

2015 Session Review

The First Regular Session of the 63rd Idaho Legislature began on January 12, 2015 and adjourned on April 10, 2015. At 89 days, the 2015 Session was the longest since 2009.

In 2015, 763 bills were drafted, 523 were introduced and 351 were passed, with four being vetoed. In addition, 194 rules packets were reviewed (totaling 1,508 pages). A special “thank you” is owed to all the members of the IAR Legislative Committee who met weekly during the Session to review legislation and rules and take positions on behalf of the Association. Here is a look at some of the action that took place, as well as an update on some of the key pieces of legislation IAR was active on this year.

FOLLOW US ON TWITTER: For real-time updates on what’s happening in Idaho’s political world (even after session), follow us on Twitter @IdahoRPAC.

EDUCATION: The Governor and the Legislature made education funding a top priority for the year, increasing general fund education spending by \$101.2 million – or a 7.4% increase over the previous year. The increase included \$33.5 million in increased teachers salaries as part of a five-year \$125 million planned salary increase. Overall, total education spending grew from 61.2 percent of all General Fund spending in 2015 to 62 percent in 2016.

Education has clearly become a top priority for elected officials in Idaho. Governor Otter has outlined a 5-year \$300 million plus plan and 2015 was the first down payment on that plan. 2016 is shaping up to be another year where education spending will dominate the discussion as more revenues become available with the growing economy. In terms of total dollars 2016 represents the most ever spent on education in Idaho, although it will probably be another year or so until schools catch up with inflation adjusted spending and new growth.

TRANSPORTATION FUNDING: By far the most contentious issue of the 2015 Session was transportation funding. Idaho has an estimated \$262 million **annual** transportation funding deficit at the state level just to maintain what we currently have. If you throw in local transportation the number balloons to more than \$540 million annually. This does not include any money for expansion of the system. More than 500 bridges in Idaho have reached their 50 year projected lifespan and need to be updated. By

2021 that number climbs to more than 1000 bridges. This is an issue that needs to be addressed in the near term by the Legislature, and they were able to put together a good down payment this Session. In conversations with Legislators, the Idaho REALTORS have repeatedly compared Idaho’s deficit spending on transportation to a homeowner not paying to fix a leaky roof. You can fix the roof immediately at a set cost, or you can wait until it collapses and pay significantly more than you would have if you just addressed the issue when it happened. Unfortunately, we already have a number of circumstances where ITD is going to have to spend significantly more to fix roads because they didn’t have the money to perform routine maintenance at the time it was needed.

HB 312 passed the Legislature, and was signed into law by the governor as the “going home” bill for 2015. HB 312 increased revenue for transportation funding by about \$94 million through a 7 cent increase in Idaho gas tax and a \$21 registration increase for personal vehicles (\$25 commercial). The bill also included some increased fees for hybrids and electric cars. These user fees haven’t been increased since 1997, and had lost significant buying power to inflation and increased fuel economy.

HB 312 also included what is called a “surplus eliminator” to create a Strategic Initiatives Program (SIP) that allows for projects to be funded on a competitively rated scale as money becomes available. The money comes from revenues generated above budgeted spending levels. The 2015 budget looks to have a surplus north of \$100 million, of which about \$40 million will go into the SIP fund to help fund transportation projects. Taken together this will mean somewhere around \$135 million in new transportation spending in fiscal year 2016. This

money is split with local governments to help bridge the entire \$540 million deficit. The state will retain 60 percent, and 40 percent will go to local government.

IDAHO REAL ESTATE COMMISSION LEGISLATION: The Idaho Real Estate Commission (IREC) passed several pieces of legislation this past Session.

They are Senate Bills 1006 through 1010, and are mostly clean up bills that will have little to no impact on agents.

Here is a summary of the legislation from IREC that became law on July 1, 2015.

SB 1006 – IREC’s annual "housekeeping" bill that cleans up the statute (spelling errors, etc).

SB 1007 – Current law only allows the Commission to deny an application for non-payment if the payment was made by check (NSF). This legislation clarifies that they can deny the application for non-payment regardless of how the payment was made - i.e. with a credit card.

SB 1008 - There is a section of license law that allows the Commission to charge a \$10 fee for administering the E&O insurance program. They used to charge this fee when they actually administered the program, but since they have gone with an outside vendor they have not charged the fee. The bill simply removes the language allowing them to charge the fee.

SB 1009 - This law would affect education providers and instructors. It moves their certification period to 1 year and has an annual renewal date for everyone of June 30.

SB 1010 - This legislation is simple in scope, but difficult to explain. Essentially it removes a loophole in the statute. Currently agents are allowed to have an unlicensed LLC that they own (or in some cases they and others own it - i.e. a team situation). The law allows this, but all of the owners are supposed to be licensed under the same Broker. The Broker can then make payments to the unlicensed LLC, which then gets distributed to the agents. The legislation doesn't change that practice. What IREC was running across are situations where a couple of other brokers own an unlicensed LLC, and an agent was having her or his broker (who is not an owner of the LLC) make payments to that LLC (which the agent

does not have an ownership interest in), and then the LLC is paying the agent. Under existing law they were not able to stop this practice, hence the loophole. This legislation makes it clear that the agent has to be an owner of the LLC, and that the broker can must pay her or him though that LLC (if she or he wants to be paid through an LLC), not one which she or he has no ownership interest in. This legislation will have no impact on the 99 percent of agents who use unlicensed LLC's in Idaho.

IDAHO TAX COMMISSION RULES AND REGULATIONS: This appears to be an annual theme with the State Tax Commission. In the 2014 Session Review we wrote:

There has been a growing amount of concern in the Legislature, and in the business community, about recent proposals from the Tax Commission regarding tax policy in Idaho. The process starts with the Legislature setting a policy regarding something to do with taxes by passing legislation. Generally the Tax Commission will then spend the following summer writing rules that will provide specifics regarding how the new law will be implemented. Those rules then go back before the legislature for review and approval or denial. If approved, the rules have the same force and effect of law as Idaho statutes do.

Recently, a good number of the rules from the Tax Commission have come under scrutiny for attempting to change the policy set by the Legislature though rule.

Apparently some things never change. Whether it is Cloud computing, site improvements, or a myriad of other rules, the Legislature spends an inordinate amount of time either making sure the Tax Commission's implementation of their legislative intent is correct, or fixing rules the Commission proposes which have no basis in underlying law.

We again saw several examples this year. In one case the Commission audited a business several years ago and found them in compliance, then audited them last year and fined them for being out of compliance. The stated reason was that their, "interpretation of the rule had changed."

Fortunately the Legislature wasn't buying it and passed legislation to fix the issue. Two other pieces of legislation also passed that are pertinent to real

estate transactions and how they are taxed in Idaho. Both dealt with capital gains.

HB 85: Federal law says that when a corporation owns a piece of property and it disperses it as part of a compensation or severance package for an employee, the employee can count the time the corporation held the property as part of the holding period in order to qualify for the capital gains deduction. The Tax Commission had recently changed their interpretation to say that the clock on the holding period has to start again from the time the employee receives the property. HB 85 rightly put Idaho back into conformance with current practices and federal law.

HB 109: Federal law allows for conservation easements as well as grazing permits and leases to qualify for the capital gains deduction when they are transferred with the land. They are considered part of the real property. Idaho had historically followed suit. However the Tax Commission, once again, changed their interpretation of the law to say the capital gains deduction could only be taken on the actual value of the land being sold – not including the value of the easement or permit attached to the land. HB 109 reverses the interpretation by the Commission and conforms to historic practices.

CLOSING PROTECTION LETTERS: After a few years of discussions the Idaho Land Title Association introduced HB 277 last Session, which passed the Legislature and became law on July 1, 2015. HB 277 deals with the concept of Closing Protection Letters (CPLs). Title underwriters have been issuing CPLs as part of the closing process when requested for the past few years. CPLs are designed to protect buyers, borrowers and lenders from any mistakes made by title companies during a transaction. Banks, in particular, have begun to require CPLs as part of a closing process in recent years. Buyers and real estate agents likely would not have seen the CPL at the time of closing as it is placed in the file at the behest of the bank, and no fee was being charged. Title underwriters were concerned that the CPL conflicted with their license law and asked for clarification from the Department of Insurance. DOI confirmed that the underwriters were only certified to write one line of insurance, and that the CPL fell outside that purview. After a lot of research it was clear that lenders were not comfortable doing business without the CPL in place in many instances, and that a fix had to be initiated. Due to federal law, lenders are generally not allowed

to pay a fee as part of closing that would pay for the CPL. HB 277 allows for underwriters to issue CPLs as part of the closing process, and provides that a fee of “not more than \$25” be imposed for the service.

URBAN RENEWAL: As usual there were a number of bills regarding Urban Renewal introduced during the Session. Foes of urban renewal introduced legislation to hamstring the process, while many legislators met weekly to discuss possible changes to the statute to provide more transparency to the process as well as create additional sideboards. In the end, legislators settled on passing a resolution calling for an Interim Committee that would undertake a wholesale review of the issue. The Interim Committee has been formed and will begin meeting in August of 2015 to look at the issue. Prior to the Session legislators heard about new types of tax increment financing being used in Utah that may work in Idaho. Idaho has essentially one land-use planning tool for economic development – the urban renewal process. Utah has broken this out into a number of different tools designed to address specific needs. The discussion at many of the legislative meetings this year revolved around Idaho trying to fit too many types of economic development into the single tool of Urban Renewal. This approach has led to some controversy with the law. The Interim Committee is designed to address these issues.

LAND USE PLANNING: As usual, there were a number of bills introduced during the Session that were aimed at land use planning. Only one piece of legislation made it through the process this year though. SB 1044 prohibited the use of eminent domain authority by local governments for the purpose of obtaining land for greenbelts and trails. The Legislature has set many sideboards on eminent domain authority, generally preferring its use be limited to roadways.

HOMEOWNER’S EXEMPTION: The Idaho REALTORS have long advocated for changes to the Idaho Homeowner’s Exemption to make it more stable. In the 2015 Session the Idaho State Tax Commission passed a change to their rules that states:

Part Year Ownership. For qualifying taxpayers who claimed the homeowner's exemption on an eligible property, the homestead that qualified on January 1 of the current tax year shall continue to receive the exemption, provided however, the assessor may remove that property's exemption if, by April 15 of the tax year, the taxpayer owns a different homestead

and requests that the exemption be transferred to the second homestead.

This means that if a home qualified for the exemption on January 1, the exemption should not be removed until the following year unless a homeowner requests a change to a new residence prior to April 15. Hopefully this is a small step forward in helping properties sell that might have previously lost their exemption after April 15.

The Idaho REALTORS will continue to push for reforms to the Homeowners exemption to help streamline the closing process and treat all properties fairly.

WHAT TO EXPECT NEXT YEAR: 2016 will be an interesting legislative Session. It will be an election year, and in Idaho US Senator Mike Crapo will lead the ticket in his race for re-election. Both congressional seats will also be up, along with all 105 legislative seats. Idaho has also changed its Presidential Primary for the Republican Party to an election rather than a caucus (as occurred in 2012), and will hold the Presidential Primary on March 8, 2016 (all other primary elections will continue to occur in May). This is designed to put Idaho into the early primary debate and draw more attention to Idaho's GOP delegates. The Idaho Democratic Party typically holds a caucus to select their candidate, but that decision will be made later this year.

Election years can have an interesting effect on legislative politics. Especially given that the filing deadline to run for office usually falls the second week of March – while the Legislature is still in Session. Expect education funding, tax cuts and water to be the big theme issues. The Idaho REALTORS will be watching closing on issues ranging from economic development (urban renewal), to the homeowners exemption, to issues regarding split estates and mineral rights.