

URBAN RENEWAL TRENDS, 2019 LEGISLATION, AND BEST PRACTICES

Presented by Ryan P. Armbruster and
Meghan S. Conrad, Elam & Burke, P.A.

HOUSE BILL 217 (2019)

SESSION LAW CHAPTER 321

IDAHO CODE § 50-2905A

LIMITATION ON USE OF TIF TO FUND CONSTRUCTION OF CERTAIN BUILDINGS – BILL HISTORY

- House Bill 217 introduced late in the Session (Feb. 27, 2019); no stakeholder input (unlike efforts in 2015 and 2016). Significant amendments to Idaho Code § 50-2905A passed as part of HB606(2016), which was part of a grand compromise.
- STATEMENT OF PURPOSE: “The legislation amends 50-2905A Local Economic Development Act. The purpose is to establish more taxpayer input into municipal structures that come off the tax roll. Urban Renewal was not intended to become the path of least resistance for the construction of financing of municipal buildings. It was designed to encourage private sector development...”

HB217 BILL HISTORY – CON'T

- Hearing in H. Revenue and Taxation Committee on March 7, 2019. As introduced would have required \$1 of TIF used in the construction of certain public buildings to be approved by the voters. Added multipurpose sports stadium complex. Greatly expanded definition of municipal building, e.g. would have applied to public restroom in a park. Also included an emergency clause. Following a hearing, the bill passed out of the H. Revenue and Taxation Committee.
- Passed the House on March 11, 2019 (59-11).
- Efforts to hold bill in Senate Local Government and Taxation Committee at call of the Chair. Progress stalled from March 12-March 21, 2019.
- Bill sponsors requested the Senate Local Government and Taxation Committee to send the bill to the amending order. No specific amendments were discussed at the Senate Local Government and Taxation Committee hearing. Again, stakeholder input was not sought.
- Bill sent to the amending order on March 21, 2019; two competing amendments presented by Sen. Burgoyne and Sen. Rice. **Sen. Rice's amendments prevailed.**

AMENDMENTS

- Senators Rice and Lakey: Amendment significant re-write of original bill as if starting over
 - Re-inserted 51% threshold
 - TIF, plus public funds, may be combined to reach threshold (excludes federal funds)
 - Includes remodels, as well as new construction
 - \$1M projects are exempt from provisions
 - Re-inserted voter approval requirement of 60% (up from 55% in original version)
 - Clarified scope of infrastructure exception and “grandfathered” previous bond issues
 - Added indoor venues to the definition of multi-purpose sports stadium complex
 - Included in the scope of the municipal building definition; added “that are not subject to property taxation whether they are, or are intended to be, owned or operated by or leased to a public body for the public’s benefit
 - Added definitions of “public body” and “public funds”
 - Removed the emergency clause

AMENDMENTS

- Senator Burgoyne Amendment: Attempted to work with existing Law
 - Re-inserted 51% threshold
 - Allowed for public match to fund project
 - Included multipurpose sports stadium complex in the definition of public building
 - Used existing definition of municipal building but added “owned or operated by or leased to a public entity.”
 - Removed the emergency clause

BILL HISTORY – CON'T

- Bill, as amended, was considered by the Senate on March 26, 2019. Senate, after suspension of rules, voted 20-14-1 in favor of passage and the bill was returned to the House for concurrence. Bill, as amended, passed out of the H. Revenue and Taxation Committee on April 1, 2019, and ultimately passed the House on April 3, 2019, after rules suspended (55-13-2).
- Governor signed the bill into law on April 9, 2019; Effective on July 1, 2019.

IDAHO CODE § 50-2905A – GENERAL THOUGHTS

- Purpose: To further restrict the ability to use tax increment revenues in the construction of certain buildings. Specific limitation on public-public partnerships
- Reaction to a local issue with statewide implications; unaware of any efforts to circumvent the existing statute adopted in 2016
- No other public entities are required to have a vote to spend money that is in the bank; HB217 does not address indebtedness
- Continuing to analyze impact
- Opposition forces included Association of Idaho Cities, Redevelopment Association of Idaho, Boise Metro Chamber of Commerce, Chamber Alliance and other private interests, including bankers/lenders.

IDAHO CODE § 50-2905A, AS AMENDED – WHAT DOES THIS MEAN?

- Three-part test:
 - After July 1, 2019, revenue allocation funds or revenue allocation funds aggregated with any other “public funds” may not contribute to 51% or more of the total “project cost” (excludes federal funds and federal funds administered by a public body); AND
 - the project is for construction of a “municipal building,” or a “multipurpose sports stadium complex,” or a remodel of either;AND
 - the total project cost exceeds \$1M
- Voter approval: if triggered, 60% of the participating qualified electors residing within the borders of the qualified municipality; election subject to consolidated election laws

IDAHO CODE § 50-2905A, AS AMENDED – WHAT DOES THIS MEAN?

- Definition of “public funds” includes funds collected or received by a “public body.” Excludes: grants or donations from private entities or individuals to the public body, and federal funds or federal funds administered by a public body
- Definition of “public body” refers to I.C. 50-2018(3), which means “the state or any municipality, township, board, commission, authority, district, or any other subdivision or public body of the state.”
- Definition of “multipurpose sports stadium” is broad: indoor or outdoor venue for sports, concerts, or other events with a field or other playing surface partly or completely surrounded by a tiered structure
 - based on debate portable bleachers/stages, etc are not included in this definition
 - likely captures amphitheatres in parks
- Definition of “municipal building” is limited: administrative building, city hall, library, courthouse, public safety or law enforcement building, other judicial buildings, fire stations, jails and detention facilities
 - not subject to property taxation
 - are/intended to be owned or operated by or leased to a public body for the public’s benefit

IDAHO CODE § 50-
2905A, AS AMENDED
– WHAT DOES THIS
MEAN?

- **Definition of “project cost” is broad** as cross reference to Idaho Code § 50-2903(14) includes hard costs, soft costs, admin costs and professional service costs: "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, including interest during construction and capitalized debt service or repair and replacement or other appropriate reserves;
- (c) Real property assembly costs, meaning any deficit incurred from the sale or lease by a municipality of real or personal property within a revenue allocation district;
- (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.

IDAHO CODE § 50-2903A - EXCEPTION

- Exception to “project cost” – certain infrastructure improvements are not subject to 51% limitation
 - “any infrastructure or belowground improvements including, but not limited to, water, sewer, storm drainage, electrical, natural gas, telecommunication, or other similar systems and lines, streets, roads, curbs, gutters, sidewalks, walkways, parking facilities, or unoccupied auxiliary structures.”
 - presumably exception applies to hard costs, soft costs, admin costs and professional service costs

EARLY TAKEAWAYS

- If you intend to spend TIF on a project that falls within the scope of Idaho Code 50-2905A, or on infrastructure related to a project within the scope of Idaho Code 50-2905A, you will need to be able to trace all dollars to make sure no TIF spent in construction of the four corners of the building. As the definition of “project costs” is broad, you will need to be concerned with costs directly allocated to the project as well as any allocation of staff time.
- Two votes on a single project could occur. City obtains approval for a GO bond. Would a second vote for use of TIF funds be necessary? Timing is of great concern.
- When does calculation of either 51% of project costs or \$1M exception occur – engineer’s estimate, contract/bid price? What happens if the entity moves forward on a project in good faith the project is under the threshold, but construction overruns occur or the final reconciliation of costs is in excess of threshold?
- What if an Agency acquires a parcel to dispose of to a private developer; deal falls through. Property ultimately quit-claimed to city and becomes the site for “municipal building”?

EXAMPLES

Total Project Costs	Revenue Allocation (Tax Increment)	Other Public Entity Solely or Collectively	Federal Funds/ Donations/ Private Entity	HB 217 Apply
\$10 million	\$10 million	\$0	\$0	Yes
\$10 million	\$1	\$9,999,999	\$0	Yes
\$10 million	\$5 million	\$4 million	\$1 million	Yes
\$10 million	\$0	\$5 million	\$5 million	No
\$10 million	\$2 million	\$2.5 million	\$5.5 million	No
\$10 million	\$0	Annually Renewable Lease (Auditorium District Model)	\$0	No
\$10 million	\$0	Annual Renewable Lease covers \$8 million	\$2 million	No

BEST PRACTICES



BEST
PRACTICE
TIPS-
CONSIDERING
A NEW
PROJECT

- Is the proposed project within the boundaries of an existing RAA?
- Is the proposed project permitted by the Urban Renewal Law or the Local Economic Development Act?
- Is the proposed project a municipal building or a multipurpose sports stadium complex?
- Is the proposed project consistent with the urban renewal plan?
- Is the plan a pre-or-post July 1, 2016, plan?
- Is a plan amendment possible or necessary?
- Is the proposed project within the jurisdictional boundaries of the city?
- Is the proposed project consistent with the City's comp plan?
- Does the property at issue have an ag exemption, or has the property been used for ag purposes within the last 3 years?
- Funding?

GENERAL COMPLIANCE



COMPLIANCE
REQUIREMENTS,
GENERALLY

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