

**MINUTES**  
**Approved by the Committee**  
**Urban Renewal Interim Committee**  
**Monday, December 14, 2015**  
**9:00 A.M.**  
**WW17**  
**Boise, Idaho**

The meeting was called to order by Co-chair Senator Dan Johnson at 9:00 a.m. Members present were: Co-chair Representative Rick Youngblood, Senators Jeff Siddoway, Chuck Winder, and Maryanne Jordan; Representatives Robert Anderst, Kathleen Sims, Lance Clow, and Hy Kloc. Senator Mary Souza was absent and excused. Staff present were Keith Bybee and Mike Nugent from the Legislative Services Office.

Others in attendance included: Russell Westerberg, Capital City Development Corporation; Ryan Armbruster, Elam and Burke; Richard Beck, Ada County; Russ Hendricks, Idaho Farm Bureau Federation; Betsy Russell, the Spokesman Review; Ken McClure, Givens Pursley; Teresa Molitor, Ignite CDA/Jerome URA; Megan Ronk, Idaho Department of Commerce; Larry Maneely, Ada County Board of County Commissioners; Anton Squyres, MDC; Carrie Foster, Lobby Idaho; ; Andrew Mitzel, Idaho Realtors; Tyler Mallard, Risch Pisca; John Watts, Veritas Advisors; Jonathan Parker, Holland and Hart; Meghan Conrad, Elam and Burke; Max Vaughn, Minidoka County Assessor, and Seth Grigg, Association of Idaho Cities.

NOTE: Copies of the draft legislation can be found at <http://www.legislature.idaho.gov/sessioninfo/2015/interim/urban.htm> and are also on file in the Legislative Services Office.

**Senator Jordan moved that the minutes from November 16, 2015, be approved and Senator Siddoway seconded his motion. The motion passed by voice vote with Senator Winder abstaining as he was not at the previous meeting held November 16, 2015.**

Co-chair Johnson said the purpose of the meeting was to go through the draft legislation DRMPN090, mark it up and make recommendations to the Legislature regarding the urban renewal issue. Co-chair Johnson called on Mr. Nugent to present the legislation. Mr. Nugent said the draft legislation would:

- Move the urban renewal law and the economic development law into one chapter;
- Provide a common set of definitions for the chapter;
- Allow city councils to have the urban renewal commissioners elected by adoption of an ordinance;
- Require a commissioner to live in the county where the urban renewal agency is located;
- Put a limit on public buildings with a cost of over one million dollars and fifty-one percent or more of the cost of the building comes from the urban renewal agency;
- Provide for a repository at the State Tax Commission for urban renewal plans; and
- Provide for a private cause of action if an urban renewal agency violated the urban renewal laws in conducting its business.

Representative Clow stated that the urban renewal agency in Burley could be problematical as it encompasses two counties. It was suggested that a commissioner has to hold residence in either the county where the urban renewal district was located or where it was doing business. Representative Clow said that the city of Twin Falls' ordinance allows commissioners two full terms and a partial if they had assumed the office when a vacancy had occurred. Representative Sims said this would allow the state's "Sunshine Law" to govern the commissioners if they were elected.

The committee next discussed the definition of "base assessment roll," which in the draft was being moved from Chapter 29, Title 50, Idaho Code, to Chapter 20, Title 50, Idaho Code. Also, the question was addressed regarding the Attorney General's opinion in the last meeting as to whether the base would or should reset after a plan modification. Representative Clow said this could be a problem for a community, both if they are one large area or multiple areas, once they are a few years into a plan. Representative Clow said generally urban renewal plans are not established to build a city hall or a park initially; and to have the base reset after a plan modification could be troublesome. Senator Johnson said it was not his intent to go retroactively to reset the bases but wished to clarify that any modification of a plan after the effective date of the act would require the base to be reset. Senator Jordan said we need to make sure urban renewal districts follow the law and, if they violate the law, perhaps the base does need to be reset. Additionally, she stated, as the plan goes along, agencies may find that they can take advantage of other opportunities that arise. She suggested a clear and concise definition of what a "modification" is might need to be included in the bill so an urban renewal agency does not unwittingly fall into a trap. It was suggested that the phrase "urban renewal plan as it exists from time to time" be inserted to add needed flexibility while ensuring that the urban renewal agencies follow the law.

Representative Sims said that each urban renewal agency's revenue allocation area needs to have a plan. That is currently in the law and would remain in the law if the proposed draft passes. Senator Johnson directed the committee to page 2 of the Attorney General's opinion: "The Idaho State Tax Commission generally does not recognize a change in the revenue allocation area as a change in the urban renewal plan, but this position may be subject to debate. The Legislature may want to discuss this provision with the Tax Commission to identify whether statutory clarification is needed." Senator Johnson said the Tax Commission's rule would appear to be in conflict with the definition of "base assessment roll" in the current version of Section 50-2903, Idaho Code.

Representative Clow said a whole section of a city can be in an urban renewal agency and not be in a revenue allocation area. He stated that a revenue allocation area may have sufficient moneys to bring certain services from the part of the city that is outside the revenue allocation area that might not be part of the original plan, but may be a public good nonetheless. Representative Youngblood mentioned that this is a large subject and if a city has an urban renewal agency, that is not a plan per se. A plan is necessary as part of the statute to form a revenue allocation area and begin the tax increment process. Representative Clow said the urban renewal part of the law existed before the Economic Development Act passed and the definition portion of "base assessment roll" may not have intended to affect the strictly urban renewal part of the law.

Senator Johnson commented that a plan is not needed in order to set up an urban renewal agency; once a revenue allocation area is established, then a plan is required. An agency can amend the plan and the policy question is whether the base should reset when that occurs. Representative Clow said it could be a problem if changing a plan automatically causes a reset of the base. Senator Siddoway pointed to the language on page 9, line 36, where buildings are referenced regarding urban renewal funds, and questioned whether that meant that these funds could be used to get around the bonding requirements by local governments. Representative Anderst said there are three or four other definitions where similar language is used as an authorized use of urban renewal funds. Senator Jordan stated that the definitions contained in the draft bill need to be utilized in order to tell communities what the law is. In response to a question from Senator Johnson, Senator Jordan said there are instances where a urban renewal plan has the proceeds to construct public facilities as the cash is there, and that the city, or the agency, can always put the project up for an advisory vote similar to what occurred with the new Ada County Courthouse.

Senator Siddoway commented his intent is that urban renewal not be an end run around the State Constitution and its provisions for incurring debt for public facilities after an election. He said that the provision has served the state and the taxpayers well. He emphasized that courthouses, schools, and jails should be up to a vote of the people. He said firehouses and expansion of sewage

treatment plants might be in the middle on this. Senator Winder remarked that at some point local governments have to bond for public buildings and there are provisions such as, judicial confirmation and lease purchases from state authorities or private individuals, where the required two-thirds vote for a constitutional amendment is circumvented. He stated that this is a complex and complicated area at times. Representative Sims voiced her agreement with Senators Siddoway and Winder. She said that in northern Idaho there are instances where urban renewal agencies have used revenue allocation areas to acquire properties and compete with the private market. She stated that perhaps there needs to be a maximum amount of time that an agency can hold a property.

Representative Youngblood pointed to the definition on page 9, lines 19-23 of the draft that is currently in the economic development chapter where "plan" or "urban renewal plan" means a plan as it exists on page 9, or may from time to time be amended, prepared and approved pursuant to Section 50-2008, Idaho Code, and any method(s) of financing such plan, which methods may include revenue allocation financing provisions. And, he questioned, once a plan gets amended, if the extra funding from the revenue allocation should be available for use or should it revert back to the taxpayers. Representative Youngblood asked if the current appeal period for a plan, of thirty days, needed to be lengthened. Representative Anderst stated that he would favor perhaps lengthening it to thirty or sixty days. Senator Jordan commented that the length of the appeal period is important so as to not unnecessarily delay necessary projects. She said she was concerned about moving the appeal period out, and that the new language regarding private actions might be an invitation to litigation. Senator Johnson said he had asked Ms. Cyd Gaudet in the Legislative Library to research the appeal period and she had found that the thirty days was contained in House Bill 636 (HB636), enacted in 1990, and it had not been changed since.

The Committee next turned its attention to the provision regarding no building of public buildings with urban renewal funds if it was over a certain dollar amount. Representative Kloc asked if the committee could exempt out public libraries from this section as they can be a magnet to attract other businesses around them like coffee shops, clothing stores, and other small businesses. The question was asked, what is the percentage of the public vote required to authorize the building when a project is above the threshold. Mr. Nugent answered that it would be a two-thirds vote unless judicial confirmation or some other process was used that did not require a vote of the people. Representative Youngblood asked if a vote with less than two-thirds might be recommended. Representative Clow asked whether the threshold should be an absolute number as in a larger area that may not be very much but in a smaller area it could be a very large structure. Representative Youngblood suggested that infrastructure not be included in this amount. Senator Siddoway stated that the constitutional provision requiring a two-thirds vote has served the people well for decades and he would not like to see the committee deviate from that.

Senator Jordan said the 1 million dollar threshold was problematical. She stated that in the past, the city of Boise built a branch library at Cole and Ustick and it was a magnet for private businesses and investments. She observed that the market for private investments is not always there without the urban renewal push. Senator Winder commented that the Cole and Ustick Library was built by the city of Boise using cash proceeds from a budget surplus and not urban renewal moneys. Senator Winder mentioned that in some local option tax legislation, he had used the fifty-five percent threshold, so perhaps that amount might be appropriate in a situation like this. Representative Anderst admitted that the 1 million dollar figure might be a bit arbitrary and that a percentage of assessed value of a revenue allocation area might be a better dividing line. Representative Youngblood reminded the committee that they were talking about public buildings that will be coming off the tax rolls.

The committee discussed a potential repository for urban renewal plans. The draft legislation provided that the State Tax Commission would be the repository. Representative Kloc voiced his concern that the State Tax Commission might need additional resources to accomplish this. Senator Johnson suggested that the committee may need to confer with Mr. Dornfest or the State Tax

Commissioners regarding the amount that would be required to accomplish this. Representative Kloc commented that we should give Tax Commission the incentive to do this. Senator Johnson stated that some of this is the cost of doing business, as maps of the revenue allocation areas are filed with the commission and this would seem to be a logical place to have a repository. Representative Anderst suggested a solution could be to allow the commission to bill the urban renewal agencies for a portion of the cost. Representative Clow asked whether, under the draft legislation, the urban renewal agency could provide a link to their plans and it was agreed that the agency could provide a link.

Senator Winder observed that this piece is trying to provide public accountability and transparency to the urban renewal process, and the Legislature should provide necessary funding to accomplish this. He also stated that Senator Jordan's question regarding extending the thirty-day period for an appeal is an excellent one and he would like to have bond counsel weigh in on an appropriate period. Representative Anderst asked if the State Tax Commission was the appropriate entity to impose penalties if urban renewal agencies did not submit their plans. Representative Youngblood said some of the feedback they've received is that some urban renewal agencies are following procedures, as well as their plan(s), and some are not. He mentioned that it may be a good idea to have a penalty imposed if they don't submit the plan so that the bonding agents will ensure that the requirements are being met. Senator Jordan suggested that the committee consider hearing from bond counsel on this matter. Representative Youngblood said he would like to ensure that the plan can be submitted for public inspection.

Senator Siddoway said he shared some of Senator Jordan's concerns, particularly for some of the smaller-populated urban renewal agencies. He is concerned about the costs that could be imposed on the urban renewal agencies if they unintentionally failed to comply. Representative Clow stated that the penalty portion of this piece is troublesome to him. He said that perhaps this would be too complicated and that compliance should be kept as simple as possible. Representative Anderst reminded the committee that at the last meeting, Mr. Dornfest had mentioned that all maps of revenue allocation areas, and about one-half of the plans, are filed with the State Tax Commission. He said it seemed that a repository was needed so that the public can have access. Representative Clow said the filing of the map was vital to the State Tax Commission's role and mission, but not with the filing of the plans; the State Tax Commissioners are not urban renewal experts and they need the maps for property tax assessment purposes. Representative Anderst said he disagreed and he believes there is a need to have a central repository. Senator Johnson suggested that the commission have Mr. Dornfest and the State Tax Commission report back regarding what resources they would need to implement this in a successful manner. Representative Anderst suggested there might need to be penalty adjustments made if a plan is not filed.

The next provision discussed were the sections for private causes of action if urban renewal agencies did not follow the law. Representative Kloc said he would be concerned where the money would come from in the case an action was successful and a plaintiff prevailed against an urban renewal agency or the commissioners. He said it should not come from the pockets of the commissioners because at times it is hard to get people to serve on these boards and the potential to lose personal money may deter people from serving. Senator Jordan remarked that the sections as written were too broad; relief already exists as far as the existing appeal period and this seems like it would be an invitation for litigation. She said most urban renewal agencies have to submit proposed projects to cities for the design review process, and that is in addition to the appeal that already exists. She mentioned that there are safeguards built into the current law and she is concerned that a statute like this would be an invitation to constant litigation. Senator Winder stated his concern about some unintended consequences from these sections. He said there probably does need to be some penalty provided; for example, when an urban renewal agency, or commissioners of the agency, do not follow the law, but the remedies provided in these sections may be too harsh. Public entities do make mistakes from time to time and they are honest mistakes- not intentional ones. He

is concerned that, as written, these sections could have the potential to cancel out an entire plan when the mistakes were made in good faith.

Representative Anderst said he could see distinction between an agency's responsibility for mistakes versus an individual board member's responsibility for mistakes, and perhaps there needs to be different remedies for the two. Senator Siddoway stated that he could not support endorsing either sections of the draft. He said remedies are already in current law for aggrieved persons, and if this were enacted, it might deter otherwise qualified people from wanting to serve on the boards. Senator Siddoway said urban renewal is working well in a lot of places, but there are a few places where there has been controversy. He stated that if people are going to be second-guessed when they are trying to do the right things for the community, they shouldn't be penalized, unless the pattern of activity rises to criminal activity. Representative Anderst said he agreed with Senator Siddoway's concerns. Senator Johnson stated that, unless there was an objection, he sensed that committee's direction was to not include these two sections in a recommendation. There was no objection.

The committee recessed for lunch at 11:50 a.m. and reconvened at 1:00 p.m.

Senator Johnson said he thought the committee was headed in the right direction regarding: 1) the rewrite of the definition of "base assessment roll"; and 2) when the base resets on a plan modification, particularly if the reset will be ongoing and not retroactive.

Senator Jordan said she would like to see if other testimony, public comments, or written remarks come in before she makes a final decision on a recommendation. She said she would like the committee to meet again during the first or second week of January to accomplish this. Representative Anderst mentioned that whatever recommendations are made would still need to go through the normal legislative process, and there would be plenty of opportunity for people to express themselves.

Representative Clow stated that a couple of issues that need to be addressed in a local option elected board of commissioners is how would vacancies be filled, appointed by mayor and confirmation by city council, for example. Also, he said, there have been some urban renewal agencies not using their names, but using other names for marketing purposes. He asked if legislation should state whether it is acceptable to use a DBA (doing business as), or another name for marketing purposes, or not acceptable. Representative Clow stated that since 2011, there have been no new urban renewal agencies created when the Legislature last addressed this issue comprehensively. He said the 2011 bill states that a vote would be required for establishing new agencies after the effective date of the act and he asked to revisit this issue because it could be potentially restrictive.

Representative Youngblood said he would like to address the public building issue, particularly if it is built with urban renewal dollars. There are still issues of upkeep, repair, and maintenance of these facilities which are taxpayer dollars. He said economic development, or blighted areas that bring in private investments, are revenue generating opportunities that can also potentially generate jobs as well. He reminded the committee that public buildings have the potential to become a burden to our taxpayers.

Mr. Vaughn, Minidoka County Assessor, said he agreed with Representative Youngblood regarding the issue of public buildings. He said their maintenance and upkeep can be a budgeting problem for local units of government. He said the tax increment affects all taxpayers in the county and also can affect them given the three percent property tax cap. There is also the issue of taxpayers having a say if they are not residents of a city where urban renewal is occurring, because the increment can effect their taxes. He stated that accountability and transparency is the key in this piece of legislation. Mr. Vaughn said that urban renewal agencies have an affect on levy rates particularly with three percent cap issues (Section 63-802, Idaho Code). Representative Youngblood asked if Mr. Vaughn was familiar with a base being reset. Mr. Vaughn said a plan modification is a major alteration of the plan and for how the increment was going to be used. Mr. Vaughn said there is

a conflict with the State Tax Commission's rule on this issue and the statute's definition of "base assessment roll." Mr. Vaughn opined that the base should always be reset when an urban renewal plan is modified and the draft should clarify that moving forward.

Mr. John Watts of the Idaho Chamber Alliance and the Idaho Library Association spoke next. He complimented the committee on its review of the subject. He said there have been some bad actors in this arena over the years but it is important not to take away tools from local governments for development. Referring to the oversight piece, Mr. Watts stated, that people need to be held accountable and the entity doing that should be the local government, whether it be the city council, county commission, or county prosecutor. He said the election of commissioners was a good addition, as long as it remained a local option. Mr. Watts questioned whether the State Tax Commission was the proper repository for plans. He asked why the repository should not be the requirement of the city if the urban renewal is in the city, or the county if the urban renewal district is county-wide. Regarding libraries, Mr. Watts observed that in many communities they are a central hub. He said Barnes and Noble bookstores have become a model for current libraries and that many newer libraries are built in mall areas.

Representative Anderst asked if Mr. Watts wanted new libraries to be on the tax rolls. Mr. Watts responded that he does not for the library itself, but that the private buildings in a mall area that are drawn by the library would be taxable. Senator Jordan asked if a new library in an urban renewal agency is different from existing libraries outside of an urban renewal agency. Mr. Watts responded that a new library is subject to the design review process and the comprehensive plan. An existing library may be grandfathered in and thus be exempted those processes. Mr. Watts commented that it would be difficult to justify an urban renewal agency to the local taxpayers that was created just to build a library. Senator Jordan stated that if an urban renewal agency builds a new library, that building would be off the tax rolls. Mr. Watts said they are not currently on the tax rolls if the building is owned by a political subdivision.

Mr. Ken McClure representing Chobani and Clif Bar said mandating a hard dollar amount on a public building might not be the best option. He suggested that perhaps a carve out for utilities, services, rights of way, and infrastructure might be a solution. He also stated his concern that public involvement regarding a public building might slow down the process enough that it could kill a major expansion that was contingent on a public building being sited. He stated that the last two provisions regarding private actions might draw some opposition from sectors that have no interest in urban renewal but are instead concerned about legal liability issues.

Senator Johnson asked for comments from the committee. Representative Kloc remarked that the committee has made progress, the legislation provides oversight and provides the people's input in the process. He added that his only issue is the vote for a library. Representative Clow said the last two sections needed to be removed and that the State Tax Commission should not be the urban renewal police because they really aren't equipped for that role. He said zoning changes can cause different fact situations as to when a plan needs to be modified to be effective. He stated that public buildings generally come after an urban renewal agency has been in existence for a period of time; in fact, most are never formed when a city hall or courthouse is built.

Representative Anderst said he supports urban renewal and economic development. He said he does not want to hamstring economic development by local governments. However, transparency and accountability for agency actions, and public participation for certain types of community development are critical. He stated that current statutes do not provide that. He added that the draft is a good first step, and he pointed to the last two sections regarding private lawsuits out. He stated that penalties should not be imposed on individuals trying to do the right thing. He suggested that perhaps a lower vote threshold could be identified for public buildings than two-thirds, the thirty-day appeal period might need to be expanded, and that perhaps urban renewal agencies

should not be in the business of building public buildings. He said he understands the arguments regarding libraries, but questioned whether a library is a need or a want for a community.

Representative Sims said combining the two chapters into one is a good thing. She said that she is fond of the idea of a repository for urban renewal plans and that the committee should remember that they are all working for the taxpayers. She voiced her agreement with Representative Anderst regarding the library issue.

Senator Jordan said that there have been instances where there have been problems but there have been a great many areas where urban renewal has worked very well. She stated that if there is going to be an urban renewal cop it should be the local government, and a repository should be at the local level. She said tying a specific dollar amount to a public project is problematical as one size does not fit all. She emphasized that public infrastructure is what urban renewal is all about.

Senator Winder said we need to provide the public the ability to participate in this process if they wish to. He said he has no issue with a repository being with the State Tax Commission, and the draft appears to be written that noncompliance almost has to be intentional for any penalties to come into effect. He stated the need to keep the appeals time as short as possible and to not penalize those urban renewal agencies who are operating correctly. He said his biggest concern is public debt and that we need to comply with the state constitution regarding public debt. If we do not want to comply, then there would be a need to amend the constitution. He stated that oversight and accountability are large issues, and there is a need to define public buildings versus infrastructure in a final version.

Senator Siddoway said he agreed with the comments of Mr. McClure on the issue of expenditures regarding certain public structures. He said that he thought a specific dollar amount was problematic, and the thirty-day appeal period is about right. He stated that he looks forward to the germane legislative committees reviewing this proposal when it is in its final form.

Representative Youngblood said he does not want to damage urban renewal. He said that the five states surrounding Idaho are more aggressive in local economic development, and that we do not have the tools right now to be as aggressive as they are. He said that perhaps we need to develop those tools in the next few years.

Senator Johnson remarked that there is a lot in the existing urban renewal statutes that work well. He stated that many issues could have been avoided over the years by resetting the base when a plan was modified. He said cities or counties can assist urban renewal agencies on developing urban renewal plans. Senator Johnson said the committee would try to meet the first week of the legislative session to finalize its work. Senator Winder said there are mechanisms out there to build public buildings without a general obligation bond and the two-thirds vote:

- Judicial confirmation;
- Revenue bonds;
- Lease with options to purchase; and
- Outright cash deals.

The committee adjourned at 2:15 p.m.