held the purpose behind Art. VIII, § 4 of the Idaho Constitution is to prevent private enterprises from gaining any competitive advantage at the expense of the taxpayers.
- An urban renewal agency must demonstrate that such improvements were primarily beneficial to the public. If an urban renewal agency's actions are challenged as unconstitutional, the agency would face a substantial risk of costly litigation and potentially an award of costs and attorney fees to anyone challenging the program.

## Limitations, continued

- A second constitutional provision also addresses limitations on a public entity to provide a donation, raise money, loan its credit, or aid any company or associated:
- Attorney General Opinion No. 95-07 regarding loaning state employees to the United Way to assist in its annual fundraising campaign

No county, town, city, or other municipal corporation, by vote of its citizens or otherwise, shall ever become a stockholder in any joint stock company, corporation or association whatever, or raise money for, or make donation or loan its credit to, or in aid of, any such company or association: provided, . . . .

Idaho Constitution, Art. 12, § 4.

# What Powers Do URA's Have?

Consistent with the urban renewal plan, to:

- Construct/reconstruct streets, utilities, parks, recreation facilities, off-street parking and public facilities, public buildings and other improvements.
- Acquire and dispose of property or buildings.
- Improve, renovate, clear and prepare for redevelopment properties or buildings.
- Acquire property to eliminate unsanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to public welfare.
- Invest and borrow money, issue bonds, and accept loans and grants.
- Work cooperatively with other public entities.
- Facilitate Local Improvement Districts (LIDs) and Business Improvement Districts (BIDs).
- Potential lease conduit financing in appropriate circumstances. *Greater Boise Auditorium District v. Frazier*

## Authorized Activities under the Law and the Act

- Urban Renewal Project as defined by the Idaho Urban Renewal Law of 1965 (the “Law”) and
- Project or Urban Renewal Project as defined by the Local Economic Development Act (the “Act”)
- The definition of “urban renewal project” contained in the Law is nearly identical to the definition contained in the Act
- The definition of “project costs”



# The Act: Title 50, Chapter 29, Idaho Code

(13) "Project" or "urban renewal project" or "competitively disadvantaged border areas" may include undertakings and activities of a municipality in an urban renewal area for the elimination of deteriorated or deteriorating areas and for the prevention of the development or spread of slums and blight and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. Such undertakings and activities may include:

*See also - I.C. 50-2018(10)*

- (a) Acquisition of deteriorated area...
- (b) Demolition and removal of buildings...
- (c) Installation, construction, or reconstruction of streets...
- (d) Disposition of any property...
- (e) Carrying out plans for...repair...
- (f) Acquisition of real property ... to be rehabilitated
- (g) Acquisition of other property ...to eliminate unsafe conditions, etc. ...
- (h) Lending or investing federal funds...
- (i) Construction of foundations...

# The Law: Title 50, Chapter 29, Idaho Code

14) “Project costs” includes, but is not limited to:

- ▶ (a) Capital costs, including the actual costs of the construction of public works or improvements, facilities, buildings, structures, and permanent fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures, and permanent fixtures; the acquisition of equipment; and the clearing and grading of land;
- ▶ (b) Financing costs...
- ▶ (c) Real property assembly costs...
- ▶ (d) Professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;
- ▶ (e) Direct administrative costs, including reasonable charges for the time spent by city or county employees in connection with the implementation of a project plan;
- ▶ (f) Relocation costs;
- ▶ (g) Other costs incidental to any of the foregoing costs.

# Project Financing Options

- Pay-as-you-go
- Developer reimbursement agreements
- Owner participation agreements
- Conventional bank loans
- Bonds
- Note: Often no tax increment available to fund projects on a pay-as-you-go method until at least two years after plan creation. Many projects require infrastructure immediately in order for a project to go - requiring financing of improvements.

# Project Financing Options, Continued

- Agency decisions regarding project financing are: properly noticed on agendas, decisions are made in open, public meetings, and by agency resolution.
- Before financing occurs, there must be a showing the project is economically feasible and a determination that an agency is credit worthy.

# How Does Revenue Allocation Financing Work?

(Local Economic Development Act)

- When a revenue allocation area is formed, property valuation is calculated on a parcel-by-parcel basis. This is the base assessment roll of the revenue allocation area.
- Base assessment roll for the geographic area under consideration (or collectively if more than one district) cannot exceed 10% of the current assessed value for the entire city.
- Due to redevelopment, it is anticipated the property values will rise. If property values increase above the base value, the added value is called the *increment*.

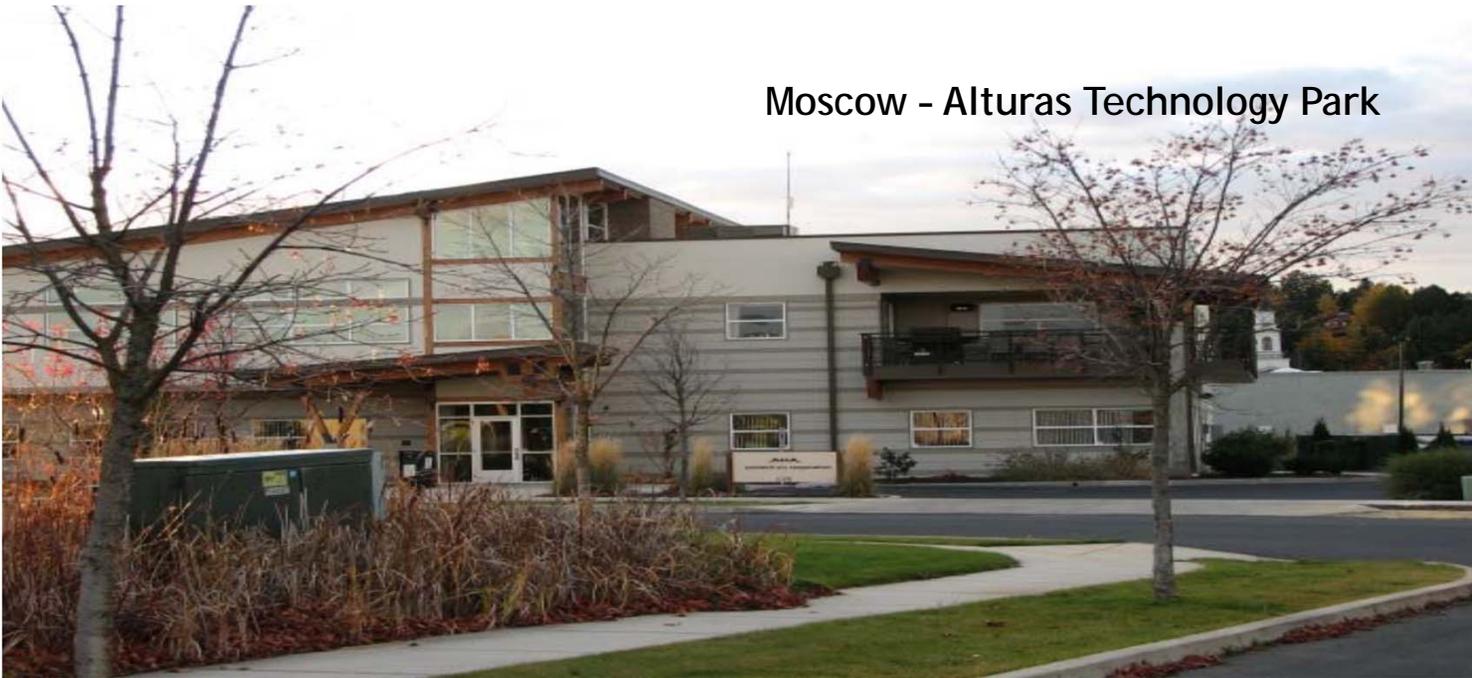
# Revenue Allocation Financing, Continued

- Budget for City, County, and other non-school taxing districts limited to previous year's budget plus 3% and credit for value of new construction. By virtue of amendments in 2007, value of new construction within a revenue allocation area is not included in that credit amount.
- County Assessor sets property values.
- County determines tax rate needed to produce budget submitted by City, County, and other taxing districts.
- Tax rates applied to full value of property outside revenue allocation areas; to the base value of property inside revenue allocation areas.
- Taxes from the base value go to the taxing districts.
- Property tax revenue from the incremental value, if any, goes to the urban renewal agency for a limited period of time (20 year max, except for "grandfathered" projects primarily 24 years).

# Revenue Allocation Financing, Continued

- The increment or revenue allocation that goes to the urban renewal agency is used to pay for improvements within the revenue allocation area.
- An urban renewal agency does not determine property valuation or tax rates.
- Funds received by an urban renewal agency for a given revenue allocation area must be spent in that revenue allocation area with limited exception.
- Funds are invested in activities that are intended to increase prosperity of the revenue allocation area.
- Result is an increase in property values which would not have otherwise occurred but for redevelopment.
- For project areas established after 2008 and voter approvals after 2008, the urban renewal agency will not receive taxes generated by voter approved levies, such as general obligation bonds, school district plant facilities levies, and supplemental levies.
- Also, no school district emergency levy available to urban renewal agency.

## Moscow - Alturas Technology Park



### **PUBLIC OVERSIGHT**

**OPEN MEETINGS ▪ PUBLIC RECORDS ▪ REPORTING REQUIREMENTS**

# Operating In The Public Eye

- Public Record Law - Idaho Code §§ 74-101 to 74-126
- Open Meeting Law - Idaho Code §§ 74-201 to 74-208
  - Notice of Meetings - Agendas, Idaho Code § 74-204
  - Executive Sessions - When Authorized, Idaho Code § 74-206

# Compliance Requirements, Generally

- Public entity compliance with open meetings, public records, audited financial statements, budgets, and annual reports
- Public bidding and contract compliance

# Procurement Rules and Procedures

- ▶ Title 67, Chapter 28, Idaho Code
  - ▶ Public Works Construction Bidding
    - ▶ SB1074 - increased threshold amounts for both formal and informal bidding processes
      - ▶ Best interests of Agency from \$0-\$25,000 to \$0-\$50,000
      - ▶ Informal bidding from \$25,000-\$100,000 to \$50,000-\$200,000
      - ▶ Formal bidding from over \$100,000 to over \$200,000
  - ▶ Public Procurement of Goods and Services Bidding
    - ▶ Best interests of Agency from \$0-\$25,000 to \$0-\$50,000
    - ▶ Informal bidding from \$25,000-\$50,000 to \$50,000-\$100,000
    - ▶ Formal bidding from over \$50,000 to over \$100,000
  - ▶ Exceptions

# Procurement Rules and Procedures, Con't

- ▶ Idaho Code § 67-2320
  - ▶ Professional Service Contracts with Design Professionals, Construction Managers, and Professional Land Surveyors
- ▶ Idaho Code § 54-4511
  - ▶ Construction manager/general contractor

# Financial Reporting Requirements: Audit, Annual Report, Budget and Other

- Audit and Annual Report
  - Idaho Code §§ 50-2006(c) and (d)
- Budget
  - Idaho Code §§ 50-2903(5) and 50-1002; see also 50-2006(d)
- Central registry and reporting portal
  - Idaho Code § 67-450E
- State Tax Commission reporting portal
  - Idaho Code § 50-2913
- Amendment certification
  - Idaho Code § 50-2903A (For plans adopted post-July 1, 2016)



Chobani - Twin Falls

## IMPLEMENTATION

BOARD ▪ CREATION ▪ PLAN ▪ RECENT CHANGES ▪ TAX COMMISSION

# Board Composition And Limitations

- 3 to 9 members appointed by the Mayor and confirmed by the City Council (or by County Commission for County urban renewal agencies).
- Currently more than 40 Idaho cities have urban renewal agencies. Most of these agencies have one or more City Council members on the Board of Commissioners, but members of the local governing body shall constitute less than a majority of the agency board members.
- Many of the agencies are staffed by city employees.

# Conflict Of Interest Laws

- Urban Renewal Law - Interested Public Officials, Commissioners or Employees, Idaho Code § 50-2017
- Ethics in Government Act of 2015 - Chapter 4, Title 74
  - ▶ Gifts/gratuities/events
- Prohibitions against Contracts with Officers - Chapter 5, Title 74

# Ethics in Government Act of 2015: Describes the Public Trust and Fiduciary Obligation

**POLICY AND PURPOSE.** It is hereby declared that the position of a public official at all levels of government is a public trust and it is in the public interest to:

- 1) Protect the integrity of government throughout the state of Idaho while at the same time facilitating recruitment and retention of personnel needed within government;
- (2) Assure independence, impartiality and honesty of public officials in governmental functions;

- (3) Inform citizens of the existence of personal interests which may present a conflict of interest between an official's public trust and private concerns;
- (4) Prevent public office from being used for personal gain contrary to the public interest;
- (5) Prevent special interests from unduly influencing governmental action; and
- (6) Assure that governmental functions and policies reflect, to the maximum extent possible, the public interest.

I.C. § 74-402

# Ethics in Government: Defines Conflict of Interest

- A serving board member has an important fiduciary duty to that entity.
- The Ethics in Government Act defines a conflict of interest.

“Conflict of interest” means any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit of the person or a member of the person’s household, or a business with which the person or a member of the person’s household is associated . . . .

I.C. § 74-403(4)

# Ethics in Government: Exception to Conflict of Interest Provision

- Exceptions to the conflict of interest provision:
  - Where the actions of the public body provide a benefit to a certain class of people, and a public official happens to be a member of that class.
  - There is a de minimis value of goods and services that a public official may receive without violating any of these provisions.
  - A specific exception for non-compensated public officials is set out in I.C. §74-405. This exception applies only when the contract for services has been subject to public bid and the appointed official submitted the lowest bid.

When a person is a public official by reason of his appointment or election to a governing board of a governmental entity for which the person receives no salary or fee as compensation for his service on said board, he shall not be prohibited from having an interest in any contract made or entered into by the board of which he is a member, if he strictly observes the procedure set out in section 18-1361A, Idaho Code.

I.C. § 74-405.

# Urban Renewal Law: Contains a Broader Conflict of Interest Prohibition

- I.C. § 50-2017 prohibits board members from having an interest in a contract connected to an urban renewal project, whether or not the urban renewal agency itself is a contracting party or not.
- Provision has not been amended since the Urban Renewal Law was enacted in 1965.
- Provision likely based on a model act required by HUD to receive federal funding assistance.
- Provision was likely intended to prevent a board member from investing in real estate in an urban renewal area.

...voluntarily acquiring any personal interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project in such municipality or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the agency and such disclosure shall be entered upon the minutes of the agency.

I.C. § 50-2017

# Urban Renewal Law: Exception to Conflict of Interest Prohibition

- There is an exception created for board members that own property in the urban renewal project area at the time the member is appointed.
- Provision is likely intended to address those situations of appointing a board member who may own property within the urban renewal project area.

...If any such official, commissioner or employee presently owns or controls, or owned or controlled within the preceding two (2) years, any interest, direct or indirect, in any property which he knows is included or planned to be included in an urban renewal project, he shall immediately disclose this fact in writing to the agency, and such disclosure shall be entered upon the minutes of the agency, and any such official, commissioner or employee shall not participate in any action by the municipality (or board or commission thereof), or urban renewal agency affecting such property.

I.C. § 50-2017

# Conflict of Interest Under I.C. § 18-1359: Criminal Misdemeanor

- Care must be taken that information obtained in your position as Board Member be disclosed or used which would benefit you or a person in whose welfare you have an interest (i.e. family members).
- Violation of I.C. § 18-1359 is a criminal misdemeanor.

“No public servant shall:

(a) Without the specific authorization of the governmental entity for which he serves, use public funds or property to obtain a pecuniary benefit for himself.

(b) Solicit, accept or receive a pecuniary benefit as payment for services, advice, assistance or conduct customarily exercised in the course of his official duties. This prohibition shall not include trivial benefits not to exceed a value of fifty dollars (\$50.00) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(c) Use or disclose confidential information gained in the course of or by reason of his official position or activities in any manner with the intent to obtain a pecuniary benefit for himself or any other person or entity in whose welfare he is interested or with the intent to harm the governmental entity for which he serves

(d) Be interested in any contract made by him in his official capacity, or by any body or board of which he is a member, except as provided in section 18-1361, Idaho Code.

I.C. § 18-1359(1)(a) through (d)<sup>31</sup>

# How Are Urban Renewal Areas Formed?

- Idaho Urban Renewal Law first adopted in 1965 states there exists in municipalities deteriorating areas which justify the powers conferred by the Act and use of public funds for that purpose.
- City Council (or County Commission) must make preliminary finding there are one or more deteriorating areas within city or county (or competitively disadvantaged border community) in order to activate an urban renewal agency.
- Mayor and City Council (or County Commission) appoint urban renewal agency board members.

# Steps to Create a RAA

- Designate a study area for potential creation of an urban renewal district
- Determine whether conditions within the study area meet the criteria established in State Law and make the requisite findings in an eligibility report

## Definition of Deteriorated Area - I.C. § 50-2903(8)-*see also*, I.C. §§ 50-2018(8) and (9)

"Deteriorated area" means:

(a) Any area, ...in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.

(b) Any area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, results in economic underdevelopment of the area, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use.

(c) Any area which is predominately open and which because of obsolete platting, diversity of ownership, deterioration of structures or improvements, or otherwise, results in economic underdevelopment of the area or substantially impairs or arrests the sound growth of a municipality. The provisions of section 50-2008(d), Idaho Code, shall apply to open areas.

...

(f) "Deteriorated area" does not mean not developed beyond agricultural, or any agricultural operation as defined in section 22-4502(1), Idaho Code, or any forest land as defined in section 63-1701(4), Idaho Code, unless the owner of the agricultural operation or the forest landowner of the forest land gives written consent<sup>34</sup> to be included in the deteriorated area, except for an agricultural operation or forest land that has not been used for three (3) consecutive years.

# Steps, Continued

- Agency Board concurs with the conclusions of the eligibility report and forwards it to the City Council
- If the City Council concurs with Agency Board, then the City Council directs the preparation of an urban renewal plan for the area; plan must include certain information with specificity - see I.C. 50-2905
- Agency prepares and approves the plan and forwards it to the City Council
- City Council receives the plan and refers it to the Planning and Zoning Commission for a determination that the plan is consistent with the City's Comprehensive Plan

# Steps, Continued

- City Council refers the plan to the affected taxing entities and provides at least 30-days notice of the public hearing
- Planning and Zoning Commission determines that the plan is consistent with the City's Comprehensive Plan.
- City Council holds public hearing; determines whether to adopt plan and form urban renewal area.
- City Council adopts the plan, including a revenue allocation financing provision, by ordinance
- Those cities/counties that did not already have an urban renewal agency established prior to July 1, 2011, must seek voter approval to establish the agency
- Generally, the plan approval process takes about 6 months

# Additional Considerations

- Must demonstrate that the proposed area and plan of work is financially feasible
- Must determine that the combined base assessment value of all existing urban renewal districts and any proposed urban renewal districts does not exceed 10% of the total city assessed value
- Owners of “agricultural lands” and “forest lands” must provide written consent

# Urban Renewal Plan - Generally

- A revenue allocation area exists for 20 years (pre-2011 plans grandfathered for longer term of 24 years)
- The urban renewal plan provides the Agency with a process and a basic framework within which to consider and proceed with specific projects
- Due to the length of time a plan is in existence, the plan maintains some flexibility to allow the Agency to respond to changing market and economic conditions.
- Amendments are limited by I.C. § 50-2033 and 50-2903A
  - Cannot amend plan to extend term beyond max term allowed by law
  - Can amend plan one time to add geographic area - limited to 10% of existing RAA
  - Permissible to amend plan to add new projects
  - Plans adopted post-2016 cannot be amended without resetting the base value to current value; limited exceptions

# Property Acquisition

- ▶ Agency has the authority to acquire property; however, the definition of “urban renewal plan” in the Law requires identification of property to be acquired by the Agency. See, I.C. § 50-2018(12)
- ▶ The Agency may acquire property by negotiation or condemnation. See, Idaho Code § 50-2010. The Agency has the authority to exercise the power of eminent domain subject to the limitations set forth in Title 7, Chapter 7, Idaho Code, specifically I.C. § 7-701A.

# Property Disposition

- ▶ Procedures for the disposition of property are set forth in Idaho Code § 50-2011. Property cannot be given to a private person/entity/non-profit without going through a competitive bidding process.
- ▶ Idaho Code § 50-2011(f): Property previously acquired or acquired by an agency for rehabilitation and resale shall be offered for disposition within three (3) years after completion of rehabilitation, or an annual report shall be published by the agency in a newspaper of general circulation...listing any rehabilitated property held by the agency in excess of such three (3) year period, stating the reasons such property remains unsold and indicating plans for its disposition.

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 606, As Amended,  
As Amended in the Senate, As Amended in the Senate

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO URBAN RENEWAL; AMENDING SECTION 50-2006, IDAHO CODE, TO REVISE PROVISIONS FOR THE MAKEUP OF THE BOARD OF COMMISSIONERS OF AN URBAN RENEWAL AGENCY, TO ALLOW FOR THE ELECTION OF COMMISSIONERS, TO REVISE PROVISIONS REGARDING THE FILLING OF VACANCIES, TO PROVIDE RESIDENCY REQUIREMENTS FOR COMMISSIONERS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 50-2033, IDAHO CODE, TO PROVIDE REQUIREMENTS FOR AMENDMENTS; AMENDING SECTION 50-2903, IDAHO CODE, TO REVISE THE DEFINITIONS OF "BASE ASSESSMENT ROLL," "PLAN" OR "URBAN RENEWAL PLAN" AND "PROJECT COSTS"; AMENDING CHAPTER 29, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-2903A, IDAHO CODE, TO PROVIDE THE EFFECT OF AN ORDINANCE TO MODIFY AN URBAN RENEWAL PLAN AND TO PROVIDE EXCEPTIONS; AMENDING SECTION 50-2905, IDAHO CODE, TO PROVIDE THAT ANY CHANGES TO AN URBAN RENEWAL PLAN SHALL BE NOTICED AND COMPLETED IN AN OPEN PUBLIC MEETING; AMENDING CHAPTER 29, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-2905A, IDAHO CODE, TO PROVIDE FOR AN ELECTION ON CERTAIN PROJECTS AND TO DEFINE TERMS; AMENDING CHAPTER 29, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-2913, IDAHO CODE, TO PROVIDE THAT URBAN RENEWAL PLANS BE SUBMITTED TO THE STATE TAX COMMISSION AND TO PROVIDE PENALTIES FOR FAILURE TO REPORT; AMENDING SECTION 63-301A, IDAHO CODE, TO PROVIDE FOR INCLUSION ON THE NEW CONSTRUCTION ROLL WHEN A MODIFICATION OF AN URBAN RENEWAL PLAN OR DE-ANNEXATION OCCURS AND TO MAKE A TECHNICAL CORRECTION PROVIDING SEVERABILITY AND PROVIDING EFFECTIVE DATES.

# 2016 House Bill 606

## As Amended, As Amended in the Senate, As Amended in the Senate

SECTION 1. That Section 50-2006, Idaho Code, be, and the same is hereby amended, to read as follows:

50-2006. URBAN RENEWAL AGENCY. (a) There is hereby created in each municipality an independent public body, corporate and politic to be known as the urban renewal agency. The urban renewal agency shall be organized in accordance with the provisions of this chapter. (b) For the purposes of this chapter, if an ordinance, that such agency shall not transact any business or exercise its powers hereunder until or unless: (1) the local governing body has made the findings prescribed in section 50-2005, Idaho Code; and provided further, that such agency created after July 1, 2011, shall not transact any business or exercise its powers provided for in this chapter until (2) a majority of qualified electors, voting in a citywide or countywide election depending on the municipality in which such agency is created, vote to authorize such agency to transact business and exercise its powers provided for in this chapter. If prior to July 1, 2011, the local governing body has made the findings prescribed in subsection (a)(1) of this section then such agency

shall transact business and shall exercise its powers hereunder and is not subject to the requirements of subsection (a) (2) of this section.

(b) Upon satisfaction of the requirements under subsection (a) of this section, the urban renewal agency is authorized to transact the business and exercise the powers hereunder by a board of commissioners to be established as follows:

(1) Unless provided otherwise in this section, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency, which shall consist of not less than three (3) commissioners nor more than nine (9) commissioners. In the order of appointment, the mayor shall designate the number of commissioners to be appointed, and the term of each, provided that the original term of office of no more than two (2) commissioners shall expire in the same year. The commissioners shall serve for terms not to exceed five (5) years, from the date of appointment, except that all vacancies shall be filled for the unexpired term.

(2) For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed by a majority vote of the board or by the local governing body only after a hearing and after he shall have been given a copy of the charges at least ten (10) days prior to such hearing and have had an opportunity to be heard in person or by counsel. Any commission position which that becomes vacant at a time other than the expiration of a term shall be filled by a majority vote of the board. The board may elect any person to fill such vacant position where such person meets the requirements of a commissioner provided for in this chapter. The mayor or chair of the board of county commissioners, if that is the local governing body, by and with the advice and consent of the local governing body, including the mayor, if applicable, and shall be filled for the unexpired term.

(3) By enactment of an ordinance, the local governing body may appoint and designate itself from among its members to be members of the board of commissioners of the urban renewal agency, provided that such representation shall be less than a majority of the board of commissioners of the urban renewal agency of the members of the local governing body on and after July 1, 2017, in which case all the rights, powers, duties, privileges and immunities vested by the urban renewal law of 1965, and as amended, in a board of commissioners, shall be vested in the local governing body which shall, in all respects when acting as an urban renewal agency, be acting as an arm of state government, entirely separate and distinct from the municipality, to achieve, perform and accomplish the public purposes prescribed and provided by said urban renewal law of 1965, and as amended.

(4) By enactment of an ordinance, the local governing body may terminate the appointed board of commissioners and thereby appoint and designate itself as the board of commissioners of the urban renewal agency for not more than one (1) calendar year.

(5) By enactment of an ordinance, the local governing body may provide that the board of commissioners of the urban renewal agency shall be elected at an election held for such purpose on one (1) of the November dates provided in section 24-106, Idaho Code, and the ordinance may

# Changes to board composition and selection

- ▶ I.C. § 50-2006(b)(3): Members of the local governing body shall constitute less than a majority of the agency board members.
- ▶ I.C. § 50-2006(b)(4): Allows the local governing body to terminate the appointed agency board and designate itself as the board “for not more than one (1) calendar year.” Presumably would allow a local governing body (the full City Council) the ability to take control from a rogue agency board and allow time to appoint a new board with less than a majority elected officials of the city.

# Board composition and selection (continued)

- ▶ I.C. § 50-2006(b)(5): By enactment of an ordinance, the local governing body may provide the agency board members shall stand for election.
- ▶ I.C. § 50-2006(b)(6): Requires board members to be residents of the county where the agency is located. [unintended consequences]

## Grandfather clause (pre-2016 plans): Idaho Code § 50-2903

Definition of “base assessment roll” includes a “grandfather clause” intending to protect plans adopted or modified prior to July 1, 2016. Additionally, subsequent modifications to plans adopted prior to July 1, 2016, are not subject to the new “base reset” limitations as further described in new Section 50-2903A.

This language is intended to respond to the Attorney General opinion issued in November 2015, indicating the base assessment roll values of a RAA should be reset to the current values upon the year of modification.

# What does this mean?

- ▶ For pre-July 1, 2016, urban renewal plans containing revenue allocation authority:
  - ▶ Plans may be amended for any reason (subject to the statutory limitations set forth in Idaho Code §§ 50-2033 and 50-2904) without risk of a base reset.
  - ▶ The attestation requirements set forth in Idaho Code § 50-2903A do not apply.
  - ▶ Creates administrative challenges for agencies that have plans adopted before and after July 1, 2016.

## Idaho Code § 50-2903A

A New Section: Plans adopted post-July 1, 2016, are subject to base reset upon modification except in limited circumstances.

The effect of a base reset is the loss of the increment value resulting in an immediate loss of revenue to an urban renewal agency leading to default on existing obligations. This statute will impact plans adopted post-July 1, 2016, and subsequent modifications to those plans.

# Idaho Code § 50-2903A

## A New Section (continued)

A modification shall not be deemed to occur in the following limited circumstances:

- (1) To make technical or ministerial plan amendments
- (2) To make a plan amendment that increases the revenue allocation area boundary by up to 10%
- (3) To de-annex parcels from a revenue allocation area. Provides statutory justification and process
- (4) To make a plan amendment to support growth of an existing commercial or industrial project in an existing revenue allocation area

This exception can only be used in limited circumstances and is subject to varying interpretations.

# Idaho Code § 50-2903A

## A New Section (continued)

- ▶ Requires that the State Tax Commission, the county clerk, and the county assessor be notified of any urban renewal plan amendments.
- ▶ If a plan modification is deemed to have occurred, the base assessment value will be reset and accrued tax increment will be lost.
- ▶ Upon certification by the agency of outstanding indebtedness that cannot be repaid prior to termination, a reset does not occur; however, the agency is required to rebate to the taxing districts any amount that exceeds the amount necessary to pay the indebtedness as certified.

Issue: The agency has the ability to protect indebtedness and “all expenses necessary to comply with all covenants related to the indebtedness” but is silent on retaining funds for agency operations and other related expenses. Further, it is our understanding this language will require specific disclosure by an agency seeking to borrow funds and may result in negative responses from those sources, higher financing costs, or more burdensome loan covenants. Undoubtedly, this new language will make it more difficult to secure financing for future projects.

If certification not made, the default is that a plan modification occurred and the base will be reset.

# How does this effect existing plans?

- ▶ Idaho Code § 50-2903A does not have any effect on plans adopted prior to July 1, 2016, and any amendments to those plans.
- ▶ For plans adopted post-July 1, 2016, there is no ability to amend the plan to support an unanticipated economic development project without risk of a base reset.
- ▶ Increased administrative responsibilities.

# “With specificity” Idaho Code 50-2905

Idaho Code § 50-2905 is amended to address the contents of a plan

- a. Requires that a revenue allocation area plan must state with specificity details about the types of projects that are contemplated [no definition of specificity].
- b. Requires that any changes to an urban renewal plan be noticed and completed in an open public meeting.

# Plan specificity - what does that mean?

- ▶ Requiring “specificity” will limit an agency’s ability to respond to new economic development opportunities.
- ▶ Additionally, as a plan is implemented, it is not uncommon for there to be changes to the location of improvements. At what point does a change deviate from the specificity requirement to require a plan amendment?

# Idaho Code § 50-2905A

## A New Section: Limits use of TIF to fund construction of public buildings.

Idaho Code § 50-2905A is a new section of Idaho Code limiting the use of revenue allocation funds to fund the construction of certain municipal buildings.

# Idaho Code § 50-2905A

## A New Section (continued)

- ▶ Allows the use of revenue allocation funds to fund up to 50% of the costs to construct municipal buildings.
- ▶ If 51% or more of project costs to construct a municipal building are to be funded by revenue allocation funds, the project must be approved by 60% of the participating qualified electors.
- ▶ Municipal building is defined as, and therefore, the voting provisions only apply to the construction of: an administrative building, a city hall, a library, a courthouse, public safety or law enforcement buildings, other judicial buildings, fire stations, jails and detention facilities.
  - ▶ Public parking structures are not defined as “municipal buildings”, and therefore, no voter approval is required.

# What can TIF be used for?

- ▶ Tax increment funds can be used to fund the cost to construct certain public buildings in an amount up to 50%
- ▶ There is no limitation on the use of tax increment to fund projects associated with the new public building, such as sidewalks, parking, etc.

# Idaho Code § 50-2913

## A New Section: State Tax Commission Repository

Idaho Code § 50-2913 established urban renewal reporting requirements and penalties for non-compliance.

# Idaho Code § 50-2913

## A New Section (continued)

- ▶ Establishes a central repository to be managed by the State Tax Commission for urban renewal agencies to upload urban renewal plans and urban renewal plan amendments.
  - ▶ Repository link on the State Tax Commission's homepage
- ▶ Urban renewal agencies that fail to comply with reporting requirements will experience, among other penalties, loss of new increment and a temporary loss of property tax replacement revenues.

# More reporting requirements!

- ▶ Increased administrative responsibilities.
- ▶ Unlike protections built into Idaho Code § 50-2903A, there are no protections for outstanding indebtedness, plus this language will require specific disclosure by an agency seeking to borrow funds and may result in negative responses from those sources, higher financing costs, or more burdensome loan covenants. Undoubtedly, this new language will make it more difficult to secure financing for future projects.

# Best Practice Tips

- ▶ If you receive a communication from the STC or from LSO - **RESPOND EVEN IF YOU THINK THE COMMUNICATION IS IN ERROR!**
  - ▶ The penalties for non-compliance with Idaho Code §§ 50-2903A and 50-2913 can be significant.

## Idaho Falls - River Commons District



**ISSUES IDENTIFIED OVER THE YEARS  
BY THE IDAHO LEGISLATURE AND URBAN RENEWAL CRITICS**

# Issues

- Definition of blight/ deteriorating conditions
- The development of open land/Greenfield development
- Board composition/ qualifications /conflict of interest/election
- Enforcement of the 10% rule/compliance/punishment if the limit is exceeded
- Perceived lack of accountability/ transparency to the general public
- Long term debt without vote
- “Distinguish TIF use for “blight” from economic development/mixed use projects
- Provide taxing entities with meaningful input/ comment/consultation
- Rebates to taxing districts
- Property tax impact
- “Giveaways”
- Penalties for non-compliance
- Limitations on types of projects that can be funded

An aerial photograph of Coeur d'Alene, Idaho, showing a large industrial site with a river in the foreground. The site is a large, flat, brownish-grey area, likely a former industrial or mining site, with some buildings and equipment visible. The river is in the foreground, and the surrounding area is a mix of residential and commercial buildings, trees, and roads. The text "Coeur d'Alene Before Urban Renewal" is overlaid in the top right corner.

Coeur d'Alene  
Before Urban Renewal

# URBAN Renewal In Idaho

## A Valuable Tool Worth Preserving