The Honorable Greg Chaney, Chair  
House Judiciary, Rules and Administration Committee  
Idaho State House of Representatives  
P.O. Box 83720  
Boise, ID  83720-0054

RE:  H0197, amending Section 31-714 and 50-302, Relating to Penalties for Violating Local Ordinances

Dear Chairman Chaney,

On behalf of the Idaho Chapter of the American Planning Association (APA Idaho), I am writing to register my organization’s opposition to House Bill 197, the amendment to Sections 31-714 and 50-302 regarding Penalties for Violating Local Ordinances.

Our organization represents more than 250 local planning officials, private-sector planners, and planning commission members statewide. We are the technicians, professionals, policy and decision makers who represent the public interest in carrying out the authorities vested with local government under Idaho’s Local Land Use Planning Act, Title 67, Chapter 65 of the Idaho Statutes. These authorities provide some of the mechanisms for local communities to adopt protections to public health, safety, and welfare.

APA Idaho strongly opposes legislative changes that would limit the ability of local communities to enforce public health, safety, and welfare ordinances. Consider the following scenarios:

1. A property owner illegally fills or grades a stream that is in the designated floodway, causing his neighbor’s house to flood. This results in FEMA determining that the community is in violation of the NFIP (National Flood Insurance Program), putting all flood insurance holders in the community at risk of losing their insurance policies and eliminating the possibility of that community to obtain FEMA disaster funds. With the adoption of this bill, the community only has a $25 fine to encourage the property owner to come into compliance.

2. A property owner builds illegal apartments in his garage and basement. These “apartments” have bare electrical wires providing intermittent power, plumbing that is backed up causing raw sewage to spill onto the floor, a gas furnaces with no venting in a bedroom and a maze of doors to get through for ingress and egress. These “apartments” are clearly not fit for habitation and pose serious risks to the tenant’s health and lives. With the adoption of this bill, the community only has a $25 fine to get the property owner to make the necessary improvements and/or stop renting the units.

3. A property owner in the middle of a residential neighborhood decides he wants to start a new business storing, selling and refilling gas cylinders (oxygen, helium, hydrogen, etc.). The community recognizes that this use is not compatible with the neighborhood. However, with the adoption of this bill, the community only has a $25 fine to get the property owner to stop running this business out of his garage. Seeing the $25 fine as a “user fee”, he
decides to keep operating. One day his teenage son decides he has a welding project to do. Not understanding the danger, he proceeds with his project and causes 40 of those oxygen cylinders to explode, leveling the house, severely damaging the neighbor’s houses and causing broken windows blocks away.

4. An industrial company decides the best way to get rid of used chemicals is to dump them down the drain, especially if it only costs them a $25 fine if they are caught. Those chemicals end up destroying a sewer lift station, so the sewage starts to back up. When the public works department goes to inspect the sewer, they are exposed to the gas released from the toxic chemicals and needed to be rushed to the hospital.

Each of these scenarios are based on actual events. Fortunately, the communities involved had the ability to use fines and criminal charges to enforce their local regulations. With the proposed bill, the mechanism to enforce vital public health, safety, and welfare ordinances is severely limited.

We recognize that for some, paying the fines may be a sufficient deterrent to achieve compliance. However, in the most difficult cases, that fine will be just the cost of doing business. With this proposed bill violators can pay the fine and continue the illegal activity. The option for using misdemeanors introduces, in the extreme cases, the potential for court ordered mandates to correct the problem or be faced with steeper penalties than just a minimal fine.

We appreciate your service and would greatly appreciate your consideration of our perspective on this matter. As the professionals responsible for code enforcement efforts that address public health, safety, and welfare issues, we want to make sure that the ramifications of this proposed legislation are understood. Please contact me at your earliest convenience should you have questions or require additional information.

Sincerely,

Jason Boal- AICP, CFM
APA Idaho Legislative Committee, Chair