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March 7, 2016

**VIA EMAIL AND HAND DELIVERY**

House Revenue & Taxation Committee  
The Honorable Gary Collins, Chairman  
Idaho State Capitol  
700 W. Jefferson  
Room EW42  
Boise, ID 83720-0042

Re: HB572

Dear Chairman Collins:

Elam & Burke represents a number of individual urban renewal agencies throughout the State as well as the Redevelopment Association of Idaho, Inc. (RAI). We call your attention to a separate letter submitted by RAI's President, Gary Riedner, concerning HB572. During the proceedings of the Urban Renewal Interim Committee, we have been monitoring those proposals and communicating with bond counsel and an underwriter/financial adviser on concerns over any proposed legislation. We have had the opportunity to review HB572 based on input from bond counsel and an underwriter/financial adviser. The concerns from the financing point of view center around two major themes:

- Protect activities by urban renewal agencies predating the effective date of the bill and not cross the line of impairment of contract.
- Protect the use of the tool for future projects. Based on the input we have received, the impact of the resetting of the base as a result of an amendment to an urban renewal plan (p.9, ll:35-48, p.10, ll:1-20) and a significant penalty for failing to report/submit urban renewal plans and modifications thereto to the state tax commission (p.12, ll:1-19) will result in additional bond covenants or conditions that will make issuing of debt more difficult. These provisions will also create additional disclosure issues for agencies seeking funding from underwriters, lenders, investors, and developers.

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The lack of protection for outstanding indebtedness in Section 7, pp. 11-13, is of particular concern. It is our opinion HB572 will negatively impact an agency's ability to access already difficult to access financial markets. HB572 does harm to urban renewal as an economic development tool.

Also enclosed please find specific comments to HB572, which should be addressed.

Sincerely,

ELAM & BURKE  
*A Professional Association*



Ryan P. Armbruster



Meghan S. Conrad

RPA/MSK/ksk  
Enclosure

cc: The Honorable Janet Trujillo, Vice Chairman  
The Honorable Mike Moyle  
The Honorable Dell Raybould  
The Honorable Neil Anderson  
The Honorable Robert Anderst  
The Honorable Thomas Dayley  
The Honorable Stephen Hartgen  
The Honorable Clark Kauffman  
The Honorable Greg Chaney  
The Honorable Ronald Nate  
The Honorable Heather Scott  
The Honorable Jeff Thompson  
The Honorable Mat Erpelding  
The Honorable Mark Nye  
The Honorable Dan Rudolph  
Bev Bean, Secretary

HB572 –ANALYSIS

1. Section 1: Idaho Code § 50-2006 is amended as follows:
  - a. 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. (P.2, ll:44-50, p.3, ll:1-15.)

**Issue: While an elected board does create additional independence between the agency and the city, creating an elected board that is subordinate to another elected board is unprecedented. There are a number of issues that are not addressed by this provision: There is no other known elected board that does not have the ability to tax and levy. Finally, any change that modifies the holdings in the Supreme Court decisions of *Hart* and *Yick Kong* creates uncertainty with an agency's ability to enter into long term debt without voter approval.**

2. Section 4: Idaho Code § 50-2903A is a new section of Idaho Code addressing under what circumstances an urban renewal plan can be amended/modified without resetting the base assessment roll values. 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.

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

- (1) To make technical or ministerial plan amendments,

**Issue: This exception fails to promote economic development and is extremely limited. There is also a question of fact as to what constitutes a technical or ministerial amendment leading to potential litigation.**

- (2) To make a plan amendment that increases the revenue allocation area boundary by up to 10%,

**Issue: This exception is also limited in scope and does not facilitate economic development. The exception does not allow for amending the text of the plan. Urban renewal plans are very rarely, if ever, amended to add geographic area without also amending the text of the plan to identify additional project costs or type of project.**

- (3) To de-annex parcels from a revenue allocation area, or

- (4) To make a plan amendment to support growth of an existing commercial or industrial project in an existing revenue allocation area.



**Issue: This is a significant shift from the language contemplated in the Urban Renewal Interim Committee recommendations dated February 18, 2016, which specifically allowed amendments without risk of a base reset to identify additional urban renewal projects supporting an unanticipated new economic development opportunity in an existing RAA. An economic development opportunity was defined as the development of a commercial or industrial enterprise either by promoting the creation or retention of jobs within the state or by increasing the increment value within the RAA.**

**As currently drafted, a plan can only be amended without penalty to support growth of an existing project greatly hamstringing an agency's ability to respond to economic development opportunities.**

**Should this bill become law, any urban renewal plan amendment to accommodate a new economic development project will result in a resetting of the base assessment value and loss of existing tax increment.**

**The proposed language could only be used in limited circumstances, is subject to varying interpretations and does not promote economic development.**

3. Section 6: 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.
  - a. Allows the use of revenue allocation funds to fund up to 50% of the costs to construct municipal buildings.
  - b. If 51% or more of project costs to construct a municipal building are to be funded by revenue allocation funds, the proposal must be approved by 60% of city voters.

**Issue: As drafted requires 60% of the voters, not 60% of the voters voting at the election. This is also a significant change from the recommendations of the Urban Renewal Interim Committee, dated February 18, 2016, which provided for 55% voter approval.**

- c. 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, a judicial building, a jail, or school facilities.
- d. Certain types of public infrastructure do not require voter approval such as public parking structures or publicly owned infrastructure that shall constitute: streets, sewer or water connections, sidewalks, gutters, utilities, or fiber optic cables.

**Issue: The list of public infrastructure that is not defined as a municipal building is limited. As not specifically identified, could revenue be spent on curbs, street lighting, landscaping, public plazas, public utility systems, etc.**

4. Section 7: Creates a new Section 50-2913 to establish urban renewal reporting requirements and penalties for non-compliance.
  - a. 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.
  - b. 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.

**Issue: 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.**

5. Finally, the Urban Renewal Interim Committee recommendations dated February 18, 2016, proposed amendments to Idaho Code § 50-2017 to revise the conflicts of interest provision to bring the statute more in line with those conflict and ethics provisions governing other public officials. Those recommended changes provide clarity and consistency but have been removed from HB572.

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