Anti-Urban Renewal Bill Progresses; Pro-Urban Renewal Bill Amended

The General Assembly will adjourn in roughly two weeks. The fate of two important urban renewal bills—one with a positive impact on urban renewal and one with a negative impact—will be decided during this time. If urban renewal is important to your project or to your community, now is the critical time to participate in the dialogue.

On Jan. 28, 2015, SB 15-135 was introduced in the Senate by Sen. Beth Martinez-Humenik (R-Thornton) and Sen. Cheri Jahn (D-Lakewood). Advocated by the Colorado Municipal League (CML), among others, the SB 15-135 was intended to address some of the issues raised by counties in last year's debate of HB 14-1375, and by the Governor in his message when he vetoed that bill.

The principal provision of SB 15-135 as originally introduced was to allow counties to appoint a representative to the board of urban renewal authorities who manage urban renewal plans where county property tax increment is authorized to be allocated to the authority.

On Friday, April 10, HB 15-1348 was introduced in the General Assembly. The House sponsors are Dickie Lee Hullinghorst (D-Boulder) and Polly Lawrence (R-Douglas, Teller). The Senate sponsors are Rollie Heath (D-Boulder) and David Balmer (R-Arapahoe). This legislation has potential to seriously impair, if not prevent, the development of important urban renewal projects throughout the state.

Advanced by Colorado Counties Inc. (CCI), HB 15-1348 is essentially HB 14-1375 from last year, with some of the worst technical issues cleaned up. Like HB 14-1375 and SB 15-125, HB 15-1348 requires the appointment of a county representative to urban renewal authority boards, and requires that, absent an agreement otherwise, a municipality may only allocate property tax increment to an urban renewal authority in the same percentage that it has allocated municipal sales tax.

On Monday, April 20, the Senate amended SB 15-135 to make it even stronger. The amendments require that the municipality meet with taxing entities in advance of plan approval to discuss impacts, and allows additional time prior to the public hearing on plan adoption for the parties to consult and negotiate. A final draft of the urban renewal plan and impact report is required 60 days in advance of any public hearing to adopt or substantially modify an urban renewal plan.

In addition, the amended SB 15-135 excludes from the property tax increment any voter-approved earmarks made after the date of plan adoption, and allows any of the taxing bodies who have made contributions to infrastructure or planning for an urban renewal plan or project to be reimbursed out of urban renewal tax increment revenues. SB 15-135 also strengthens existing arbitration provisions to allow the arbitrator to make specific findings regarding adequate consideration of impact on county costs of services and infrastructure.

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Finally, and perhaps most important, the amended SB 15-135 authorizes a statewide study of the benefits and impacts of urban renewal tax increment financing statewide.

The attached chart provides a more detailed comparison of the current law and both bills. Feel free to include it in your correspondence with the General Assembly.

As we have noted in **prior client alerts**, urban renewal is a tool that allows development to "pay its own way" by capturing the incremental property and sales tax generated by new development, and also allows an urban renewal authority, metro district, or property owner/developer to borrow against this revenue stream up front in order to facilitate the project. In an urban renewal project, the urban renewal authority forecasts the new, incremental taxes that may be generated by a project after redevelopment. The difference between current revenue (or base) and projected revenue (tax increment) then can be used to finance bonds or reimburse developers for their expenses (tax increment financing). Urban renewal thus adds an additional revenue stream to the capital stack for a project that involves the rehabilitation or redevelopment of property that meets the statutory criteria for blight. Additionally, the base is adjusted upwards every other year in the biennial reassessment, thus allocating additional revenue to all of the taxing entities that impose property taxes within an urban renewal project area. Urban renewal therefore creates a "win-win" for all involved: the urban renewal authority achieves its goal of remediating a blighted area; the developer obtains the additional revenue needed to close the gap in its pro forma; the surrounding property owners get increased property values resulting from the new investment; and the other taxing bodies receive increased property taxes both during and after the 25-year period during which incremental tax revenues may be used.

Enacted in 1958, the Colorado Urban Renewal Law was originally designed principally as a tool for municipalities to receive and distribute federal funds for slum clearance and housing construction. Over the last 25 years, however, the federal government has played a decreasing role in funding of such activities, and the tool has evolved as one of self-help for municipalities.

Many of the concerns articulated by opponents of urban renewal have been addressed through amendments over the last 15 years. For example, since 2010, urban renewal plans that include agricultural land may only be implemented when certain criteria (such as consent of all the taxing entities, or environmental contamination) are met. This amendment to the bill addressed the concern over the use of urban renewal to support so-called "greenfield" projects. Since 2004, municipalities considering urban renewal plans that authorize the use of county property tax increment must prepare reports analyzing the potential impact of tax increment financing and the proposed development on the ability of counties to provide services within the urban renewal area, and to make findings regarding what mechanism the municipality has adopted to address any deficiencies.

The underlying philosophy of the Colorado Urban Renewal Law is that, without intervention by the municipality, properties that are blighted will most likely continue to decline, resulting not only in decreases in the property tax revenues for both the municipality and all of the taxing entities, but also in an increase in the need for public services to be provided by all such taxing entities. The statute itself

notes that slum and blighted areas constitute a “public menace” and “an economic and social liability,” and finds that acquisition, clearance and disposition of properties within such areas should be achieved through appropriate public action.

Recent natural disasters in Colorado such as the flooding in the fall of 2013 have also highlighted the flexibility of the statute in providing municipalities with tools to address the resulting damages. The story of Estes Park’s use of urban renewal to create both financing and a framework for recovery and rehabilitation following the Big Thompson flood has become urban renewal lore in Colorado. Many Colorado cities are now following in the footsteps of Estes Park and evaluating how this tool can assist them in recovering from the 2013 floods.

Attracting and facilitating action to address blighted conditions is a critical issue for municipalities. No two projects are alike, and each has its own unique challenges. Blighted properties do not attract investment on an equal playing field with properties that are not blighted. A financial structure that works in one municipality or for one project may not work for another. For properties located in blighted and challenged urban renewal areas, multiple sources of both public and private revenues must be included in a capital stack in order to enable a project to move forward.

Please contact **Carolynne White** (**cwhite@bhfs.com**, 303.223.1197) to get an expanded analysis of this legislation in relation to a specific project or matter, or if you’d like assistance with preparing testimony or contacting legislators.

Our **Brownstein Public Policy** team is pleased to provide you with updates on legislative topics on as frequent a basis as would be useful for you. The updates include committee actions, record of votes and testimony before committees. These can be sent on a weekly basis or as action takes place on a bill and would be in addition to these updates. Please contact a member of our Public Policy team for further information.

This document is intended to provide you with general information regarding the Urban Redevelopment Fairness Act. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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