

WHAT'S THE TIF ABOUT TIF?: AN INCREMENTAL APPROACH TO IMPROVING THE PERCEPTION, AWARENESS, AND EFFECTIVENESS OF URBAN RENEWAL IN IDAHO

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I. INTRODUCTION

In 2015, the Idaho Urban Renewal Law of 1965 will be fifty years old. In those fifty years, at least seventy-three urban renewal districts in twenty-five of Idaho's forty-four counties have sprung up across the state of Idaho.¹ In spite of urban renewal's longevity and proliferation in Idaho, it continues to face opposition in the state.² Yet, when compared to other states, Idaho's urban renewal laws have always been fairly restrictive of the practice.³ Furthermore, in the fifty years since its inception, the Idaho legislature has changed and, arguably, improved the way that urban renewal is implemented in the state. Despite these improvements, the implementation of Idaho's urban renewal laws could benefit from minor changes.

Part I of this article explains what urban renewal is, examines its history, posits that aversion to urban renewal is partly due to a turbulent history that misbranded it, describes what tax increment financing (TIF) is, and explains how TIF became an integral part of urban renewal. Part II examines the legality of urban renewal and TIF in Idaho, demonstrates how the Idaho Supreme Court has ruled on most of the major legal objections to urban renewal, and predicts how that court would decide unaddressed legal issues relating to urban renewal in Idaho. Part III explains that TIF is simultaneously successful and controversial because of inherent aspects of TIF that closely map features of contemporary local government, surveys TIF successes and failures in Idaho, shows the conservative beginnings of Idaho's TIF laws, displays

1. E-mail and spreadsheet from Gary Houde, Senior Research Analyst, Idaho State Tax Commission, to author (April 18, 2014, 05:09 PST) (on file with author).

2. See, e.g., Randal O'Toole, *Theft as Urban Renewal: Why Idaho Should Repeal the Local Economic Development Act*, IDAHO FREEDOM FOUND. (Feb. 2011), <http://idahofreedom.net/wp-content/uploads/2011/08/Theft-as-Urban-Renewal-Feb-2011.pdf>.

3. Compare Craig L. Johnson & Kenneth A. Kriz, *A Review of Tax Increment Financing Laws*, in TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT 15, 33–35, 45–47 (Craig L. Johnson & Joyce Y. Man eds., 2001) (comparing urban renewal and TIF laws in the United States) with *infra* Part V (tracking the history of Idaho's urban renewal statutes). See *infra* Part III.

how those laws have evolved to create more government accountability for TIF projects, and suggests minor changes that could improve TIF in Idaho. After the conclusion in part IV, a table in part V tracks the history and evolution of Idaho's urban renewal and TIF statutes.

A. What are Urban Renewal and Tax Increment Financing?

Black's Law Dictionary explains that urban renewal is "[t]he process of redeveloping urban areas by demolishing or repairing existing structures or by building new facilities on areas that have been cleared in accordance with an overall plan."⁴ Urban renewal generally requires that an area be blighted in order for it to be eligible for renewal,⁵ though this requirement has been significantly relaxed.⁶ Urban renewal goes by various names throughout the country. In California, urban renewal is known as redevelopment.⁷ Some progressive states and municipalities recognize the relaxation of blight requirements and simply label urban renewal economic development or development.⁸ Whatever its label, urban renewal has been a source of controversy and criticism throughout the United States.⁹

Critics of urban renewal come from both ends of the political spectrum. In California, much of the criticism of urban renewal comes from the left.¹⁰ One of the most prominent liberal critics of urban renewal is California Governor Jerry Brown.¹¹ Brown eliminated California's urban renewal program in 2012 as an austerity measure to "try and shock voters into approving new revenues."¹² Much of the criticism of urban renewal in Idaho comes from the far right.¹³ These highly conservative critics and local leaders claim that urban renewal spends public funds without voter accountability, robs governmental entities of tax revenues, and does not provide significant public benefits.¹⁴ These criticisms are

4. BLACK'S LAW DICTIONARY 1680 (9th ed., 2011).

5. See IDAHO CODE ANN. § 50-2008(a) (2009 & Supp. 2013) (requiring an area to be a "deteriorated area" before it is eligible for urban renewal).

6. Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65, 71 (2010).

7. See CAL. HEALTH & SAFETY CODE § 33000 (West, Westlaw through Ch. 11 of 2014 Reg. Sess. and all propositions on the 6/3/2014 ballot).

8. See Briffault, *supra* note 6, at 71; *Nampa Development Corporation*, THE CITY OF NAMPA, <http://www.cityofnampa.us/index.aspx?NID=100> (last visited May 22, 2014).

9. See Briffault, *supra* note 6, at 66.

10. See Robert Cruickshank, *Governor Brown's Progressive Shock Doctrine Takes Shape*, CALITICS (Jan. 4, 2011, 7:00 AM), <http://www.calitics.com/diary/12999/governor-browns-progressive-shock-doctrine-takes-shape>.

11. *Id.*

12. *Id.*; Dan Walters, *Dan Walters: Political Struggle Looms over Redevelopment's Revival*, CAL. REDEV. ASS'N. (Jan. 13, 2014), <http://www.calredevelop.org/wcnews/newsarticledisplay.aspx?ArticleID=49>.

13. See generally O'Toole, *supra* note 2.

14. See *id.*; John Funk, *Nampa Council Discusses Future of NDC Board*, IDAHO PRESS-TRIB., Jan. 26, 2014, <http://www.idahopress.com/members/nampa-council-discusses->

largely addressed in parts II and III. Some criticisms of urban renewal are based on negative associations with historical aspects of urban renewal that are basically nonexistent in modern contexts.¹⁵ Thus, an understanding of urban renewal's history adds complexity and meaning to the way it is viewed today.

i. The History and Misbranding of Urban Renewal

Federal urban renewal was first codified in Title I of the Housing Act of 1949.¹⁶ Title I promised large-scale revitalization of American cities through federal funding.¹⁷ It purported to offer the kind of overarching redevelopment scheme that only the federal government could supply.¹⁸ To better utilize the federal funds that flowed from Title I, Idaho passed the Idaho Urban Renewal Act of 1965.¹⁹ The Idaho Urban Renewal Act of 1965 authorized Idaho municipalities to define urban renewal districts²⁰ and use federal funds to improve blighted and deteriorated areas within those districts.²¹

Despite nationwide state passage of urban renewal acts similar to the Idaho Urban Renewal Act of 1965,²² support for federal urban renewal waned during the 1960s and 1970s.²³ Critics felt that Title I's "ambiguous and ill-defined" goals created uncertainty about how it should be implemented.²⁴ Further, federal urban renewal encouraged the use of eminent domain to obtain title to massive urban areas to be

future-of-ndc-board/article_73acff70-8334-11e3-8e49-001a4bcf887a.html [hereinafter *Nampa Council Discusses Future of NDC Board*].

15. See, e.g., *infra* Part I.A.i.

16. See Jon C. Teaford, *Urban Renewal and Its Aftermath*, 11 HOUS. POL'Y DEBATE 443, 443 (2000), available at <http://www.knowledgeplex.org/showdoc.html?id=2092>.

17. See *id.*

18. See *id.*

19. CTR. FOR PUB. POL'Y & ADMIN., ET AL., TAX INCREMENT FINANCING: FISCAL IMPACT OF THE BOISE CENTRAL URBAN RENEWAL DISTRICT 3 (2002) [hereinafter *FISCAL IMPACT*] (on file with author); John T. Reuter, *Razed & Confused: Boise's Turbulent History of Urban Renewal*, BOISE WEEKLY, Aug. 4, 2010, available at <http://www.boiseweekly.com/boise/razed-and-confused-boises-turbulent-history-of-urban-renewal/Content?oid=1713334>.

20. See generally Idaho Code Ann. § 50-2001-33 (2009 & Supp. 2013).

21. See IDAHO CODE ANN. § 50-2007(k) (2009 & Supp. 2013); *FISCAL IMPACT*, *supra* note 19, at 3; Reuter, *supra* note 19.

22. See, e.g., CAL. HEALTH & SAFETY CODE ANN. § 33000 (West, Westlaw through 2014 Reg. Sess. and all propositions on the 6/3/2014 ballot); FLA. STAT. ANN. § 163.330 (West, Westlaw through 2014 2nd Reg. Sess., March 31, 2014); IOWA CODE ANN. § 403.1 (West, Westlaw through legislation signed as of 4/11/2014 from the 2014 Reg. Sess.); NEV. REV. STAT. ANN. § 279.382 (West, Westlaw through 2013 77th Reg. Sess. and the 27th Special Sess.); R.I. GEN. LAWS ANN. § 45-31-1 (West, Westlaw through chapter 534 of the 2013 Reg. Sess.); TENN. CODE ANN. § 13-20-201 (West, Westlaw through 2014 Second Reg. Sess.); WASH. REV. CODE ANN. § 35.81.005 (West, Westlaw through 2014 legislation).

23. See Teaford, *supra* note 16, at 454.

24. *Id.* at 445.

cleared for redevelopment.²⁵ After these areas were taken, they were often occupied by private entities in order to spur economic development.²⁶ Federal urban renewal also had little regard for historically significant buildings, which, because of the age of such buildings, often fell neatly into definitions of blight.²⁷ Finally, and perhaps most damning, Title I “modified the programs set up under the 1937 Housing Act by conditioning funding for slum clearance projects on affording ‘maximum opportunity’ to private developers and by allowing slum areas to be redeveloped with other than low income housing.”²⁸ This meant that many low-income urban residents, which were predominantly racial minorities, were forced out of their housing.²⁹ Such effects quickly found disfavor among private property owners,³⁰ historical preservationists,³¹ and civil rights advocates.³² The United States Supreme Court upheld and perpetuated federal urban renewal and its effects as part of the police power with its decision in *Berman v. Parker*.³³ The *Berman* Court stated, “It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.”³⁴ Ultimately, however, Congress decreased the scale of and funding for federal urban renewal by integrating it into the Great Society’s Model Cities scheme in 1974.³⁵

Even though eminent domain is rarely used for urban renewal in modern contexts, urban renewal continues to carry the stigma of eminent domain in Idaho.³⁶ The United States Supreme Court’s 2005 decision in *Kelo v. City of New London*, which allowed local governments to use eminent domain for economic development purposes,³⁷ exacerbated

25. See Amy Lavine, *Urban Renewal and the Story of Berman v. Parker*, 42 URBAN LAWYER 423, 437–38 (2010).

26. See generally *Boise Redev. Agency v. Yick Kong Corp.*, 499 P.2d 575, 578, 94 Idaho 876, 879 (1972) (stating the redevelopment agency’s plan was “to clear the area and thereafter permit private enterprise, on a bid basis, to construct and occupy certain of the buildings planned for the area”).

27. George Lefcoe, *After Kelo, Curbing Opportunistic TIF-Driven Economic Development: Forgoing Ineffectual Blight Tests; Empowering Property Owners and School Districts*, 83 TUL. L. REV. 45, 61 (2008).

28. Lavine, *supra* note 25, at 472, 442.

29. *Id.* at 424.

30. See *Yick Kong Corp.*, 499 P.2d at 577, 94 Idaho at 878. The plaintiffs in *Yick Kong* claimed that a taking that incidentally benefitted private developers was not a public use. *Id.*

31. Lefcoe, *supra* note 27, at 61; Reuter, *supra* note 19.

32. Lavine, *supra* note 25, at 472.

33. See Lavine, *supra* note 25, at 423–24.

34. *Berman v. Parker*, 348 U.S. 26, 33 (1954).

35. Teaford, *supra* note 16, at 459.

36. See IDAHO CODE ANN. § 7-701A (2009 & Supp. 2013). This section was passed in direct response to the Supreme Court’s holding in *Kelo*. Kimberly M. Watt, *Eminent Domain, Regulatory Takings, and Legislative Responses in the Post-Kelo Northwest*, 43 IDAHO L. REV. 539, 539 (2007).

37. *Kelo v. City of New London, Conn.*, 545 U.S. 469, 484 (2005); Watt, *supra* note 36, at 539.

critics' disfavor for urban renewal.³⁸ Polls taken at the time of the decision indicated that over 90% of Americans disagreed with the opinion and 67% of registered voters wanted to limit the power of eminent domain.³⁹ Idaho was not exempt from this unpopular view of *Kelo*. In direct response to *Kelo*, the Idaho legislature enacted Idaho Code section 7-701A in 2006 "to provide limitations on eminent domain for private parties, urban renewal or economic development purposes."⁴⁰ Because of urban renewal's connection with economic development and history of using eminent domain, critics of urban renewal continue to associate it with eminent domain and the negative stigma of the *Kelo* ruling. However, eminent domain has become a relatively underutilized process for obtaining property for urban renewal in Idaho.⁴¹ In a 2010 Boise Weekly article, Phil Kushlan, then executive director of Boise's urban renewal agency, said, "in the old days we used eminent domain a lot, and we haven't used it since 1980."⁴² Although limitations such as Idaho Code section 7-701A likely contribute to this underutilization, it is more likely due to the administrative and political burdens of pushing an eminent domain proceeding through the public hearings required for urban renewal.⁴³ Regardless, though eminent domain is still available to urban renewal agencies (URAs), negatively associating urban renewal with eminent domain does not make sense in Idaho where URAs rarely use eminent domain.

Critics also continue to associate urban renewal with the destruction of historical buildings.⁴⁴ Indeed, in the heyday of federal urban renewal and "large-scale, federally funded clearance projects" this was a warranted association.⁴⁵ In Idaho, Boise fell subject to this "heavy-handed" style of urban renewal.⁴⁶ In the 1970s, Boise's URA tore down Boise's Chinatown and attempted to demolish several historical buildings.⁴⁷ However, as federal urban renewal wound down, historical preservation became popular and federal tax laws were adjusted to favor rehabilitation of aged buildings.⁴⁸ In Boise, former Boise Mayor Dirk Kempthorne spearheaded locating the Boise Town Square Mall four miles outside of downtown instead of in the place of several historical

38. See IDAHO CODE ANN. § 7-701A (2009 & Supp. 2013); Ilya Somin, *The Limits of Backlash: Assessing the Political Response to Kelo*, 93 MINN. L. REV. 2100 (2009).

39. Watt, *supra* note 36, at 539.

40. H.R. 555, 58th Leg., 2nd Sess., Statement of Purpose (Idaho 2006).

41. Telephone Interview with Melinda Anderson, Economic Development Director, City of Twin Falls, Idaho (Mar. 3, 2014) (notes on file with author); Telephone Interview with Ryan P. Armbruster, Shareholder, Elam & Burke, & Meghan S. Conrad, Associate, Elam & Burke (Feb. 27, 2014) (notes on file with author).

42. Reuter, *supra* note 19.

43. Lefcoe, *supra* note 27, at 80–81.

44. O'Toole, *supra* note 2; Reuter, *supra* note 19.

45. Teaford, *supra* note 16, at 461.

46. Reuter, *supra* note 19.

47. *Id.*

48. Teaford, *supra* note 16, at 461.

downtown buildings and encouraged renovation instead of destruction;⁴⁹ this changed the attitude of urban renewal in Boise. According to Boise Weekly, “[U]rban renewal in Boise has treated the city's history with respect and has restored almost as much of the city as it decimated in the 1970s.”⁵⁰ Boise’s URA now focuses on “supporting the reuse of historic buildings and re-creating traditional downtown streetscapes.”⁵¹ Indeed, the Boise URA and Idaho URAs in general now encourage historical preservation rather than destruction. Considering this role-reversal, associating urban renewal with the destruction of historical buildings is not rational.

Though perhaps not as much as states with large populations of racial minorities, Idaho also experienced the racially discriminatory effects of federal urban renewal. As already mentioned, Boise’s URA decimated Boise’s Chinatown, “destroying not just buildings, but what remained of a community, too.”⁵² Congress’s passage of the Widnall Amendment to the Housing Act in 1966 and the Fair Housing Act of 1968 helped limit the discriminatory effects of federal urban renewal.⁵³ Local governments have also sought to mitigate the discriminatory impacts of modern urban renewal.⁵⁴ Contemporary “state and local governments are . . . more aware of the discriminatory impacts of redevelopment than they were . . . [and] have taken steps to improve the fairness of the redevelopment process by making it more transparent and by improving relocation assistance programs.”⁵⁵ Despite these changes, many critics believe that urban renewal still imposes disproportionate burdens on poor communities and minorities.⁵⁶ However, if used correctly, urban renewal need not bear this stigma. When urban renewal is used without the power of eminent domain, as in Idaho, the burdens it imposes on poor and minority communities are drastically reduced if not eliminated.⁵⁷

ii. The Emergence and Proliferation of Tax Increment Financing

With less federal funding after federal urban renewal was eliminated in the 1970s, states were forced to independently fund their urban renewal projects.⁵⁸ Many states turned to tax abatements, incentive zoning, and direct grants.⁵⁹ In California, where bonds for urban renewal required hard-to-obtain voter approval, local governments began using tax increment financing as a way to provide more funding for urban re-

49. Reuter, *supra* note 19.
50. *Id.*
51. *Id.*
52. *Id.*
53. See Lavine, *supra* note 25, at 472.
54. See *id.* at 473.
55. *Id.*
56. *Id.* at 473–74.
57. See *id.* at 475.
58. Teaford, *supra* note 16, at 460.
59. *Id.*

newal.⁶⁰ Initially, TIF grew slowly; in the late 1970s there were just twenty-six TIF areas in California and six other states where TIF was authorized.⁶¹ But between 1980 and 1990, the number of TIF areas in California more than doubled, increasing from 299 to 658.⁶² Twenty-eight other states had authorized TIF by 1984.⁶³ This number increased to thirty-three by 1987 and forty-four by 1992.⁶⁴ Today, TIF is authorized in forty-eight states and the District of Columbia.⁶⁵ By far, TIF has become the most widespread urban renewal financing mechanism in the country.⁶⁶ Idaho adopted TIF in 1988 with the passage of The Local Economic Development Act.⁶⁷

Studies suggest there are many thousands of TIF districts nationwide.⁶⁸ In 2003, Wisconsin had 789 TIF districts, Missouri had at least 291 TIF districts in 2007, and Iowa had a staggering 2,400 TIF districts “covering 7.1[%] of the urban tax base” in 1999.⁶⁹ California had upward of 10% of its property tax base included in a TIF district in 2001.⁷⁰ In Idaho, 3.9% of property taxes went to Idaho URAs statewide in 2009.⁷¹ In 2013, there were seventy-three urban renewal districts in twenty-five of Idaho’s forty-four counties.⁷²

The proliferation of TIF has paralleled the evolution of urban renewal.⁷³ As TIF became the most widely used financing tool for urban renewal, urban renewal evolved to allow local governments to develop unblighted areas.⁷⁴ As previously mentioned, urban renewal came to be used not only to *redevelop* dilapidated, deteriorated areas, but also to *develop* unblighted areas.⁷⁵ To accommodate the evolution of urban renewal, state legislatures have relaxed definitions of blight.⁷⁶ As state courts have largely deferred to legislatures’ proffered definitions of blight, findings of blight have become merely a formality.⁷⁷ Sixteen states have abolished the need for a blight finding altogether.⁷⁸ TIF is a

60. Briffault, *supra* note 6, at 69.

61. *Id.*

62. *Id.* at 70.

63. *Id.*

64. *Id.*

65. *Id.* California repealed its TIF statute in 2012. Walters, *supra* note 12. Arizona is the other state without a TIF program. Briffault, *supra* note 6, at 70. To the knowledge of the author, no other states have repealed or enacted TIF statutes since Richard Briffault published this article in 2010.

66. Teaford, *supra* note 16, at 460.

67. IDAHO CODE ANN. § 50-2901 (2009 & Supp. 2013).

68. Briffault, *supra* note 6, at 70.

69. *Id.*

70. *Id.*

71. O’Toole, *supra* note 2.

72. E-mail and spreadsheet from Gary Houde, *supra* note 1.

73. See Briffault, *supra* note 6, at 71.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* at 71–72.

78. *Id.*

major reason for this evolution. While TIF can work in blighted areas, it is most effective in unblighted areas.⁷⁹

TIF's prevalence not only demonstrates its suitability to local economic development, but also its place as a necessary tool for municipalities.⁸⁰ Without federal funding from Title I, states needed a way to finance urban renewal and economic development.⁸¹ TIF filled that void.⁸² Idaho cities almost exclusively use TIF to finance urban renewal.⁸³ In Idaho, TIF laws are intertwined with urban renewal laws. Definitions and procedures from Idaho's urban renewal laws are incorporated into Idaho's TIF laws.⁸⁴ The remainder of this article will focus mostly on TIF. However, because TIF is almost exclusively used for urban renewal in Idaho,⁸⁵ when this article refers to the use of TIF, it will also be referencing the practice of urban renewal and vice versa.

iii. The Basic Structure of Tax Increment Financing

TIF begins with the creation of an urban renewal agency.⁸⁶ The agency then forms TIF districts where TIF funds will be allocated.⁸⁷ Once an agency forms a district, the property tax value within the district is assessed and set.⁸⁸ The assessed value is the set base value.⁸⁹ Property taxes in the district are levied as usual, and the set base value continues to go to the various taxing entities, such as municipalities, counties, school districts, and fire districts.⁹⁰ As property tax values within the TIF district increase, the agency receives any property tax revenues that exceed the set base value and uses them to make improvements to the TIF district.⁹¹ These excess revenues are the increment in tax increment financing. Improvements include the construction of public facilities, infrastructure, or other economic development.⁹² Urban renewal agencies can implement TIF by paying for improvements as the TIF district produces increment or by leveraging bonds that are used to fund improvements.⁹³ In the latter situation, the improvements increase property tax revenues, the increment of which is used to repay

79. Lefcoe, *supra* note 27, at 67–73.

80. J. Drew Klacik & Samuel Nunn, *A Primer on Tax Increment Financing*, in TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT, *supra* note 3, at 15.

81. Teaford, *supra* note 16, at 460.

82. *See id.*

83. Telephone Interview with Ryan Armbruster & Meghan Conrad, *supra* note 41.

84. *See, e.g.*, IDAHO CODE ANN. §§ 50-2903(2), (8)(c), (12), -2906(1), (3), -2909(1)(c), (3) (2009 & Supp. 2013) (referencing the Idaho Urban Renewal Law of 1965).

85. Telephone Interview Ryan Armbruster & Meghan Conrad, *supra* note 41.

86. *See* IDAHO CODE ANN. § 50-2006(a) (2009 & Supp. 2013).

87. Briffault, *supra* note 6, at 67.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* at 67–68.

the bonds.⁹⁴ TIF bonds thus allow municipalities to “jumpstart the redevelopment process.”⁹⁵ As bonds or project costs are paid off, the project is wound down and incremental revenues are eventually returned to the taxing entities.⁹⁶

Broadly speaking, TIF can be divided into five phases.⁹⁷ The first phase is the project initiation phase. During this phase, a city identifies an area as blighted or underdeveloped and forms an urban renewal agency to address the problem.⁹⁸ The second phase is the plan formulation phase. In this phase, the urban renewal agency forms a TIF plan that sets out the municipality’s blight finding, the urban renewal area, and other aspects important to the community and the success of the project.⁹⁹ The third phase is the plan adoption phase. During this phase, the urban renewal agency subjects the plan to various participatory mechanisms that allow the public and affected taxing entities to become familiar with and object to the TIF plan.¹⁰⁰ If the plan is adopted at the plan adoption phase, it is then implemented. The plan implementation phase is the fourth phase and includes property value assessment, tax increment allocation to the urban renewal agency, and physical plan execution.¹⁰¹ As the plan is implemented, “it should be subject to evaluation and set to terminate within a specified time.”¹⁰² This is the fifth and final TIF phase: evaluation and termination. Throughout all phases of the project, agencies should operate transparently.

After part II discusses the legality of TIF, part III examines the status of Idaho’s TIF laws and improvements the Idaho legislature could make to these laws in relation to each of the project phases.¹⁰³

II. THE LEGALITY OF URBAN RENEWAL AND TAX INCREMENT FINANCING

Because urban renewal is implemented on a state-by-state basis, it is subject to state constitutional and statutory restrictions. Accordingly, urban renewal opponents have sought to undermine urban renewal’s legality by arguing that it violates certain state constitutional and statutory restrictions.¹⁰⁴ While these arguments are used against TIF today, they are generally the same arguments used against the revenue bonds

94. *Id.*

95. *Id.*

96. J. Drew Klacik & Samuel Nunn, *A Primer on Tax Increment Financing*, in TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT, *supra* note 3, at 16.

97. Johnson & Kriz, *supra* note 3, at 32.

98. *See id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. A table showing the project phases and the way that different elements of each phase is and has been addressed in Idaho is available in the appendix. *Infra* Part V.

104. *See* Boise Redev. Agency v. Yick Kong Corp., 499 P.2d 575, 579–83, 94 Idaho 876, 880–84 (1972).

that funded urban renewal before TIF existed (with the exception of the argument that TIF is often not the “but for” causation of development).¹⁰⁵ Thus, while one of the cases discussed in this section refers to revenue bonds, the arguments made against revenue bonds are equally applicable to TIF. These arguments assert that urban renewal violates constitutional restrictions and principles of statutory construction.¹⁰⁶ While the Idaho Supreme Court has not ruled on all of these arguments, this section explains how it has ruled on some of them and seeks to predict how it might rule on others.

A. Constitutional Restrictions

Most of the constitutional arguments against TIF stem from constitutional limits on public spending, such as restrictions on municipalities’ ability to incur debt and requirements that expenditure of municipal funds be limited to public purposes. These limits on public spending originated in the 1830s when states sought to replicate the success the Erie Canal had in stimulating New York’s economy by sponsoring massive amounts of state-funded infrastructure development.¹⁰⁷ Large-scale projects such as “turnpikes, canals, and railroads” sprang up all over the country.¹⁰⁸ Unfortunately, many private developers were unable to repay the money borrowed from states to make these improvements.¹⁰⁹ The states in turn had trouble repaying their debtors and several defaulted on their loans.¹¹⁰ As a result, many states revised their constitutions to prevent municipalities from incurring debt without voter approval¹¹¹ and to require that funds must be spent in furtherance of a public purpose.¹¹²

i. Restraints on Cities’ Ability to Incur Indebtedness without Voter Approval

Much of the controversy over TIF stems from the fact that TIF bonds are usually entered into without voter approval.¹¹³ Whether TIF bonds require voter approval depends on whether they are more like revenue bonds or general obligation bonds.¹¹⁴ Revenue bonds are repaid solely by funds produced by a specified revenue-generating source associated with the bonds.¹¹⁵ Similarly, TIF bonds are repaid by incremental

105. *See id.*; Briffault, *supra* note 6, at 74–81.

106. *See Yick Kong Corp.*, 499 P.2d at 580, 94 Idaho at 881.

107. Richard Briffault, *Foreword: The Disfavored Constitution: State Fiscal Limits and State Constitutional Law*, 34 RUTGERS L.J. 907, 911 (2003) [hereinafter *Forward*].

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* at 917.

112. *Id.* at 911–12.

113. *See Briffault, supra* note 6, at 76–77.

114. *See id.*

115. *Id.*

increases in property tax revenues that come from revenue-generating sources in a specific area associated with the bonds.¹¹⁶ General obligation bonds are backed by the full faith and credit of the city and repaid from the city's treasury.¹¹⁷ TIF bonds are similar to general obligation bonds because TIF bonds are repaid using money that would otherwise go to the city treasury.¹¹⁸ Through judicial interpretation and constitutional amendment, revenue bonds have generally been found to be exempt from constitutional limitations on incurring debt without voter approval.¹¹⁹ Thus, if TIF bonds are more like revenue bonds, they may be exempt from constitutional restrictions on incurring debt without voter approval.¹²⁰ However, if TIF bonds are more like general obligation bonds, they likely violate such restrictions if they are used without voter approval.¹²¹ In states that have no laws exempting TIF bonds from state constitutional restrictions on incurring debt, courts have split over whether TIF bonds are akin to revenue bonds or general obligation bonds.¹²² However, most states avoid interpreting whether they should treat TIF bonds as though they are revenue bonds or general obligation bonds by exempting TIF bonds themselves from state constitutional restraints on incurring debt without voter approval.¹²³ This can be accomplished by judicial or legislative declaration that urban renewal agencies, as authorities independent of municipalities, are not subject to debt limits.¹²⁴

The Idaho Supreme Court made such a declaration in *Boise Redevelopment Agency v. Yick Kong Corp.*¹²⁵ There, the Boise Redevelopment Agency (BRA) sought to purchase property from the Yick Kong Corporation for the purpose of urban renewal.¹²⁶ Negotiations between the two parties broke down, and the BRA pursued condemnation of the property.¹²⁷ The trial court granted the BRA's condemnation of the property.¹²⁸ The Yick Kong Corporation appealed, claiming that the revenue bonds (this case was decided before Idaho used TIF) the BRA used to finance its projects were invalid because article VIII, section 3 of the Idaho Constitution prevents cities from incurring debt without taxpayer approval.¹²⁹

116. *Id.*

117. *Id.*

118. *Id.*

119. *Forward*, *supra* note 107, at 913, 918.

120. *See* Briffault, *supra* note 6, at 76.

121. *See id.*

122. *Id.*

123. Johnson & Kriz, *supra* note 3, at 44.

124. *Id.* at 47. Minnesota has made such a declaration. *Id.*

125. *Boise Redev. Agency v. Yick Kong Corp.*, 499 P.2d 575, 581, 94 Idaho 876, 882 (1972).

126. *Id.* at 577, 94 Idaho at 878.

127. *Id.*

128. *Id.*

129. *Id.* at 579-80.

The Yick Kong Corporation asserted that the BRA was the alter ego of the city and was therefore subject to the same constitutional restrictions on incurring debt that the city was, and that, by issuing revenue bonds, the BRA—and thus the city—had violated article VIII, section 3 of the Idaho Constitution.¹³⁰ The Yick Kong Corporation based this assertion on the city's ability to appoint and remove agency commissioners and approve and deny agency projects.¹³¹ The Idaho Supreme Court dismissed these arguments, noting that (1) the city's ability to appoint and remove commissioners was not absolute and thus did not confer excessive control and (2) the city's ability to approve and deny projects was necessary to provide a local voice in the BRA's operations.¹³² The court concluded that the URA was not "the alter ego of the City of Boise," that "[t]he degree of control exercised by the City of Boise [did] not usurp the powers and duties of the [BRA]," and that "the close association between the two entities at most show[ed] two independent public entities closely cooperating for valid public purposes."¹³³

In 2009, the Idaho Supreme Court reaffirmed the *Yick Kong* holding in *Urban Renewal Agency of the City of Rexburg v. Hart*.¹³⁴ In *Hart*, the City of Rexburg's urban renewal agency planned to use TIF bonds to construct a public outdoor swimming facility, a sporting and community events building, and outdoor fields.¹³⁵ Kenneth Hart, a Rexburg citizen filing a pro se appearance, challenged the constitutionality of the TIF bonds.¹³⁶ Hart made the same argument as the Yick Kong Corporation—that urban renewal agencies are the alter egos of cities and are therefore subject to the same state constitutional limits on incurring debt without voter approval as cities.¹³⁷ Hart claimed that the Rexburg URA, as the alter ego of the city, could not issue TIF bonds to finance its project because such financing would amount to the city incurring debt without voter approval.¹³⁸

Hart further argued that two amendments to the Idaho Urban Renewal Law of 1965 made subsequent to *Yick Kong* validated the alter-ego argument.¹³⁹ The first of these amendments allowed a city to appoint itself as its own urban renewal agency board both at the outset of the URA's formation and by terminating an existing board.¹⁴⁰ The second amendment removed language that prevented a URA board member from holding any other public office in the municipality of the

130. *Id.*

131. *Yick Kong Corp.*, 499 P.2d at 580, 94 Idaho at 881.

132. *Id.* at 581, 94 Idaho at 882.

133. *Id.*

134. *Urban Renewal Agency of City of Rexburg v. Hart*, 222 P.3d 467, 471, 148 Idaho 299, 303 (2009).

135. *Id.* at 468, 148 Idaho at 300.

136. *Id.*

137. *Id.* at 469–70, 148 Idaho at 301–02.

138. *Id.*

139. *Id.* at 470, 148 Idaho at 302.

140. *Hart*, 222 P.3d at 470, 148 Idaho at 302.

URA.¹⁴¹ Hart claimed that these amendments increased the amount of control cities exercised over URAs, thus making URAs the alter egos of cities.¹⁴²

The trial court found that the TIF bonds were constitutional.¹⁴³ Hart appealed the ruling and nine other Idaho URAs filed a brief as *amici curiae*, asking the Idaho Supreme Court to affirm the trial court's holding.¹⁴⁴ The Idaho Supreme Court maintained that URAs are not the alter egos of cities.¹⁴⁵ The court noted that the amendments did not increase cities' control over URAs:

[E]ven if the city governing body does appoint itself, the commissioners [including those who hold other public offices in the URA's municipality] "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."¹⁴⁶

The court held, "Even as amended, the Law does not allow a city to usurp the powers and duties of the urban renewal agency."¹⁴⁷

The holdings in *Yick Kong* and *Hart* thus make it clear that the Idaho Supreme Court does not think that urban renewal and TIF violate constitutional restraints on cities' ability to incur indebtedness without voter approval.

ii. Restraints Limiting Expenditure of Tax Dollars to Public Purposes

State courts strictly interpreted what constituted a public purpose for the expenditure of tax dollars from the time public purpose requirements were instituted in the 1830s and 1840s up until the 1930s.¹⁴⁸ With the onset of the Great Depression, however, state courts increasingly upheld programs that issued bonds to catalyze development.¹⁴⁹ These efforts to counteract the effects of the Great Depression led to the erosion of public purpose requirements.¹⁵⁰ By the end of the twentieth century, nearly all state courts had upheld the constitutionality of one form or another of funding for private economic development through revenue bonds.¹⁵¹ Although public purpose restrictions are still preva-

141. *Id.*

142. *Id.*

143. *Id.* at 468, 148 Idaho at 300.

144. *Id.*

145. *Id.* at 471, 148 Idaho at 303.

146. *Hart*, 222 P.3d at 470, 148 Idaho at 302 (quoting IDAHO CODE ANN. § 50-2006(b)(3) (2009 & Supp. 2013)).

147. *Id.* at 471, 148 Idaho at 303.

148. *Forward*, *supra* note 107, at 911–12.

149. *Id.*

150. *Id.*

151. *Id.* at 913.

lent today, state courts are very deferential to state legislatures' definitions of what a public purpose is.¹⁵² This often means that state constitutions' public purpose restrictions on the expenditure of tax dollars are, for the most part, ornamental.¹⁵³

Article VIII, sections 2 and 4, and article 12, section 4 of the Idaho Constitution contain Idaho's public purpose requirement.¹⁵⁴ The Idaho Supreme Court also announced a public purpose requirement in *Idaho Water Resource Board v. Kramer*, noting that a public purpose is one "that serves to benefit the community as a whole and which is directly related to the functions of government."¹⁵⁵ In *Yick Kong*, the Yick Kong Corporation also asserted that the City of Boise had violated Idaho's public purpose requirement by lending credit to the URA, which it asserted was a private entity.¹⁵⁶ The court held that the Boise URA was engaged in a public purpose.¹⁵⁷ The court noted that the URA, "being a public and not a private enterprise, [did] not fall within the strictures and prohibition of Article 8, Section 4 and Article 12, Section 4 of the Idaho Constitution."¹⁵⁸

Additionally, because judicial treatment of what constitutes a public purpose for the expenditure of tax dollars is similar to what constitutes a public use in an eminent domain proceeding,¹⁵⁹ the *Yick Kong* court's discussion of why the taking of property involved in the case was for a public use is instructive. The court found that the state "may legitimately protect the public from disease, crime, and perhaps even deterioration, blight and ugliness" through urban renewal.¹⁶⁰ The court also found that so long as the benefit that the URA tenders is predominately public, and private benefit is incidental, urban renewal should be deemed a public purpose.¹⁶¹ Finally, the court held that economic development is generally incidental to the predominantly public purpose of urban renewal.¹⁶²

To take the similarity between what constitutes a public purpose for the expenditure of tax dollars and what constitutes a public use in an eminent domain proceeding to its logical end would mean that, after *Kelo*, the Idaho Supreme Court could technically announce that urban renewal that is *predominately* driven by private economic development is a public purpose,¹⁶³ thus allowing for the expenditure of tax dollars.

152. *Id.* at 914.

153. *Id.* at 914–15.

154. IDAHO CONST. art. VIII, §§ 2, 4; IDAHO CONST. art. XII, § 4.

155. *Idaho Water Res. Bd. v. Kramer*, 548 P.2d 35, 59, 97 Idaho 535, 559 (1976).

156. *Boise Redev. Agency v. Yick Kong Corp.*, 499 P.2d 575, 582, 94 Idaho 876, 883 (1972).

157. *Id.* at 581, 583, 94 Idaho at 882, 884.

158. *Id.* at 583, 94 Idaho at 884.

159. *Forward*, *supra* note 107, at 946 n. 195.

160. *Yick Kong Corp.*, 499 P.2d at 578, 94 Idaho at 879.

161. *Id.* at 578–79, 94 Idaho at 879–80.

162. *Id.*

163. *See Kelo v. City of New London, Conn.*, 545 U.S. 469, 484 (2005).

This reasoning is in line with current state interpretations of what constitutes a public purpose for the expenditure of tax dollars.¹⁶⁴

B. Statutory Restrictions

While TIF statutory schemes have many restrictions, two restrictions that go to the very core of how and why TIF is used ask whether the area in which development is proposed is blighted and whether the proposed development would have occurred without the use of TIF incentives (a “but for” requirement).¹⁶⁵

i. Is the Area Blighted?

Most states’ urban renewal statutes require that there be a finding of blight before TIF bonds can be used to finance urban renewal.¹⁶⁶ However, state legislatures have redefined and broadened the meaning of blight to include areas that are more underdeveloped than blighted.¹⁶⁷

The definition of blight in Idaho urban renewal and TIF laws has remained largely the same since the Idaho Urban Renewal Law of 1965 and the Local Economic Development Act of 1987 were enacted. There are definitions of blight in each of these chapters.¹⁶⁸ Both chapters use the term deteriorated rather than blighted.¹⁶⁹ Idaho Code subsection 50-2018(8) sets out the specific requirements for an area to be considered deteriorated for the purposes of urban renewal.¹⁷⁰ This subsection was amended in 2006 and 2011.¹⁷¹ Idaho Code subsection 50-2903(8) sets out requirements for an area to be considered deteriorated for the purposes of a TIF project.¹⁷² These requirements are largely the same as those in subsection 50-2018(8).¹⁷³ The two subsections are used concurrently¹⁷⁴ and the legislature has similarly amended them throughout the years.¹⁷⁵ Because the language in subsection 50-2903(8) is much more

164. Briffault, *supra* note 6, at 74; *Forward*, *supra* note 107, at 945–46.

165. *See* Briffault, *supra* note 6, at 77–78.

166. *Id.* at 78; *see also* IDAHO CODE ANN. § 50-2018(8) (2009 & Supp. 2013).

167. Briffault, *supra* note 6, at 78.

168. IDAHO CODE ANN. §§ 50-2018(8), -2903(8) (2009 & Supp. 2013).

169. IDAHO CODE ANN. §§ 50-2018(8), -2903(8) (2009 & Supp. 2013).

170. IDAHO CODE ANN. § 50-2018(8) (2009 & Supp. 2013).

171. Idaho Urban Renewal Law of 1965, ch. 317, sec. 4, § 50-2018(8), 2011 Idaho Sess. Laws 910, 916 (codified as amended at IDAHO CODE ANN. § 50-2018(8) (2009 & Supp. 2013)); Idaho Urban Renewal Law of 1965, ch. 310, sec. 1, § 50-2018(8), 2006 Idaho Sess. Laws 953, 953–54 (codified as amended at IDAHO CODE ANN. § 50-2018(8) (Supp. 50-2013)).

172. IDAHO CODE ANN. § 50-2903(8) (2009 & Supp. 2013).

173. *Id.*; IDAHO CODE ANN. § 50-2018(8) (2009 & Supp. 2013).

174. *See* IDAHO CODE ANN. §§ 50-2903(2), (8)(c), (12), -2906(1), (3), -2909(1)(c), (3) (2009 & Supp. 2013) (each of these subsections reference the Idaho Urban Renewal Law of 1965).

175. Idaho Urban Renewal Law of 1965, ch. 317, sec. 4, § 50-2018(8), 2011 Idaho Sess. Laws 910, 916 (codified as amended at IDAHO CODE ANN. § 50-2018(8) (2009 & Supp. 2013)); Local Economic Development Act, ch. 317, sec. 6, § 50-2903(8), 2011 Idaho Sess. Laws 910, 920 (codified as amended at IDAHO CODE ANN. § 50-2903(8) (2009 & Supp. 2013)) (both

current and subsection 50-2903(8) is likely the subsection an urban renewal agency would use when making a blight finding, I will use this subsection to explain Idaho's blight requirement.

The broadest sections of 50-2903(8) allow a finding of deterioration in any area in which there is a

predominance of defective or inadequate street layout, faulty lot layout . . . , diversity of ownership, . . . defective or unusual conditions of title, . . . or any combination of such factors [that] 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.¹⁷⁶

This subsection also specifies that such an area may be an open area.¹⁷⁷ The most significant amendments to subsection 50-2903(8) occurred in 1994 and 2011.¹⁷⁸ While the 1994 amendment broadened the definition of blight, the 2011 amendment narrowed the definition. The 1994 amendment added subsection 50-2908(8)(e), which makes any area that is economically disadvantaged because of its close proximity to the border of an adjacent state a deteriorated area.¹⁷⁹ This subsection broadened the definition of a deteriorated area to include areas that may not meet any of the definitions of a deteriorated area but are merely economically disadvantaged by virtue of their proximity to a state border.¹⁸⁰ The 2011 amendment sought to limit the definition of a deteriorated area by exempting agricultural and forest land.¹⁸¹ Although this amendment technically narrowed the definition of blight, it is unlikely any urban renewal agency would seek to establish an urban renewal district on agricultural or forest land without the land first being zoned for other purposes.

State courts have encouraged the broadening of blight definitions by legislatures by largely deferring to legislatures' definitions of

statutes were changed to exempt agricultural and forest land from the definition of deteriorated); Idaho Urban Renewal Law of 1965, ch. 310, sec. 1, § 50-2018(8), 2006 Idaho Sess. Laws 953, 953-54 (codified as amended at IDAHO CODE ANN. § 50-2018(8) (2009 & Supp. 2013)).

176. IDAHO CODE ANN. § 50-2903(8) (2009 & Supp. 2013).

177. *Id.*

178. Local Economic Development Act, ch. 317, sec. 6, § 50-2903(8), 2011 Idaho Sess. Laws 910, 920 (codified as amended at IDAHO CODE ANN. § 50-2903(8) (2009 & Supp. 2013)); Local Economic Development Act, ch. 381, sec. 2, § 50-2903(7), 1994 Idaho Sess. Laws 1222, 1224 (codified as amended at IDAHO CODE ANN. § 50-2903(8) (2009 & Supp. 2013)).

179. Local Economic Development Act, ch. 381, sec. 2, § 50-2903(7), 1994 Idaho Sess. Laws 1222, 1224 (codified as amended at IDAHO CODE ANN. § 50-2903(8) (2009 & Supp. 2013)).

180. IDAHO CODE ANN. § 50-2903(7) (2009 & Supp. 2013).

181. Local Economic Development Act, ch. 317, sec. 6, § 50-2903(8), 2011 Idaho Sess. Laws 910, 920 (codified as amended at IDAHO CODE ANN. § 50-2903(8) (2009 & Supp. 2013)).

blight.¹⁸² Such was the case in *Yick Kong*.¹⁸³ The Yick Kong Corporation challenged the finding of blight in the condemned area, where there were sixty-five buildings, forty-five of which were deemed “defective,” and seven parcels with no buildings on them.¹⁸⁴ The court held that, because the structures and other improvements in the area were predominately defective, the area was deteriorating.¹⁸⁵ The court’s holding rested largely on deference to the Idaho legislature’s definition of deteriorated.¹⁸⁶ The court stated, “The definitions contained in I.C. s[ection] 50-2018 are, in our view, sufficiently precise to give adequate guidelines to the local governing body.”¹⁸⁷

ii. Would the Development Have Occurred without TIF Subsidies?

Conceptually, TIF would not be a viable source of financing economic development if the development it seeks to attract would have occurred just as easily without TIF subsidies.¹⁸⁸ Thus, several states require that TIF plans cannot be approved unless the development would not have occurred “but for” the TIF subsidies offered to developers.¹⁸⁹

An explicit “but for” requirement is absent from Idaho’s TIF and urban renewal statutes.¹⁹⁰ However, Idaho Code section 50-2905(3) requires that a TIF plan include an “economic feasibility study.”¹⁹¹ Though the statute does not specify what an “economic feasibility study” should include,¹⁹² conceivably, a TIF project would not be economically feasible if the development it seeks to attract would have located in the TIF district without any TIF subsidies. Furthermore, it seems to have become a best practice of sorts among Idaho municipalities not to approve a TIF plan unless it meets a “but for” standard.¹⁹³

Idaho is not alone in its lack of a “but for” requirement. In 2008, only nineteen states applied a “but for” requirement.¹⁹⁴ Like the statutory blight requirement, courts have become less stringent in applying the

182. Briffault, *supra* note 6, at 79.

183. *See* Boise Redev. Agency v. Yick Kong Corp., 499 P.2d 575, 584, 94 Idaho 876, 885 (1972).

184. *Id.*

185. *Id.*

186. *See id.*

187. *Id.*

188. *See* Briffault, *supra* note 6, at 77.

189. *Id.*

190. *See generally* IDAHO CODE ANN. §§ 50-2001–33, -2901–12 (2009 & Supp. 2013).

191. IDAHO CODE ANN. § 50-2905(3) (2009 & Supp. 2013).

192. *See generally* IDAHO CODE ANN. §§ 50-2001–33, -2901–12 (2009 & Supp. 2013).

193. *See* Telephone Interview with Melinda Anderson, *supra* note 41; Telephone Interview with Ryan P. Armbruster & Meghan S. Conrad, *supra* note 41.

194. *See* COUNCIL OF DEV. FIN. AGENCIES, ORIGINAL RESEARCH: 2008 TIF STATE-BY-STATE REPORT (2008), available at [http://www.cdfa.net/cdfa/cdfaweb.nsf/0/8ee94afece08bc988257936006747c5/\\$FILE/CDFA-2008-TIF-State-By-State-Report.pdf](http://www.cdfa.net/cdfa/cdfaweb.nsf/0/8ee94afece08bc988257936006747c5/$FILE/CDFA-2008-TIF-State-By-State-Report.pdf).

“but for” requirement.¹⁹⁵ Although some TIF projects have been struck down because they did not meet the “but for” threshold, courts are generally deferential to municipalities’ determinations of “but for” causation, even when such determinations are “debatable and even conclusory.”¹⁹⁶ This may be because it can be very difficult to determine if development would have happened without TIF subsidies.¹⁹⁷ Still, deference to local determinations of “but for” causation can be detrimental to communities implementing TIF. A lack of “but for” causation could mean that the URA or municipality is using TIF purely to garner its increments, without concern for TIF’s ability to bring benefits to a community.¹⁹⁸ Although “but for” standards are “usually very low hurdles and not uniformly or rigorously applied,”¹⁹⁹ Idaho could help prevent purely tax-driven TIF projects by making its “but for” standard explicit and explaining exactly what an “economic feasibility study” should include.

Because Idaho does not have an explicit “but for” standard and rigorous application of the standard has fallen by the wayside, it is very difficult to determine how the Idaho Supreme Court would decide a “but for” challenge to a TIF project under Idaho’s current TIF statutes. On one hand, the lack of an explicit “but for” standard in Idaho’s TIF statutes and lax application of the standard in general seem to imply that the court likely would not strike down a TIF project with a weak showing of “but for” causation. On the other hand, if a “but for” challenge presented facts extremely indicative of a lack of “but for” causation, the court might strike down a TIF project for failing to create an economically feasible plan.

III. WHY TAX INCREMENT FINANCING SUCCEEDS AND WHY IT IS CONTROVERSIAL

Although urban renewal has managed to thrive in the Idaho legal system for the past fifty years,²⁰⁰ Idahoans continue to resent its existence as a part of our local government system.²⁰¹ The success and controversy of TIF in Idaho and elsewhere is largely attributable to its ability to play off of aspects of local government.²⁰² In a 2010 article, Colum-

195. Briffault, *supra* note 6, at 77–78.

196. *Id.*

197. Johnson & Kriz, *supra* note 3, at 39.

198. See Lefcoe, *supra* note 27, at 93–95.

199. Johnson & Kriz, *supra* note 3, at 39.

200. See e-mail and spreadsheet from Gary Houde, *supra* note 1 (showing that there were seventy-three urban renewal districts in twenty-five of Idaho’s forty-four counties in 2013).

201. See generally O’Toole, *supra* note 2 (“[T]ax-increment financing allows cities to steal funds that taxpayers think they have dedicated to schools, fire, and other programs in order to subsidize favored developers, increase municipal budgets, and socially engineer the way Idahoans live.”).

202. See Briffault, *supra* note 6, at 65.

bia University Law Professor Richard Briffault writes, “TIF succeeds—in the sense of its ubiquitous adoption and use—because it maps precisely onto the principal features of contemporary local government. So, too, TIF is controversial because it exacerbates some of the basic tensions in our local government structure and policies.”²⁰³ Professor Briffault specifically identifies four inherent aspects of TIF that, while making TIF successful, also aggravate tensions in local politics and economics:

TIF succeeds . . . because it, like local government more generally, is highly decentralized; reflects and reinforces the fiscalization of development policy; plays off the fragmentation of local governments and the resulting interlocal struggle for investment; and fits well with the entrepreneurial spirit characteristic of contemporary local economic development policy. A better understanding of TIF contributes to a better understanding of the political economy of American local government.²⁰⁴

Such an understanding—of the interplay between TIF and local government politics—is important to Idahoans’ understanding of TIF and its evolving purposes. This section explains how the inherent aspects of TIF that Professor Briffault identifies cause TIF to succeed and how they can also cause problems. This section also highlights changes that the Idaho legislature has made and could make to Idaho’s TIF laws. While these changes certainly cannot eliminate the problems TIF creates, they can mitigate them.

A. TIF is Decentralized like Local Government

More so than federal and state governments, municipalities have a unique connection to their constituencies. Local governments need the ability to make economic development decisions based on the unique conditions, needs, and desires of their location and citizens.²⁰⁵ Unlike federal urban renewal, which restricted local control over economic development by conditioning receipt of federal funding on compliance with federal regulations,²⁰⁶ with TIF, local governments are given a large amount of control over each aspect of a TIF project.²⁰⁷

As already noted, TIF’s proliferation has been astounding.²⁰⁸ One major reason TIF has experienced so much success is the decentralization of authority to implement TIF projects.²⁰⁹ The federal government

203. *Id.*

204. *Id.*

205. *See id.* at 85.

206. *See id.* at 69; Teaford, *supra* note 16, at 445.

207. Briffault, *supra* note 6, at 85–86.

208. *See supra* Part I.A.ii.

209. Briffault, *supra* note 6, at 84–86.

does not have anything to do with TIF implementation.²¹⁰ State governments provide broad boundaries in which local governments make most major decisions about how TIF will work within their municipalities.²¹¹ Local governments are able to decide TIF district boundaries, what kind of development to pursue, and what kind of infrastructure to place in TIF districts.²¹² By vesting decision-making power in local governments, TIF allows local governments to shape the future of their municipalities.²¹³

The City of Nampa's construction of the Idaho Center is one example of an Idaho community seeking to shape a distinct urban development vision. The Idaho Center was conceptualized by the Urban Renewal Agency of the City of Nampa, which was formed in 1994, just three years before the Idaho Center was constructed in 1997.²¹⁴ As Idaho's second largest city, just twenty miles west of Boise, the agency envisioned Nampa competing with Boise for tourism and entertainment dollars.²¹⁵ The complex would be the home of the Snake River Stampede, one of the largest rodeos in the nation, and the Idaho Stampede, Idaho's first semi-professional basketball team.²¹⁶ It would also host large concerts, rallies, and meetings.²¹⁷ The outdoor horse center would "accommodate[] a wide range of horse events."²¹⁸ In addition to these large-scale events, the complex would host college and high school sport competitions, high school and college graduations, community fundraisers, trade shows, and various other community events.²¹⁹ The Nampa URA hoped bringing these events to the complex would "[e]nhance Nampa's community image / identity" by "putting Nampa on the map," providing a "[s]ense of community pride," causing Nampa to be "viewed as a progressive community," and sending the message that "Nampa is good enough to support amenities."²²⁰

The Idaho Center succeeded in achieving this vision. A benefits analysis of the Idaho Center and the North Nampa Urban Renewal Area published in 2004, the year the urban renewal area closed, states the Idaho Center "[e]nhances quality of life [and] . . . the Treasure Valley's image as a major regional center" and "[r]einforces Nampa's image and importance within the region."²²¹ While these qualitative benefits were

210. *Id.*

211. *Id.*; see also IDAHO CODE ANN. §§ 50-2901-12 (2009 & Supp. 2013).

212. Briffault, *supra* note 6, at 84.

213. *Id.* at 85.

214. Nampa, Idaho, Ordinance 2449, 4 (Nov. 14, 1994) (on file with author); BARNEY & WORTH, INC. & CS PROJECTS, IDAHO CENTER COMMUNITY BENEFITS ANALYSIS 1 (2004) [hereinafter BARNEY & WORTH] (on file with author).

215. BARNEY & WORTH, *supra* note 214, at 1, 22.

216. *Id.* at 1, 3, 7.

217. *Id.* at 7.

218. *Id.*

219. *Id.* at 2, 10, 11.

220. *Id.* at 23.

221. *Id.* at 20.

important factors in the decision to form the North Nampa Urban Renewal Area of which the Idaho Center was a part,²²² Nampa's urban renewal agency also hoped to spur development and increase the tax base in the then barren north Nampa.²²³ The Idaho Center largely succeeded in this aspect as well. The benefits analysis estimates that the Idaho Center had succeeded in catalyzing approximately \$31.3 million in direct and indirect contributions to the Nampa area economy between 2000 and 2004.²²⁴ The tax increment of the North Nampa Urban Renewal Area increased by 88% in 1996, 86% in 1997, and 59% in 1998.²²⁵ When the area closed in 2004, property taxes in the area were nearly eight times what they were before the area was formed.²²⁶ Property taxes for agricultural land near the Idaho Center increased in value from \$2000 per acre in 1995 to \$300,000 per acre when the area closed.²²⁷ Furthermore, after the construction of the Idaho Center, a plethora of businesses settled in the area. Before the urban renewal area closed in 2004, prominent businesses such as the Idaho Center Auto Mall, an enormous collection of car dealerships that sits on nearly forty-two acres and employs over 408 people,²²⁸ and the College of Western Idaho, a small community college with over 10,000 students and nearly 900 employees, had settled near the Idaho Center.²²⁹ Businesses have continued to build in the area after the urban renewal area closed. The Nampa Gateway Center, a large commercial property whose major tenants include Sports Authority, Macy's, Edwards Theatres, Discount Tire, and JC Penney, opened near the Idaho Center in 2007.²³⁰

i. Creating Oversight through Participatory Mechanisms

Although the decentralization of TIF has facilitated its proliferation and cities' ability to respond to the needs of communities and shape a development vision,²³¹ it also means that there is little uniform oversight of cities' use of TIF.²³² As previously mentioned, state governments

222. Nampa, Idaho, Ordinance 2449, 1 (Nov. 14, 1994).

223. BARNEY & WORTH, *supra* note 214, at 1.

224. *Id.* at 2.

225. *Id.* at 15.

226. *Id.* at 14.

227. *Id.*

228. *About*, IDAHO CTR. AUTO MALL, <http://idahocenterautomall.com/about> (last visited May 22, 2014).

229. *Facts at a Glance*, COLL. OF W. IDAHO, <http://cwidaho.cc/info/facts-glance> (last visited May 22, 2014).

230. Holly Beech, *Nampa Gateway Center Continues to Draw Tenants; Still Room for Many More*, IDAHO PRESS-TRIB., Nov. 20, 2010, http://www.idahopress.com/members/nampa-gateway-center-continues-to-draw-tenants-still-room-for/article_6fa7ee82-32d9-11e2-bc74-0019bb2963f4.html.

231. *Supra* Part III.A.–A.i.

232. See Craig L. Johnson, *The Use of Debt in Tax Increment Financing*, in TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT, *supra* note 3, at 85; Kenneth M. Murchinson, *Louisiana: From the Big Easy to the Suburbs, TIF and Its Dangers*, in TAX INCREMENT FINANCING 95, 107–08 (David Callies & Andrew Gowder, Jr. eds., 2012).

provide broad boundaries in which local governments make most major decisions about how TIF will work within their municipalities.²³³ Thus, cities are basically trusted to use TIF responsibly and efficiently without any checks in place to prevent them from failing to do so.²³⁴ This has led to concern for TIF projects with no accountability measures that fail “to produce net benefits for all affected taxing entities.”²³⁵

States have sought to mitigate this problem by adding citizen and entity participatory mechanisms that take place during the plan adoption phase.²³⁶ The most prevalent citizen participatory mechanism is the requirement that municipalities hold public hearings before creating a TIF district or approving a TIF plan.²³⁷ In 2001, forty-two of the forty-eight states then authorized to use TIF required public hearings both before a district was created and before a plan was adopted.²³⁸ In 2008, forty-six of the forty-nine states that authorized TIF required hearings to create a TIF district.²³⁹ Another citizen participatory mechanism, the formation of citizens’ councils, is required in some states.²⁴⁰ This mechanism requires a citizens’ council to approve or modify a proposed TIF plan before the TIF project can go forward.²⁴¹

Some states require URAs to satisfy taxing entity participatory measures before a district or plan can be approved, such as consultation with the other taxing entities affected by a TIF plan.²⁴² The most restrictive entity participatory measures allow other taxing entities to collectively veto a TIF plan.²⁴³ In 2008, thirty-two states had provided for entity participatory measures in their TIF statutes.²⁴⁴ Because taxing entities have a strong incentive to maximize the amount of taxes they receive, these highly restrictive measures can severely inhibit a URA’s ability to adopt a TIF plan unless the plan benefits all affected taxing entities.²⁴⁵ Thus, while citizen and entity participatory measures increase equity for residents and taxing entities, this equity comes at the expense of efficiency.²⁴⁶ As the amount of control citizens and taxing entities have over plan adoption increases, the ability of a URA to efficiently do its job decreases.²⁴⁷

233. *Supra* Part III.A.; *see also* Murchinson, *supra* note 232, at 107–08.

234. *See* Craig L. Johnson, *The Use of Debt in Tax Increment Financing*, in TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT, *supra* note 3, at 85; Murchinson, *supra* note 232, at 107–08.

235. *See* Johnson & Kriz, *supra* note 3, at 43.

236. *Id.* at 41–42.

237. *Id.*

238. *Id.*

239. COUNCIL OF DEV. FIN. AGENCIES, *supra* note 194.

240. Johnson & Kriz, *supra* note 3, at 42.

241. *Id.*

242. *Id.*

243. *Id.*

244. COUNCIL OF DEV. FIN. AGENCIES, *supra* note 194.

245. *Id.* at 43.

246. *Id.*

247. *See id.*

ii. Participatory Mechanisms and Transparency in Idaho

Although Idaho's TIF laws have and continue to provide a significant amount of citizen participation, the laws do not provide as much citizen participation as some other states' laws. Idaho's urban renewal laws were codified in 1966 with provisions for public hearings before the adoption of an urban renewal plan.²⁴⁸ As part of the hearing, the URA must "generally identify the urban renewal area covered by the plan."²⁴⁹ This requirement effectively combines the hearing for district (area) and plan creation. When the Idaho legislature adopted TIF in 1988, the legislature incorporated the requirement for public hearings before plan and district approval into Idaho's TIF laws and added a requirement that a public hearing be held before a plan could be amended.²⁵⁰ The legislature also included provisions requiring URAs to transmit the TIF plan and a description of the TIF district to all affected taxing entities before a TIF district is formed.²⁵¹ There are no provisions for the formation of citizens' councils in Idaho's TIF laws.²⁵² While Idaho would likely benefit from citizens' councils that consult with URAs about TIF plans at the plan adoption phase, citizens' councils that have too much control over plan adoption will likely inhibit Idaho URAs' ability to efficiently perform their functions.

A noteworthy Idaho citizen participatory mechanism is a 2011 amendment to subsection 50-2006(a) that gives citizens a significant amount of control over the creation of urban renewal agencies. The amendment requires "a majority of qualified electors, voting in a citywide or countywide election . . . [to] vote to authorize [an urban renewal] agency to transact business and exercise its powers."²⁵³ This amendment greatly increases the amount of voter participation in urban renewal at the project initiation phase. Although the details of plan and district formation are still left completely to the discretion of the URA, URA formation now requires voter approval.²⁵⁴ While this new requirement makes it harder for Idaho municipalities to create urban renewal agencies, most of the URAs in Idaho were created before the amend-

248. Idaho Urban Renewal Law of 1965, ch. 246, sec. 8, § 50-2008(c), 1965 Idaho Sess. Laws 600, 607 (codified as amended at IDAHO CODE ANN. § 50-2008(c) (2009 & Supp. 2013)); see also Johnson & Kriz, *supra* note 3, at 33–35 tbl. 3.1.

249. IDAHO CODE ANN. § 50-2008(c) (2009 & Supp. 2013).

250. Local Economic Development Act, ch. 210, sec. 6, § 50-2906(1), 1988 Idaho Sess. Laws 393, 397 (codified as amended at IDAHO CODE ANN. § 50-2906(1) (2009 & Supp. 2013)).

251. Local Economic Development Act, ch. 210, sec. 7, § 50-2907(1), 1988 Idaho Sess. Laws 393, 398 (codified as amended at IDAHO CODE ANN. § 50-2907(1) (2009 & Supp. 2013)).

252. See generally IDAHO CODE ANN. §§ 50-2001–33, -2901–12 (2009 & Supp. 2013).

253. Idaho Urban Renewal Law of 1965, ch. 317, sec. 1, § 50-2006(a)(2), 2011 Idaho Sess. Laws 910, 911 (codified as amended at IDAHO CODE ANN. § 50-2006(a)(2) (2009 & Supp. 2013)).

254. *Id.*

ment²⁵⁵ and citizens are likely to approve a URA where there is a need.²⁵⁶

Although Idaho only has one entity participatory measure, this measure still provides for more entity participation than many other states that have no such measures.²⁵⁷ The lone Idaho entity participatory measure is found in Idaho Code subsection 50-2906(1), which requires URAs to transmit a description of the TIF district and the TIF plan to all affected taxing entities.²⁵⁸ Idaho's TIF laws do not require URAs to consult with or consider the input of the other taxing entities involved in a TIF plan.²⁵⁹ With such minimal input, Idaho municipalities run the risk of adopting TIF plans that do not "proportionately spread benefits and costs across all affected jurisdictions."²⁶⁰ By amending its TIF statutes to encourage or require URAs to consult with taxing entities before adoption of a TIF plan, the Idaho legislature would "give affected taxing districts some influence over the process, without giving them complete veto power, [thus] granting them a measure of input without unduly constraining the authorizing body."²⁶¹ Such a "balanced approach will probably yield the best results in terms of the mix of efficiency, effectiveness, and equity concerns."²⁶²

The Idaho legislature has also sought to provide oversight for TIF projects by including transparency measures in Idaho's TIF laws.²⁶³ The first of these measures was added in 2002 and requires URAs to comply with Idaho's public records and open meetings laws.²⁶⁴ The second of these measures was added in 2011 and requires each URA to hold a public meeting where it reports its "activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expense as of the end of such calendar year," and takes comments from the public.²⁶⁵ These transparency measures help the public ensure that Idaho URAs are acting efficiently and responsibly.

255. This amendment does not affect urban renewal agencies established before July 2011. IDAHO CODE ANN. § 50-2006(a)(2) (2009 & Supp. 2013).

256. Telephone Interview with Ryan Armbruster & Meghan Conrad, *supra* note 41.

²⁵⁷ For a tabular comparison of state-by-state participatory mechanisms, see Johnson & Kriz, *supra* note 3, at 33–35 tbl. 3.1.

258. IDAHO CODE ANN. §§ 50-2906(1), -2907(1) (2009 & Supp. 2013).

259. See Johnson & Kriz, *supra* note 3, at 33–35 tbl. 3.1 (these are considered "additional participatory mechanisms"). See generally IDAHO CODE ANN. §§ 50-2001–33, -2901–12 (2009 & Supp. 2013).

260. *Id.* at 43.

261. *Id.*

262. *Id.*

263. IDAHO CODE ANN. § 50-2006(c), (e) (2009 & Supp. 2013).

264. Idaho Urban Renewal Law of 1965, ch. 143, sec. 1, § 50-2006(e), 2002 Idaho Sess. Laws 394, 396 (codified as amended at IDAHO CODE ANN. § 50-2006(e) (2009 & Supp. 2013)).

265. Idaho Urban Renewal Law of 1965, ch. 317, sec. 1, § 50-2006(c), 2011 Idaho Sess. Laws 910, 912 (codified as amended at IDAHO CODE ANN. § 50-2006(c) (2009 & Supp. 2013)).

B. TIF Promotes Fiscal Responsibility in Local Government

Because local government is largely decentralized, municipalities must rely heavily on their own resources to finance operations.²⁶⁶ Local governments basically have two ways to produce additional revenue for financing their operations: they must either raise tax rates, a process inhibited by local politics, or “increase the value of taxable resources.”²⁶⁷ TIF is one of the only tools municipalities have to raise the value of resources subject to taxes.²⁶⁸ TIF does this by leveraging private investment to bring in new revenue.²⁶⁹ TIF encourages private development, which in turn increases property values.²⁷⁰ This increase in property values provides additional revenue to municipalities. When TIF bonds are paid off and all project costs are provided for, incremental revenues produced by the TIF project are no longer allocated to project costs and instead revert to the affected taxing entities, “thus generating either new revenues or reducing tax rates for taxpayers.”²⁷¹ This is a major selling point for TIF; it allows municipalities to finance their operations without seeking additional funds from taxpayers.²⁷² This also goes to the very heart of TIF. TIF is self-sustaining, which is attractive to municipalities that must answer to taxpayers while providing services and encouraging growth.²⁷³

i. Mitigating Unexpected Circumstances

Although TIF encourages fiscal responsibility and can generally produce enough increment to successfully finance all project costs and TIF bonds, unexpected economic factors, such as low occupancy rates, may prevent TIF projects from catalyzing development, producing increments, and paying off bonds.²⁷⁴ States can anticipate and prevent such unexpected factors at the evaluation phase by enacting “legal provisions that require the evaluation of a project’s progress toward meeting the objectives laid out in the enabling ordinance If problems . . . can be identified early in the redevelopment venture, then the authority can act to alleviate the problems.”²⁷⁵ In 2001, only nine states had eval-

266. Briffault, *supra* note 6, at 86.

267. *Id.*

268. *See id.*; J. Drew Klacik & Samuel Nunn, *A Primer on Tax Increment Financing*, in *TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT*, *supra* note 3, at 16.

269. J. Drew Klacik & Samuel Nunn, *A Primer on Tax Increment Financing*, in *TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT*, *supra* note 3, at 16.

270. *Supra* Part I.A.iii.

271. J. Drew Klacik & Samuel Nunn, *A Primer on Tax Increment Financing*, in *TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT*, *supra* note 3, at 16.

272. Briffault, *supra* note 6, at 86–87.

273. *See id.*

274. *See* Johnson & Kriz, *supra* note 3, at 52.

275. *Id.* at 52–53.

uation provisions in their TIF statutes and Idaho was not one of them.²⁷⁶

Idaho currently has no evaluation scheme provided for in its TIF statutes.²⁷⁷ Idaho could prevent the risk of TIF projects failing due to unexpected circumstances by enacting such a provision.²⁷⁸ Massachusetts's TIF statutes afford an excellent example. Massachusetts requires a state Economic Assistance Coordinating Council to "conduct a continual evaluation of economic opportunity areas and the projects certified for participation in the economic development incentive program."²⁷⁹

While enacting an evaluation provision would likely help Idaho municipalities identify and react to unexpected factors in an urban renewal project before the project is finished, it is possible that unsuccessful projects will still go forward. The transparency measures mentioned previously²⁸⁰ can help Idaho municipalities learn from the mistakes of urban renewal projects that are already completed and mitigate those mistakes going forward.

ii. Screening Unrealistic Expectations

Another fiscal responsibility problem arises when municipalities expect TIF projects to produce revenue for the municipality independent of tax increment.²⁸¹ Although the private development generated by a TIF project usually produces additional revenues for cities, those revenues can be offset by TIF projects that are expected to independently produce revenues for the city, but fail to do so.²⁸² Thus, even though tax increment has provided for all of a project's costs and bonds, cities are forced to subsidize TIF projects that do not produce independent revenue.²⁸³

The Idaho Center is a relevant example of this. Although the Idaho Center illustrates a city using TIF to shape a unique development vision,²⁸⁴ that vision may not have been *the best* way to stimulate private development. As previously noted, the Idaho Center achieved many of its development goals. After the Idaho Center was completed, many businesses settled nearby and property taxes surrounding the Idaho Center increased eight fold.²⁸⁵ However, the Idaho Center itself has nev-

276. *See id.* at 45–47 tbl. 3.2, 53.

277. *See generally* IDAHO CODE ANN. §§ 50-2001–33, -2901–12 (2009 & Supp. 2013).

278. *See Johnson & Kriz, supra* note 3, at 53.

279. MASS. GEN. LAWS ANN. ch. 23A, § 3C (West, Westlaw through chapter 70 of the 2014 2nd Annual Sess.).

280. *Supra* Part II.A.ii.

281. Idaho Press-Trib. Editorial Bd., *Idaho Center Worth Keeping*, IDAHO PRESS-TRIB., July 14, 2013, http://www.idahopress.com/members/idaho-center-worth-keeping/article_a34b6b86-eb45-11e2-a9fe-001a4bcf887a.html; *infra* Part III.B.ii

282. *Infra* Part III.B.ii.; *see also* Idaho Press-Trib. Editorial Bd., *supra* note 281.

283. *Infra* Part III.B.ii.; *see also* Idaho Press-Trib. Editorial Bd., *supra* note 281.

284. *Supra* Part III.A.–A.i.

285. *Supra* Part III.A.–A.i.

er become a self-sustaining investment. Practically every year since opening, the Idaho Center has produced net losses. Those losses totaled \$394,425 in 2000; \$537,408 in 2001; \$507,116 in 2002; \$774,755 in 2003;²⁸⁶ \$1,084,743 in 2007; \$1,363,426 in 2008; \$1,208,499 in 2009; \$696,486 in 2010; \$1,764,897 in 2011; \$1,569,294 in 2012; and \$1,803,634 in 2013.²⁸⁷

The Idaho Center benefits analysis, which was published in 2004, noted, “[T]he Nampa events complex persistently continues to lose money, requiring an annual operating subsidy from the Urban Renewal Agency.”²⁸⁸ The analysis attributes the Idaho Center’s poor performance to market conditions:

Market conditions facing the events business have not been favorable in recent years. Across the nation, more than seventy concert venues have been built in the past five years, while the number of proven acts on tour—musical performers, circuses, family shows—have dropped significantly. Concert promoters today are focusing on the largest markets, where 20,000 seat “mega-arenas” can sell out at the highest ticket prices. In the Pacific Northwest, with economic conditions lagging behind the nation’s rebound from recession, many event venues are reporting a significant drop in their business. The Idaho Center, along with many of its peers, has not been able to run its operation on a break-even basis.²⁸⁹

This benefits analysis was published before the start of the recession in 2007.²⁹⁰ After the recession was well underway, in 2010, the Idaho Press-Tribune reported that the Idaho Center continued to struggle, noting that “B market’ entertainment venues” were floundering because

286. BARNEY & WORTH, *supra* note 214, at 13.

287. DEPT OF FIN., CITY OF NAMPA, COMPREHENSIVE ANNUAL FINANCE REPORT 76 (2007), available at <http://www.cityofnampa.us/DocumentCenter/View/31>; DEPT OF FIN., CITY OF NAMPA, COMPREHENSIVE ANNUAL FINANCE REPORT 73 (2008), available at <http://www.cityofnampa.us/DocumentCenter/View/32>; DEPT OF FIN., CITY OF NAMPA, COMPREHENSIVE ANNUAL FINANCE REPORT 76 (2009), available at <http://www.cityofnampa.us/DocumentCenter/View/33>; DEPT OF FIN., CITY OF NAMPA, COMPREHENSIVE ANNUAL FINANCE REPORT 74 (2010), available at <http://www.cityofnampa.us/DocumentCenter/View/34>; DEPT OF FIN., CITY OF NAMPA, COMPREHENSIVE ANNUAL FINANCE REPORT 75 (2011), available at <http://www.cityofnampa.us/DocumentCenter/View/35>; DEPT OF FIN., CITY OF NAMPA, COMPREHENSIVE ANNUAL FINANCE REPORT 74 (2012), available at <http://id-nampa.civicplus.com/DocumentCenter/View/850>; DEPT OF FIN., CITY OF NAMPA, COMPREHENSIVE ANNUAL FINANCE REPORT 78 (2013), available at <http://id-nampa.civicplus.com/DocumentCenter/View/1786>. Information for 1995–2000, 2004–2006 was unavailable.

288. BARNEY & WORTH, *supra* note 214, at 3.

289. *Id.* at 4.

290. *See id.*; Bus. Cycle Dating Comm., Determination of the December 2007 Peak in Economic Activity, THE NATL BUREAU OF ECON. RESEARCH, <http://www.nber.org/dec2008.html> (last visited May 22, 2014).

“[e]ntertainment dollars are some of the first to dry up in a recession.”²⁹¹ Considering the Idaho Center’s failure to produce revenues since its inception, whether the events center will ever produce revenues seems questionable. The Idaho Center’s poor performance thus raises the question: considering Nampa’s location and size, was an events center a wise use of Nampa TIF funds?

a. Keeping the Public Informed through Plan Requirements

Where a TIF project fails to meet revenue-production expectations for cities, it is important to focus on the positive benefits the project accomplishes. While the Nampa URA likely hoped the Idaho Center would bring in revenue, it was probably more focused on the morale it would inspire in the community, the economic development it would catalyze, and the effect it would have on property taxes.²⁹² Its goals in these areas were largely met.²⁹³ However, critics will still condemn projects that do not produce revenues as expected.²⁹⁴ States can mitigate this criticism at the plan formulation phase by requiring urban renewal plans to (1) conform to existing community plans, (2) include precise descriptions of the planned uses for the TIF district, and (3) provide estimates of project costs.²⁹⁵ Such elements will inform the public about the feasibility of the plan and help them decide whether the plan will complement the community.

A TIF plan should state “the objectives of the redevelopment project and should reflect the interests and existing plans of the community as a whole.”²⁹⁶ These interests can be gleaned from existing master community plans.²⁹⁷ Master community plans typically expound matters necessary to community development such as “aspects relating to zoning, densities of residential and commercial properties, [and] the provision of affordable housing.”²⁹⁸ URAs should use master community plans to ensure that their TIF projects will complement the community, rather than offend it.²⁹⁹ In 2001, at least thirty-two states required TIF plans to conform to master community plans.³⁰⁰ Moreover, plans that include the project costs of and specify the planned uses in a TIF area will further ensure that TIF projects complement the community.³⁰¹ Re-

291. Mike Butts, *Idaho Center Subsidy Increases*, IDAHO PRESS-TRIB., Dec. 5, 2010, http://www.idahopress.com/news/idaho-center-subsidy-increases/article_667c32c6-0010-11e0-8c1e-001cc4c03286.html.

292. *Supra* Part III.A.i.

293. *Supra* Part III.A.i.

294. *See* Idaho Press-Trib. Editorial Bd., *supra* note 281.

295. Johnson & Kriz, *supra* note 3, at 40.

296. *Id.* at 39–40.

297. *Id.*

298. *Id.* at 40.

299. *See id.*

300. *See id.* at 33–35 tbl. 3.1.

301. Johnson & Kriz, *supra* note 3, at 39–40.

quiring inclusion of these elements in an urban renewal plan will encourage urban renewal agencies to plan according to public need.³⁰² If the plan is not acceptable, the inclusion of these elements, with the help of the citizen participatory measures described earlier, will help spark “the public debate on the appropriateness of the public expenditure” and screen those plans that fail to garner public support.³⁰³ If a community supports an urban renewal plan from the outset, it will be more likely to condone its failings.

b. Plan Requirements in Idaho

Compared to other states, Idaho’s TIF laws have fairly restrictive plan requirements.³⁰⁴ Idaho’s TIF laws have required urban renewal plans to conform to existing community plans, include precise descriptions of the planned uses for the TIF district, and provide estimates of project costs since the Local Economic Development Act was passed in 1988.³⁰⁵ Several subsections of Idaho Code make up Idaho’s requirement that urban renewal plans conform to master community plans.³⁰⁶ Idaho Code subsections 50-2905(2) and (4) contain Idaho’s requirement that urban renewal plans include project costs and specify the planned uses for a project area.³⁰⁷

In addition to the plan requirements listed above, the Local Economic Development Act has always required that urban renewal plans contain an economic feasibility study (Idaho’s only resemblance of a “but for” requirement), fiscal impact statement, and description of how the URA will finance project costs.³⁰⁸ The Idaho legislature added two more requirements in 2002. These additions were the result of the legislature setting a time limit on urban renewal projects in 2000.³⁰⁹ The additions require that urban renewal plans include the project’s termination date and a “description of the disposition or retention of any assets of the

302. *See id.*

303. *Id.*; *see also supra* Part III.A.i.–ii.

304. *See Johnson & Kriz, supra* note 3, at 33–35 tbl. 3.1; IDAHO CODE ANN. § 50-2905 (2009 & Supp. 2013).

305. *See* Local Economic Development Act, ch. 210, sec. 5, § 50-2905(1), (3), 1988 Idaho Sess. Laws 393, 397 (codified as amended at IDAHO CODE ANN. § 50-2905(2), (4) (2009 & Supp. 2013)); Idaho Urban Renewal Law of 1965, ch. 246, sec. 8, § 50-2008(b), 1965 Idaho Sess. Laws 600, 607 (codified as amended at IDAHO CODE ANN. § 50-2008(b) (2009 & Supp. 2013)).

306. IDAHO CODE ANN. §§ 50-2008(b), (d), (g), -2009, -2018(12)(g) (2009 & Supp. 2013).

307. IDAHO CODE ANN. § 50-2905(2), (4) (2009 & Supp. 2013).

308. Local Economic Development Act, ch. 210, sec. 5, § 50-2905(2), (4)–(5) 1988 Idaho Sess. Laws 393, 397 (codified as amended at IDAHO CODE ANN. § 50-2905(3), (5)–(6) (2009 & Supp. 2013)).

309. *See* Local Economic Development Act, ch. 275, sec. 2, § 50-2904, 2000 Idaho Sess. Laws 893, 897 (codified as amended at IDAHO CODE ANN. § 50-2904 (2009 & Supp. 2013)).

agency upon the termination date.”³¹⁰ In 2011, the Idaho legislature added yet another requirement: that urban renewal plans include the assessed value of the project area at the beginning of the project year and the assessed value of all taxable property in the municipality.³¹¹ This requirement allows municipalities to confirm that an urban renewal area is blighted at the outset of a project and that development within an area is stimulating the tax base in comparison to the rest of the city as a project goes forward.

While these requirements, taken together, certainly help inform communities about the desirability of an urban renewal plan, some of the requirements are undefined, which makes it difficult to know if the requirement has been met. For example, Idaho Code does not define what the standard for conformance with master community plans is.³¹² This essentially leaves the interpretation of whether a TIF plan conforms with a master community plan to each individual URA. Furthermore, subsection 50-2905(2) only requires “[a] statement listing the kind, number, and location of all proposed public works or improvements within the revenue allocation area.”³¹³ URAs are allowed to make their descriptions as general or specific as they desire. Finally, as previously mentioned, the statute does not describe what an economic feasibility study is, thus making the only resemblance of a “but for” standard in Idaho’s TIF laws a fairly easy hurdle to cross. Setting a standard for these requirements will take the interpretation of whether TIF plans meet the requirements out of the hands of URAs, thus increasing the public’s ability to screen impractical or incompatible projects.

C. TIF Plays Off of Local Government Competition

TIF’s ability to generate financing for local government projects can create or intensify competition between local government jurisdictions.³¹⁴ This competition comes in two forms: between adjoining communities vying for regional development and between URAs and taxing entities vying for tax increments.³¹⁵

i. Between Adjoining Communities

Because TIF helps local governments attract businesses, thus increasing the tax base and providing for local services, bordering com-

310. Local Economic Development Act, ch. 143, sec. 4, § 50-2905(6)–(7), 2002 Idaho Sess. Laws 394, 401 (codified as amended at IDAHO CODE ANN. § 50-2905(7)–(8) (2009 & Supp. 2013)).

311. Local Economic Development Act, ch. 317, sec. 8, § 50-2905(1), 2011 Idaho Sess. Laws 910, 923 (codified as amended at IDAHO CODE ANN. § 50-2905(1) (2009 & Supp. 2013)).

312. See IDAHO CODE ANN. §§ 50-2008(b), (d), (g), -2009, -2018(12)(g) (2009 & Supp. 2013).

313. IDAHO CODE ANN. § 50-2905(2) (2009 & Supp. 2013).

314. Briffault, *supra* note 6, at 88.

315. *Id.*

munities often use TIF as a bargaining chip.³¹⁶ Indeed, “TIF adoption is frequently a copycat phenomenon, with a municipality more likely to implement a TIF program when other municipalities in the vicinity have done so.”³¹⁷ The existence of TIF plans in a municipality can be the difference between a thriving development community and a stagnant one.³¹⁸ Thus, where one local government implements TIF projects, neighboring governments are sure to follow in order to maintain an even playing field.³¹⁹ This competition has partly driven the success and proliferation of TIF.³²⁰ Even if a local government has no desire to use TIF, if its neighboring communities are using TIF, it may be inclined to do so.³²¹ While this is an important aspect of why TIF is successful, it is rarely a source of controversy. It is hard for a neighboring community to complain about losing private investment to its counterparts using TIF when it generally has an equal ability to use TIF.³²²

ii. Between Taxing Entities

TIF also promotes competition between overlapping taxing entities, such as fire districts, counties, and school districts, which resent the allocation of tax increments to URAs in a TIF district.³²³ While the competition that TIF promotes between nearby communities is not controversial, competition between taxing entities is one of the most controversial aspects of TIF and promotes distrust and infighting, which ultimately hinders the realization of entities’ and URAs’ goals.³²⁴ As previously explained, TIF works by setting a base value that continues to go to the various taxing entities.³²⁵ As property tax values in the TIF district increase, any property tax revenues that exceed the set base value go to the URA to fund improvements.³²⁶ These increments are often quite large.³²⁷ Although the increments are eventually returned to the entities when the project closes, entities often feel entitled to these funds while projects remain open.³²⁸ The taxing entities that most often feel slighted by the formation of a TIF area are school districts.³²⁹ An Illinois study found that TIF formation “appears to have created an atmosphere of mistrust between school districts and municipalities.”³³⁰

316. *See id.* at 90.

317. *Id.*

318. *See id.*

319. *See id.*

320. *See id.*

321. *See id.*

322. *See id.* at 90.

323. *See id.* at 88.

324. *See id.* at 89.

325. *Supra* Part I.A.iii.

326. *Supra* Part I.A.iii.

327. *See* Briffault, *supra* note 6, at 88.

328. *See id.* at 88–89.

329. *See id.*

330. *Id.* at 89.

A timely Idaho example of such mistrust is a recent lawsuit between Nez Perce County and the City of Lewiston's URA. The dispute arose after Lewiston's URA had finished all the work in a TIF plan and all plan costs were provided for.³³¹ Idaho Code subsection 50-2909(4) requires that when a TIF

area plan budget . . . estimates that all financial obligations have been provided for . . . and the agency has determined no additional project costs need be funded through revenue allocation financing [TIF], the allocation of revenues . . . shall thereupon cease; any moneys . . . in excess of the amount necessary to pay such principal and interest shall be distributed to the affected taxing districts . . .³³²

The URA's budget for the coming year showed that increment had provided for all the costs of the plan.³³³ The county filed a writ of mandamus to compel the URA to close the two areas in the plan and return any excess funds to the taxing entities.³³⁴ A writ of mandamus compels a government entity to perform acts it has a clear legal duty to perform.³³⁵ The county argued that, although the plan was still within the twenty years allotted for it by Idaho Code section 50-2904, because all the work in the plan was completed and the budget provided for all future plan costs, Idaho Code subsection 2909(4) imposed a ministerial duty on the URA to either close the areas in the plan and distribute any money in excess of the amount needed to pay for remaining plan costs or amend the plan to include more projects.³³⁶ Any incremental revenues that were still accruing for the plan would revert back to the county and other taxing entities.³³⁷

Rather than closing the areas, the URA wanted to rebate some of the excess funds and keep the areas open until it could determine if increment was needed to fund projects the URA wanted to add to the plan.³³⁸ Idaho Code subsection 50-2903(5) states in part:

An agency shall, by September 1 of each calendar year, adopt and publish . . . a budget for the next fiscal year. . . . For the fiscal year that immediately predates the termination date for an urban renewal plan . . . the agency shall adopt and publish a budget specifically for the projected revenues and expenses of

331. Petitioner's Brief in Support of Verified Petition for Writs of Mandate and Writs of Prohibition at 3, *Nez Perce Cnty. v. City of Lewiston*, No. CV2013-01608 (Idaho Dist. Ct. Oct. 18, 2013) [hereinafter Petitioner's Brief].

332. IDAHO CODE ANN. § 50-2909(4) (2009 & Supp. 2013).

333. Petitioner's Brief, *supra* note 331, at 3.

334. *Id.* at 7.

335. Verified Answer at 11, *Nez Perce Cnty. v. City of Lewiston*, No. CV2013-01608 (Idaho Dist. Ct. Sept. 13, 2013).

336. Petitioner's Brief, *supra* note 331, at 6-7.

337. *See id.* at 8-9; IDAHO CODE ANN. § 50-2909(4) (2009 & Supp. 2013).

338. Petitioner's Brief, *supra* note 331, at 4; Verified Answer, *supra* note 335, at 14.

the plan and make a determination as to whether the revenue allocation area can be terminated before the [sic] January 1 of the termination year³³⁹

The URA asserted that, according to subsection 50-2903(5), termination of an urban renewal area before the twenty-year time limit is discretionary, not ministerial, and thus the county's writ must fail.³⁴⁰ According to the URA, if a URA determines that an area should be terminated it should publish a specific termination budget for the coming year.³⁴¹ Because the agency had discretion to terminate the area and to create a specific termination budget, and it did not do either, the URA asserted that it could keep the areas open and continue to collect tax increments until it made such findings or the twenty years allotted for the urban renewal plan expired.³⁴² Furthermore, the URA asserted that because several subsections in title 50, chapters 20 and 29 provide that an urban renewal plan may be amended anytime in the twenty years allotted for a plan, the URA had discretion to add new projects to the plan anytime before the conclusion of the twenty-year time limit.³⁴³

The district court held that the URA was allowed to keep the areas open.³⁴⁴ The county filed a motion for clarification and reconsideration in December 2013; however, that motion was denied in February 2014 and the county has not sought any further action.³⁴⁵

a. Reducing Tension between Taxing Entities and URAs through Financial Management Restrictions

Nez Perce County's actions display the tension that TIF can create between local governing entities.³⁴⁶ This tension hinders the realization of both URAs' and taxing entities' goals.³⁴⁷ Although this tension will exist practically anytime TIF is used, some states have enacted financial management restrictions at the plan implementation phase to limit the burden that TIF may impose and provide relief to entities that have a greater need for the increments that TIF would normally capture.³⁴⁸ The first of these restrictions requires URAs to return excess TIF revenues

339. IDAHO CODE ANN. § 50-2903(5) (2009 & Supp. 2013).

340. See Verified Answer, *supra* note 335, at 13.

341. *Id.*

342. *Id.*

343. *Id.* at 9–11.

344. See Joel Mills, *Judge Rules 2 Lewiston URA Districts Can Stay Open*, LMTRIBUNE.COM, Feb. 1, 2014, http://lmtribune.com/northwest/article_55376017-a562-556b-9afb-ad08031d3b5a.html.

345. See Sophie Miraglio, *Nez Perce County Files Petition to Clarify and Reconsider URA Ruling*, KLEWTV.COM (Dec. 27, 2013, 10:20 AM), <http://www.klewtv.com/news/local/COUNTY-VS-CITY-237502641.html>.

346. See generally Petitioner's Brief, *supra* note 331.

347. See Briffault, *supra* note 6, at 89.

348. Johnson & Kriz, *supra* note 3, at 48.

when a TIF plan is terminated.³⁴⁹ As shown by the Nez Perce County case, TIF projects often accrue more increments than are needed to finance project costs.³⁵⁰ These excess funds should ideally be returned to the other taxing entities involved in a TIF project once the project is terminated.³⁵¹ In 2001, at least sixteen states had restrictions requiring the URAs to return excess TIF funds.³⁵² The Nez Perce County case also displays that, whether these funds should be returned as soon as a TIF project is finished and financed is not always clear.³⁵³ However, one thing is certain, “[a] ‘perpetual’ TIF district was likely not envisioned by those seeking to promote current redevelopment in an area.”³⁵⁴ This is why many states have set time limits for TIF projects or areas in the first place, because “[i]f TIDs are not limited in the period of time they may collect diverted taxes, authority members may inappropriately use such revenues for purposes not explicitly approved in the capital planning process.”³⁵⁵

Another financial management restriction compels URAs to reimburse the losses entities may incur in the initial stages of TIF implementation.³⁵⁶ TIF projects can sometimes cause the assessed value of land to fall initially.³⁵⁷ As a result, taxing entities lose the money they otherwise would have received had no TIF project been implemented.³⁵⁸ As Johnson and Kriz note:

If these “losses” . . . go unreimbursed by the authority in charge of redevelopment, then the proposed TIF project is not strictly financed through increments. . . . [T]his gets at the very nature of TIF. Financing redevelopment in a self-supporting way has always been the primary selling point for municipalities seeking a technique to redevelop previously blighted areas.³⁵⁹

Despite the importance of this requirement, only seven states had such a requirement in 2001.³⁶⁰ North Dakota’s law provides an excellent example. The law provides that after the county auditor certifies any tax losses, then,

[u]pon receipt of any tax increments in the fund, the county treasurer, at the times when the county treasurer distributes collected taxes to the state and to each political subdivision for

349. *Id.*; Petitioner’s Brief, *supra* note 331, at 6–7.

350. Johnson & Kriz, *supra* note 3, at 48.

351. *Id.*

352. *Id.* at 45–47 tbl. 3.2.

353. *See generally* Petitioner’s Brief, *supra* note 331.

354. Johnson & Kriz, *supra* note 3, at 53.

355. *Id.*

356. *Id.* at 48.

357. *Id.*

358. *See id.*

359. *Id.* at 49.

360. *See id.*

which a tax loss has previously been recorded, shall also remit to each of them from the tax increment fund an amount proportionate to the amount of that tax loss, until all those tax losses have been reimbursed.³⁶¹

The final restriction partially or completely exempts school districts from surrendering tax increments.³⁶² Because school districts have historically received a bigger portion of property tax revenues, there is often concern that TIF projects place a greater burden on school districts than other taxing entities.³⁶³ As a result, some states have exempted school districts from TIF projects to some degree or another.³⁶⁴

b. Financial Management Restrictions in Idaho

As displayed by the Nez Perce County case, Idaho Code subsection 50-2909(4) requires URAs to return excess TIF funds at the termination of a TIF plan.³⁶⁵ This subsection has been in Idaho's TIF laws (with minor changes in 2002³⁶⁶) since they were codified in 1988.³⁶⁷ Idaho's TIF laws in this area are rather restrictive when compared to other states.³⁶⁸ However, this section could benefit from clarification about whether termination before the twenty years allotted for a TIF plan is solely at the URA's discretion or if it can be triggered by completion and financing of a plan.³⁶⁹

Idaho's TIF laws also require URAs to return excess funds for TIF plans that go beyond the twenty-year time limit set by section 50-2904.³⁷⁰ Section 50-2904 creates several exceptions that allow a TIF plan to exceed twenty years.³⁷¹ Subsection 50-2904(5) requires a TIF plan that exceeds twenty years under one of these exemptions to return revenues exceeding the amount necessary to repay bonds to the various taxing entities on a pro rata basis.³⁷² This subsection was enacted in

361. N.D. CENT. CODE ANN. § 40-58-20(7) (West, Westlaw through the 2013 Reg. Sess.).

362. Johnson & Kriz, *supra* note 3, at 49.

363. *See id.*

364. *Id.*

365. *See* Petitioner's Brief, *supra* note 331, at 4–5; IDAHO CODE ANN. § 50-2909(4) (2009 & Supp. 2013).

366. Local Economic Development Act, ch. 143, sec. 5, § 50-2909(4), 2002 Idaho Sess. Laws 394, 401–02 (codified as amended at IDAHO CODE ANN. § 50-2909(4) (2009 & Supp. 2013)).

367. Local Economic Development Act, ch. 210, sec. 9, § 50-2909(4), 1988 Idaho Sess. Laws 393, 400 (codified as amended at IDAHO CODE ANN. § 50-2909(4) (2009 & Supp. 2013)).

368. *Compare* Johnson & Kriz, *supra* note 3, at 33–35, 45–47 (comparing how states deal with excess TIF funds) *with infra* Part V (tracking the history of how Idaho has dealt with excess TIF funds).

369. *See generally* Petitioner's Brief, *supra* note 331.

370. IDAHO CODE ANN. § 50-2904(5) (2009 & Supp. 2013).

371. *Id.* at § 50-2904(1)–(4).

372. *Id.* at § 50-2904(5).

2000,³⁷³ the same year the legislature created a time limit for TIF plans, which was initially twenty-four years³⁷⁴ but changed to twenty years in 2011.³⁷⁵

Idaho is one of the pioneers of school district exemptions.³⁷⁶ In 2001, just fourteen states had school district exemptions.³⁷⁷ Idaho had a partial school district exemption from the time the Local Economic Development Act was codified in 1988³⁷⁸ until the exemption was removed in 2006.³⁷⁹ In 2008, the Idaho legislature created another partial school district exemption, which exempted voted-on levies from going to URAs.³⁸⁰ School districts have variety of levies, some of which are voted and others that do not require a vote.³⁸¹ The 2008 exemption prevents any levies that are voted on from being collected by URAs.³⁸² Because the non-voted levies are generally small, Idaho's school district exemption prevents school districts from surrendering a substantial amount of increment.³⁸³ The creation of this exemption was a step in the right direction for Idaho, a state with notoriously low education spending.³⁸⁴

Idaho does not have any financial management restrictions that require URAs to reimburse entities for losses they incur in the initial stages of TIF implementation.³⁸⁵ As already noted, reimbursing entities for these losses is integral to assuring that TIF is a self-sustaining mechanism of financing redevelopment.³⁸⁶ By adding such a requirement, the Idaho legislature would ensure that the self-supporting nature of TIF remains a selling point for municipalities using TIF in their jurisdictions.

373. Local Economic Development Act, ch. 275, sec. 2, § 50-2904(3), 2000 Idaho Sess. Laws 893, 896–97 (codified as amended at IDAHO CODE ANN. § 50-2904(5) (2009 & Supp. 2013)).

374. Local Economic Development Act, ch. 275, sec. 2, § 50-2904, 2000 Idaho Sess. Laws 893, 896–97 (codified as amended at IDAHO CODE ANN. § 50-2904 (2009 & Supp. 2013)).

375. Local Economic Development Act, ch. 317, sec. 7, § 50-2904, 2011 Idaho Sess. Laws 910, 922–23 (codified as amended at IDAHO CODE ANN. § 50-2904 (2009 & Supp. 2013)).

376. See Johnson & Kriz, *supra* note 3, at 49–50.

377. *Id.* at 49.

378. See *id.* at 49–50; Local Economic Development Act, ch. 210, sec. 8, § 50-2908(2)(a)(iii), 1988 Idaho Sess. Laws 393, 398–99.

379. Local Economic Development Act, ch. 1, sec. 14, § 50-2908(2)(a)(iii), 2006 Idaho Sess. Laws 1st Extraordinary Sess., available at <http://legislature.idaho.gov/legislation/2006spcl/H0001.html>.

380. Local Economic Development Act, ch. 253, sec. 1, § 50-2908(1)(e), 2008 Idaho Sess. Laws 740, 741 (codified as amended at IDAHO CODE ANN. § 50-2908(1)(f) (2009 & Supp. 2013)).

381. Telephone Interview with Ryan Armbruster & Meghan Conrad, *supra* note 41.

382. Local Economic Development Act, ch. 253, sec. 1, § 50-2908(1)(e), 2008 Idaho Sess. Laws 740, 741 (codified as amended at IDAHO CODE ANN. § 50-2908(1)(f) (2009 & Supp. 2013)).

383. Telephone Interview with Ryan Armbruster & Meghan Conrad, *supra* note 41.

384. Kevin Richert, *Idaho Ranks No. 50 in Per-Pupil Spending*, IDAHO EDUC. NEWS (May 21, 2013), <http://www.idahoednews.org/news/idaho-ranks-no-50-in-per-pupil-spending/>.

385. See generally IDAHO CODE ANN. §§ 50-2001–33, -2901–12 (2009 & Supp. 2013).

386. *Supra* Part III.C.ii.a.

D. TIF Encourages Public-Private Collaboration like Contemporary Economic Development Efforts

The last way TIF is similar to local government is in its ability to facilitate public-private collaboration.³⁸⁷ Without private investment, TIF would not be a viable way to stimulate economic development. TIF depends on private investment to boost the property tax base, thus providing increments to pay for projects.³⁸⁸ To woo private investors, municipalities often use TIF to construct infrastructure (such as roads, sewer lines, parking lots, and lighting) that private investors would have otherwise had to pay for themselves.³⁸⁹ Such interaction between public and private actors necessarily requires a great deal of collaboration and coordination to accomplish the proposed objectives.³⁹⁰

An excellent example of public and private actors collaborating through TIF for the well-being of an Idaho community is the world's largest yogurt plant that was constructed in Twin Falls by Chobani in 2012.³⁹¹ Evidence of this collaboration is in the development agreement between the City of Twin Falls, the Twin Falls URA, and Chobani (referred to as Agro-Farma).³⁹² Several times throughout the agreement, the completion of the project is conditioned on the cooperation of the parties involved.³⁹³ The distinct and essential roles each public and private actor played in the agreement emphasize the necessity of each actor's cooperation in the successful completion of the project.³⁹⁴

The agreement required the city to “[c]omplete a public pre-treatment wastewater treatment system . . . to accommodate . . . compliance with the Industrial Wastewater Discharge Permit” required for the plant;³⁹⁵ “cooperate with and assist URA and/or Agro-Farma in applying for and obtaining all permits and approvals;” and “expedite and fast track all such permits, inspections, and approvals.”³⁹⁶ The URA was required to cooperate with Agro-Farma “to determine the total investment to be made by Agro-Farma for the A-F Plant, the tax increment funds to be generated by the A-F Plant, and the maximum amount of the URA Financing.”³⁹⁷ This amount was to be a minimum of

387. Briffault, *supra* note 6, at 91.

388. *Supra* Part I.A.iii.

389. Briffault, *supra* note 6, at 92.

390. *Id.* at 91–92.

391. Press Release, Chobani Foodservice, Chobani Celebrates Grand Opening of World's Largest Yogurt Manufacturing Plant in Twin Falls, Idaho (Dec. 17, 2012) [hereinafter Press Release], <http://chobanifoodservice.com/who-we-are/news-and-events/chobani-celebrates-grand-opening-of-worlds-largest-yogurt-manufacturing-plant-in-twin-falls-idaho/>; see also Development Agreement, City of Twin Falls, Urban Renewal Agency of the City of Twin Falls, Agro-Farma, Inc. (Nov. 3, 2011) (on file with author).

392. See generally Development Agreement, *supra* note 391.

393. See generally *id.*

394. *Id.* at 5–8, 12.

395. *Id.* at 3.

396. *Id.* at 6.

397. *Id.* at 8.

\$17,340,000, which would be used for “property acquisition, site development, pretreatment facilities, sewer trunk line improvements, water line improvements, power and gas line extensions, . . . [and] other expenses related to the project.”³⁹⁸ In exchange, Agro-Farma agreed to invest at least \$128,000,000 and as much as \$300,000,000 to build the plant.³⁹⁹ Because Agro-Farma decided to expand the plant, the URA’s financing ended up being \$36,260,927⁴⁰⁰ and Agro-Farma ended up expending closer to \$450 million on the project.⁴⁰¹

The benefits of public-private collaboration can be seen in the construction of the Chobani plant and its resulting effect on the community. Chobani constructed plant in 326 days, and employed 2,000 people to do so.⁴⁰² Chobani estimated it would employ 400 employees at the plant⁴⁰³ and “for every 10 jobs it create[d] directly, it . . . expected to create roughly 66 additional jobs in ancillary businesses.”⁴⁰⁴ Twin Falls City Manager Travis Rothweiler expected that the plant would employ up to 500 employees once it was running at full capacity.⁴⁰⁵ Chobani also supports the local community by purchasing its dairy supply locally.⁴⁰⁶ All in all, the state expected the economic impact of the plant’s business to be \$1.3 billion.⁴⁰⁷ Mr. Rothweiler also stated, “The opportunities Chobani has presented are incredible. . . . We’ve seen an 80[%] increase in single-family home permits in the last year. I can’t say Chobani is all of it, but what they have brought, in terms of that sense of optimism about our community, is huge.”⁴⁰⁸ Obviously, not all TIF projects will produce the same effects as the Chobani plant; however, the success of the Chobani plant displays the public benefit a TIF project can provide to the community when public and private actors effectively work together.

Even though the public-private nature of TIF can generate TIF’s greatest benefits, it is also seen as one of TIF’s greatest flaws.⁴⁰⁹ Indeed, “TIF is simultaneously popular and controversial because of its central role in enabling local governments to work closely with private busi-

398. *Id.*

399. *Id.* at 1.

400. Emilie Ritter Saunders, *Chobani Opens Twin Falls Yogurt Facility Today, but at What Cost to Taxpayers?*, STATEIMPACT (Dec. 17, 2012, 7:00 AM), <https://stateimpact.npr.org/idaho/2012/12/17/chobani-opens-twin-falls-yogurt-facility-today-but-at-what-cost-to-taxpayers/>.

401. Press Release, *supra* note 391.

402. *Id.*

403. Development Agreement, *supra* note 391, at 13.

404. Stephanie Strom, *U.S. Hunger for Yogurt Leads to Gigantic Factory*, N.Y. TIMES, Dec. 17, 2012, at B3, available at http://www.nytimes.com/2012/12/17/business/chobani-to-open-huge-yogurt-factory-in-idaho.html?_r=0.

405. Saunders, *supra* note 400.

406. Press Release, *supra* note 391.

407. Strom, *supra* note 404.

408. Saunders, *supra* note 400.

409. See Briffault, *supra* note 6, at 92–93.

nesses in promoting development.”⁴¹⁰ TIF is generally considered a public purpose because it is usually tied to urban renewal and alleviating blight.⁴¹¹ However, with the relaxation of blight requirements, TIF critics assert that it is no longer being used for a public purpose because it is no longer alleviating blight.⁴¹² This is true in predominantly rural states, such as Idaho, where traditional definitions of urban blight are hard to find.⁴¹³ What critics refuse to recognize, however, is whether TIF is used for development or redevelopment, it provides public benefits and is thus a public purpose. Even when TIF is used for development, it brings significant benefits to a community. The Chobani plant exemplified this. Jobs, tax revenues, community optimism, and overall economic growth are tangible public benefits that are not small potatoes, even for Idahoans.⁴¹⁴

Legislatures in at least seventeen states have recognized these benefits by eliminating blight as a precondition for the creation of a TIF district.⁴¹⁵ This approach is not only more intellectually honest,⁴¹⁶ but some scholars believe that it is also a better use of TIF.⁴¹⁷ USC Law Professor George Lefcoe asserts, “TIFs depend upon dramatic increases in property value and, as a result, are geared more toward new commercial investment, often in well-heeled suburban neighborhoods.”⁴¹⁸ Consequently,

[p]rograms of wholesale blight eradication funded by TIF do not work well in stagnant, poorer communities. An optimal TIF project is one that can be built quickly, at the highest conceivable density and at the greatest fair market value, garnering huge retail sales. In places lacking dramatic growth in effective demand for space, property values and tax revenues are not going to increase quickly and broadly enough to finance the costs of acquisition and redevelopment.⁴¹⁹

While eliminating blight as a precondition for the creation of a TIF district may not be necessary in Idaho, Professor Lefcoe’s assertions suggest that Idaho should not unduly limit TIF through strict blight requirements.

410. *Id.* at 93.

411. Lefcoe, *supra* note 27, at 70–71.

412. *See* Briffault, *supra* note 6, at 87–88.

413. Telephone Interview with Ryan Armbruster & Meghan Conrad, *supra* note 41.

414. *See* H. Lawrence Hoyt, *What’s the “TIF” All About*, in TAX INCREMENT FINANCING, *supra* note 232, at 25.

415. COUNCIL OF DEV. FIN. AGENCIES, *supra* note 194.

416. H. Lawrence Hoyt, *What’s the “TIF” All About*, in TAX INCREMENT FINANCING, *supra* note 232, at 21–22.

417. *See* Lefcoe, *supra* note 27 at 67–74.

418. *Id.* at 72.

419. *Id.* at 69.

i. Providing Public Benefits through Agreements with Developers

Although TIF projects used for development can rightfully be considered a public purpose, on the other end of the spectrum, purely development- or tax-driven TIF projects can cause local officials to treat TIF like a “cash cow” without concern for a project’s ability to bring benefits to a community.⁴²⁰ “But for” causation is one way to alleviate such situations. However, as discussed in part II.B.2., “but for” standards are usually easy to meet and are not strictly applied. Another way to prevent such situations is by requiring private developers to enter into community benefit agreements at the plan formulation phase.⁴²¹ These agreements often include

specified numbers of new affordable housing units, a commitment to hire local labor first, a developer's commitment to create a specified number of jobs at living wages, and job training. “Because the agreements are negotiated between community coalitions and interested developers, the benefits can be tailored to meet specific community needs, such as the need for parks, day-care centers, or job-training facilities.” Community representatives come from the neighborhood and from labor, environmental, and religious organizations, often assisted by public interest lawyers and city staff, and encouraged by elected city officials.⁴²²

Although these agreements are similar to the development agreements that cities often make with private developers (such as the one Chobani entered into with the City of Twin Falls and the Twin Falls URA), because they are negotiated by community groups, rather than city and URA officials, they are more focused on pursuing as much public benefit as possible from a given TIF project.⁴²³ Community benefit agreements “are considered by their supporters to be powerful tools for assuring that communities’ needs will not be neglected by large developers.”⁴²⁴

ii. Agreements with Developers in Idaho

Although Idaho Code allows for development agreements between cities, URAs, and private developers, these agreements can only be entered into if the private developer is also seeking a rezone.⁴²⁵ With many Idaho TIF projects, private developers are seeking a rezone, and URAs are thus allowed to enter into development agreements with the

420. *See id.* at 94.

421. *Id.* at 95–96.

422. *Id.* (quoting Patricia E. Salkin & Amy Lavine, *Understanding Community Benefits Agreements*, PRAC. REAL EST. LAW. 19, 19 (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1157613).

423. Salkin & Lavine, *supra* note 422, at 19.

424. *Id.* at 20.

425. IDAHO CODE ANN. § 67-6511A (2009 & Supp. 2013).

developers.⁴²⁶ However, it is possible that a developer would not seek a rezone as part of a TIF project, and, accordingly, the municipality involved in the TIF project would not be able to enter into a development agreement with the developer. Furthermore, when municipalities are allowed to enter into development agreements, the agreements are negotiated by cities and URAs and thus may not be as publicly focused as community benefit agreements, which are negotiated by community groups.⁴²⁷

Idaho Code could profit from a provision that encourages or requires URAs to enter into community benefit agreements with private developers that lay out specific public benefits that a private development will provide. These agreements would not be conditioned on a rezone and, ideally, community groups with the help of public interest lawyers and city staff, rather than URAs or cities, would negotiate the agreements. Encouraging or requiring URAs to make such agreements with private developers would help ensure that TIF in Idaho does not become a purely tax-driven mechanism.⁴²⁸

IV. CONCLUSION

As discussed earlier, California, the birthplace of TIF, eliminated its urban renewal program in 2012.⁴²⁹ Although urban renewal finances had yet to be completely wound down in January 2014, the same California legislators who sought to eliminate the program were already writing proposals to revive it, albeit with a different title.⁴³⁰ The most ambitious attempt at re-establishment was Senate Bill 1, which would encourage “development in transit priority areas, small walkable communities and clean energy manufacturing sites.”⁴³¹ Governor Jerry Brown, who spurred the elimination of the program and indicated that it was too early to reinstate the program in 2013, has even proposed creating more modest “infrastructure financing districts” that require approval by 55% of local voters.⁴³² Other proponents have sought to bypass the capitol altogether by filing an initiative “that would reinstate redevelopment agencies with even broader powers, calling them job and education development agencies.”⁴³³ Whatever the method or form of reestablishment, it is clear that California wants urban renewal back.⁴³⁴

426. See Development Agreement, *supra* note 391, at 10 (requiring the URA to “obtain all zoning changes, conditional use permits, variances and exceptions, and similar permits and approvals from the City of Twin Falls” that were required to construct plant).

427. See Salkin & Lavine, *supra* note 422, at 19.

428. See Lefcoe, *supra* note 27, at 96.

429. *Supra* Part I; Walters, *supra* note 12.

430. Walters, *supra* note 12.

431. *Id.*

432. *Id.*

433. *Id.*

434. See *id.*

Similar to California, one Idaho community, Nampa, has had a fickle relationship with urban renewal. In 2004, the city disbanded its URA through an advisory vote.⁴³⁵ Just two years later, the city had created a new URA.⁴³⁶ Recently, the city has sought to reduce the role of urban renewal within its jurisdiction without actually eliminating its URA. The city elected four new city council members in November 2013.⁴³⁷ The new six-member city council consisted primarily of members who were opposed to urban renewal.⁴³⁸ With the new city council in place, it voted to replace Nampa's URA board with the council itself.⁴³⁹ This unprecedented move was taken to give the council "more control over which projects move forward."⁴⁴⁰ However, considering most of the council members' opposition to urban renewal, it is questionable whether any substantial progress will be made on current and future projects. Although the council claims to be providing voter accountability for the URA,⁴⁴¹ the change in administration seems more like a makeshift mechanism for severely limiting urban renewal in Nampa without eliminating it completely.

Efforts such as the Nampa City Council's seem redundant considering California's and Nampa's histories with urban renewal. These examples show that even those who criticize urban renewal find that it is hard to live without once it is gone.⁴⁴² This is not only because urban renewal fits so well with prominent features of contemporary local government but also because the benefits that urban renewal provides, though seemingly intangible while urban renewal exists, become much more tangible once it is gone. The Idaho Supreme Court and legislature have recognized these benefits by upholding the constitutional and statutory legality of urban renewal.⁴⁴³ Thus, even though highly conservative local leaders and urban renewal critics may take drastic measures to resist urban renewal, as long as it keeps providing these benefits to Idaho communities, their efforts will be ineffectual.

This is not to say that urban renewal does not have shortcomings. As this article points out, urban renewal has a turbulent past and there are inherent aspects of modern urban renewal that cause it to succeed

435. Rebecca Meany, *Urban Renewal Agency Requires Specific Plans*, IDAHO MOUNTAIN EXPRESS & GUIDE, April 12, 2006, http://www.mtexpress.com/index2.php?ID=2005109261&var_Year=2006&var_Month=04&var_Day=12#.U2WVu15T5-w.

436. *Nampa Development Corporation*, *supra* note 8.

437. John Funk, *Four New Nampa City Council Members Will Join White, Kren*, IDAHO PRESS-TRIB., Nov. 6, 2013, http://www.idahopress.com/members/four-new-nampa-city-council-members-will-join-white-kren/article_61425ea8-46c0-11e3-b27c-0019bb2963f4.html.

438. See John Funk, *Nampa Votes to Dissolve NDC Board*, IDAHO PRESS-TRIB., Feb. 19, 2014, http://www.idahopress.com/members/nampa-votes-to-dissolve-ndc-board/article_8d322ea8-9931-11e3-891c-001a4bcf887a.html.

439. *Id.*

440. See *Nampa Council Discusses Future of NDC Board*, *supra* note 14.

441. *Id.*

442. Walters, *supra* note 12.

443. *Supra* Part II.

while simultaneously creating tension in local politics and economics.⁴⁴⁴ The way to mitigate these shortcomings, however, is not the elimination or severe limitation of urban renewal, but the fostering of a climate in which urban renewal can realize its full potential. Idaho can foster such a climate by shedding negative associations with urban renewal's troubled past, recognizing the evolution and beneficial aspects of Idaho's current system, and making efforts to incrementally improve that system going forward.

*Spencer W. Holm**

444. *Supra* Parts I, III.

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V. APPENDIX: The Evolution of Urban Renewal in Idaho*

	1965 ⁱ	1988 ⁱⁱ	1994
PROJECT INITIATION			
URA authorization by voters	⊖	⊖	⊖
PLAN FORMULATION			
<i>Legal Requirements</i>			
Blight finding	✓	✓	✓ ⁱⁱ
Explicit “but for” requirement	⊖	⊖	⊖
<i>Plan Requirements</i>			
Conformance with comprehensive plan	✓	✓	✓
Specific planned uses	⊖	✓	✓
Project costs	⊖	✓	✓
Community benefit agreements	⊖	⊖	⊖
Additional requirements	⊖	✓	✓
PLAN ADOPTION			
<i>Hearings Required</i>			
At plan adoption	✓	✓	✓
At plan amendment	⊖	✓	✓
At district creation	✓	✓	✓
<i>Additional Participatory Mechanisms</i>			
Transmit plan description to taxing entities	⊖	✓	✓
Consult with citizens’ council &/or taxing entities	⊖	⊖	⊖
PLAN IMPLEMENTATION			
<i>Tax Increment Management</i>			
Return of excess revenues after 20+ years	⊖	⊖	⊖
Return mandated when plan terminated	⊖	✓	✓
Losses in initial stages reimbursed	⊖	⊖	⊖
Partial school district exemption	⊖	✓	✓
EVALUATION			
Regular evaluation during project	⊖	⊖	⊖
Transparency	⊖	⊖	⊖
TERMINATION			
Time limits	⊖	⊖	⊖

APPENDIX: The Evolution of Urban Renewal in Idaho (*continued*)

2000	2002	2005	2006	2008	2011	Present	Suggested
⊖	⊖	⊖	⊖	⊖	⊖	✓ ^v	✓
✓	✓	✓	✓ ^f	✓	✓ ^{fi}	✓ ⁱⁱ	✓
⊖	⊖	⊖	⊖	⊖	⊖	⊖	✓
✓	✓	✓	✓	✓	✓	✓ ⁱⁱⁱ	✓
✓	✓	✓	✓	✓	✓	✓ ^k	✓
✓	✓	✓	✓	✓	✓	✓ ^k	✓
⊖	⊖	⊖	⊖	⊖	⊖	⊖	✓
✓	✓ ⁱ	✓	✓	✓	✓ ⁱⁱ	✓ ⁱⁱⁱ	✓
✓	✓	✓	✓	✓	✓	✓ ^{xiv}	✓
✓	✓	✓	✓	✓	✓	✓ ^{xv}	✓
✓	✓	✓	✓	✓	✓	✓ ^{xvi}	✓
✓	✓	✓	✓	✓	✓	✓ ^{xvii}	✓
⊖	⊖	⊖	⊖	⊖	⊖	⊖	✓
✓	✓	✓	✓	✓	✓	✓ ^{xviii}	✓
✓	✓	✓	✓	✓	✓	✓ ^{xix}	✓
⊖	⊖	⊖	⊖	⊖	⊖	⊖	✓
✓	✓	✓	⊖	✓	✓	✓ ^{xx}	✓
⊖	⊖	⊖	⊖	⊖	⊖	⊖	✓
⊖	✓	✓	✓	✓	✓ ^{xxi}	✓ ^{xxii}	✓
✓ ^{xxiii}	✓	✓	✓	✓	✓	✓ ^{xxiv}	✓ ^{xxv}

* This table is based largely on the table that Johnson and Kriz used in their 2001 publication that surveyed TIF laws across the United States. Johnson & Kriz, *supra* note 3, at 33–35 tbl. 3.1, 45–47 tbl. 3.2.

i. Title 50, chapter 20 enacted. Idaho Urban Renewal Law of 1965, ch. 246, sec. 1, § 50-2001, 1965 Idaho Sess. Laws 600.

ii. Title 50, chapter 29 enacted. Local Economic Development Act, ch. 210, sec. 1, § 50-2901, 1988 Idaho Sess. Laws 393.

iii. (e) added to IDAHO CODE ANN. § 50-2903(8) (2009 & Supp. 2013). Local Economic Development Act, ch. 381, sec. 2, § 50-2903(7), 1994 Idaho Sess. Laws 1222, 1224 (codified as amended at IDAHO CODE ANN. § 50-2903(8) (2009 & Supp. 2013)) (adding competitively disadvantaged border areas).

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- iv. IDAHO CODE ANN. § 50-2006(a) (2009 & Supp. 2013).
 - v. Agricultural land exempted from IDAHO CODE ANN. § 50-2018(8) (2009 & Supp. 2013). Idaho Urban Renewal Law of 1965, ch. 310, sec. 1, § 50-2018(8), 2006 Idaho Sess. Laws 953, 953–54 (codified as amended at IDAHO CODE ANN. § 50-2018(8) (2009 & Supp. 2013)).
 - vi. Forestland exempted from IDAHO CODE ANN. § 50-2018(8) (2009 & Supp. 2013). Idaho Urban Renewal Law of 1965, ch. 317, sec. 4, § 50-2018(8), 2011 Idaho Sess. Laws 910, 916 (codified as amended at IDAHO CODE ANN. § 50-2018(8) (2009 & Supp. 2013)). (f) added to IDAHO CODE ANN. § 50-2903(8) (2009 & Supp. 2013). Local Economic Development Act, ch. 317, sec. 6, § 50-2903(8), 2011 Idaho Sess. Laws 910, 920 (codified as amended at IDAHO CODE ANN. § 50-2903(8) (2009 & Supp. 2013)) (specifying that deterioration does not include areas “not developed beyond agricultural, or any agricultural operation”).
 - vii. IDAHO CODE ANN. §§ 50-2018(8), -2903(8) (2009 & Supp. 2013).
 - viii. IDAHO CODE ANN. §§ 50-2008(b), (d), (g), -2009, -2018(12)(g) (2009 & Supp. 2013).
 - ix. IDAHO CODE ANN. § 50-2905(2) (2009 & Supp. 2013).
 - x. IDAHO CODE ANN. § 50-2905(4) (2009 & Supp. 2013).
 - xi. (7) and (8) added to IDAHO CODE ANN. § 50-2905 (2009 & Supp. 2013). Local Economic Development Act, ch. 143, sec. 4, § 50-2905(6), (7), 2002 Idaho Sess. Laws 394, 401 (codified as amended at IDAHO CODE ANN. § 50-2905(7), (8) (2009 & Supp. 2013)) (requiring a termination date (7) and “[a] description of the disposition or retention of any assets of the agency upon the termination date.” (8)).
 - xii. (1) added to IDAHO CODE ANN. § 50-2905 (2009 & Supp. 2013). Local Economic Development Act, ch. 317, sec. 8, § 50-2905(1), 2011 Idaho Sess. Laws 910, 923 (codified as amended at IDAHO CODE ANN. § 50-2905(1) (2009 & Supp. 2013)) (requiring a statement describing the value of the taxable property in the TIF district and in the municipality).
 - xiii. IDAHO CODE ANN. § 50-2905(1), (3), (5)–(8) (2009 & Supp. 2013).
 - xiv. IDAHO CODE ANN. § 50-2008(c) (2009 & Supp. 2013).
 - xv. IDAHO CODE ANN. § 50-2906(1) (2009 & Supp. 2013).
 - xvi. IDAHO CODE ANN. § 50-2008(c) (2009 & Supp. 2013).
 - xvii. IDAHO CODE ANN. § 50-2907 (2009 & Supp. 2013).
 - xviii. IDAHO CODE ANN. § 50-2904(5) (2009 & Supp. 2013).
 - xix. IDAHO CODE ANN. § 50-2909(4) (2009 & Supp. 2013).
 - xx. IDAHO CODE ANN. § 50-2908(1)(f) (2009 & Supp. 2013).
 - xxi. (c) added to IDAHO CODE ANN. § 50-2006 (2009 & Supp. 2013). Idaho Urban Renewal Law of 1965, ch. 317, sec. 1, § 50-2006(c), 2011 Idaho Sess. Laws 910, 912 (codified as amended at IDAHO CODE ANN. § 50-2006(c) (2009 & Supp. 2013)) (requiring a public meeting to present yearly report).
 - xxii. IDAHO CODE ANN. § 50-2006(c), (e) (2009 & Supp. 2013).
 - xxiii. 24-year time limit added to IDAHO CODE ANN. § 50-2904 (2009 & Supp. 2013). Local Economic Development Act, ch. 275, sec. 2, § 50-2904, 2000 Idaho Sess. Laws 893, 896–97 (codified as amended at IDAHO CODE ANN. § 50-2904 (2009 & Supp. 2013)).
 - xxiv. 24-year time limit changed to 20-year time limit. Local Economic Development Act, ch. 317, sec. 7, § 50-2904, 2011 Idaho Sess. Laws 910, 923 (codified as amended at IDAHO CODE ANN. § 50-2904 (2009 & Supp. 2013)).
 - xxv. IDAHO CODE ANN. § 50-2904 (2009 & Supp. 2013).