**2017 Session Review**

The First Regular Session of the 64th Idaho Legislature began on January 9, 2017 and adjourned on March 29th, 2017, lasting 80 days.

In 2017, 785 bills were drafted, 540 were introduced for consideration, and 337 were passed. Eight bills were vetoed by the Governor. A special “Thank You” is owed to all of the members of the IR Legislative Committee who worked diligently throughout the session to review legislation and take positions on behalf of the Association. Below is a review of some of the action that took place this year, as well as an update on some of the key pieces of legislation that the Idaho REALTORS were active on this year.

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**Overview:** The 2017 Legislative Session was again dominated by transportation, taxation and education issues. The Legislature increased General Fund education spending by 6.3 percent for K-12. This included an additional $61.9 million for the third year of the career ladder for teacher pay. The career ladder compensation system is a five-year plan recommended by the Governor’s Education Task Force that will increase teacher pay by more than $300 million.

Transportation funding was once again front and center for legislative debate. Legislators approved more than $50 million in one-time funds for infrastructure repair and replacement necessitated by the harsh winter. To address safety and capacity issues legislators allowed for an additional $300 million in bonding. To help with maintenance concerns the legislature continued for two more years a plan to take a portion of any surplus revenues at the end of the year, and transfer them to road funding.

The Legislature spent a great deal of time talking about and voting on a bevy of different tax proposals. Ultimately they passed HB 67aaS, aaS which repealed the tax on groceries in Idaho. The bill was subsequently vetoed by the Governor, but is now the subject of a lawsuit brought by several legislators claiming the veto was unconstitutional and the legislation should become law.

**HB 216 Vacation Rentals –** In 2016, the Idaho REALTORS® helped address vacation rentals (or short-term rentals) in Homeowner’s Associations. Because of that legislation, HOA’s cannot ban vacation rentals in an HOA without the owner’s written consent. In 2017, IR worked with various stakeholders to pass sweeping legislation regarding how vacation rentals are regulated by cities and counties.

HB 216 requires “online marketplaces” such as AirBnB and VRBO to collect and remit all applicable taxes for their clients. This puts the vacation rentals on a level playing field with our hotels and motels, and makes sure homeowners that rent their homes through an online marketplace aren’t getting dinged by the State Tax Commission for not collecting taxes they may not know exist.

On the property rights side, HB 216 also prohibits cities and counties from banning vacation rentals, or passing an ordinance “that has the express or practical effect of prohibiting short-term rentals.” Cities and Counties can regulate vacation rentals for “health, safety and welfare”, but cannot ban them. The bill also classifies vacation rentals as a residential use for zoning requirements. This means that if a city or county already has an ordinance that would apply to residential homes, they cannot have a higher standard for vacation rentals. For instance, if a city has a parking ordinance that allows for on street parking in a certain manner they could not impose a higher burden on vacation rental properties.

This legislation goes into effect on January 1, 2018.

HB 216 is somewhat groundbreaking across the nation as this is the first legislation the online marketplaces have agreed to where they are required to collect and remit the taxes owed. It is also one of the only pieces of legislation to pass in the country that prohibits local governments from banning vacation rentals.

As cities and counties begin to implement their ordinances regulating vacation rentals there will likely be conflicts with this statute. IR members and local associations should be aware of these proposals and contact IR staff if they have any questions about local proposals.

**Taxes –** Taxes were a topic of great discussion again this year, but in the end, no meaningful action was taken to reduce or reform taxes this Session after the Governor vetoed the only tax reduction bill to pass the Legislature. HB 67, as passed by the House, would have eliminated the income tax on any income below $750 and would have lowered the marginal rates by two-tenths of a percent across the board. This legislation was sent to the amending order in the Senate and “radiator capped” to be a grocery tax repeal bill. This is the term used for keeping a portion of the title of a bill, while eliminating all the language in the bill and replacing it with an entirely different bill (essentially like driving in a car, lifting the radiator cap off the car, then driving a new car in and replacing the radiator cap on that car with the old one).

This procedure is common for tax bills in the Senate, as all tax bills have to begin in the House. Several Senators had requested a hearing on a grocery tax issue in the House Revenue and Taxation Committee, but were not granted a hearing during the Session, they therefore held HB 67 until the end of Session as a bargaining chip.

Ultimately, the House concurred with the Senate amendments, and the grocery tax repeal bill went to the Governor. After Session ended the Governor vetoed the bill.

After HB 67 passed and was sent to the Governor, the House amended a “must pass” Senate bill they had been holding hostage that would have stopped a planned increase in unemployment taxes for Idaho businesses (to the tune of $115 million over the next three years). The amendments to this bill added back in the language reducing the income tax brackets – but this time by only one-tenth of a percent. The Senate immediately voted not to concur with the amendments and adjourned for the year. The result of this action was they could not pass a new bill on the unemployment tax issue, so employers will see their taxes go up until they can fix the issue next year.

A different proposal to change the definition of nexus for online retailers to make them collect and remit the sales tax was popular in the Senate, but got caught up in the politics of the House tax cut proposal and died. The Idaho REALTORS® supported this legislation as an effort to level the playing field for our main street businesses that are competing with out of state retailers. Nationally, NAR is a member of the coalition urging congress to act to require online retailers to collect and remit sales taxes for the same reasons.

Legislation was also introduced that passed the House, but was not heard in the Senate, to require that every year local units of government analyze the amount of property that was removed from the tax rolls in their jurisdiction, and then reduce their budget accordingly by reducing the amount of new growth they can claim through the new construction roll. This was aimed at addressing situations where a government, or a nonprofit hospital, buys land and it is removed from the property tax rolls. Rather than shift the burden of the lost revenue to all other property owners, House members wanted to make local governments reduce their budgets to compensate for the lost revenue. This issue will likely return in the coming years.

**SB 1206 – Transportation Funding –** Transportation funding has been an ongoing issue for the Legislature for a number of years now. In 2015 the Legislature passed a transportation funding bill that increased fees and the gas tax to provide about $95 million in additional revenue to pay for much needed maintenance on Idaho roads (the shortfall was projected to be north of $200 million annually at the time). They also created a “surplus eliminator” to take part of any revenues received above their budget and put it into a special transportation fund.

This Session the legislature was again faced with some serious issues regarding transportation funding. The harsh Idaho winter quickened the decline in road quality in a number of places around the state and caused a number of safety concerns. The Legislature quickly appropriated more than $50 million from their surplus to deal with washed out roads and bridges, but needed to find an ongoing solution in some areas. After several stops and starts, HB 1206 passed the legislature and was signed into law by the Governor.

SB 1206 authorizes up to $300 million in bonding for road construction (this is the state borrowing against future federal transportation dollars, so it does not impact state or local road funds used for maintenance). About half of this funding will go to widen and repair I-84 between Meridian and Caldwell. Several other projects around the state will be considered and funded by the Idaho Transportation Department in the coming year as well.

This legislation also extended the surplus eliminator for two more years, with the added twist that the funds be split 60 percent for the state, and 40 percent for local governments. Previously the surplus eliminator monies were dedicated to just the state.

In addition, the bill reserved 1 percent of all sales tax revenues to be dedicated to transportation funding (about $15 million). Finally, the legislation directed an unallocated portion of the cigarette tax to transportation. The net fiscal impact to transportation funding will be hard to judge because most of it will be based on how big of a surplus the state has each fiscal year.

**HB 425 Tax Conformity –** The legislature unanimously conformed our state income tax code to the federal code. This is important, since other states are attempting to decouple from the federal code, and we are seeing attempts to remove the Mortgage Interest Deduction from state income taxes. It will also be a key issue moving forward if changes are made at the federal level that significantly impact federal deductions – such as doubling the standard deduction and eliminating the ability to write-off your property taxes. The state legislature will have to decide whether those deductions are important to their constituents and what the revenue impact will be. Congress is looking at lowering tax rates as part of their proposal, but Idaho would have to do that separately.

**HB 98 Real Estate Agent Licensing –** The Idaho Real Estate Commission (IREC) passed HB 98 this Session to deal with agent advertising. Currently the law requires the Broker’s licensed business name to be on all advertising by agents. Unfortunately, the law doesn’t state in what manner the Broker’s licensed business name has to appear on advertising. One of the top complaints the Commission deals with is misleading advertising, although almost all of the complaints are from other licensees. HB 98 states the Broker’s licensed business name must be “clear and conspicuous” on all advertising. IREC plans to work through the summer with IR to try to come up with rulemaking to give clarity to the new requirement. The Commission hopes writing some clear standards will cut down on the number of violations.

**HB 99aa Commercial Agent Licensing –** Idaho was one of only eight states to not have some form of cooperative agreements for commercial agents licensed in other states to do business with Idaho agents. The largest number of license law violations the Commission deals with revolve around unlicensed practice, and most of those cases are in the commercial sector. HB 99aa defines “commercial real estate” essentially as anything you would use the International Building Code for as opposed to the Residential Code. The definition specifically excludes condos, townhomes and other unit-by-unit developments as well as farm and ranch transactions.

HB 99aa will allow commercial agents licensed in another state to apply for a cooperative license with the Commission for a single commercial transaction. The out-of-state agent must find an Idaho Broker that will sign the agreement to supervise the out-of-state agent, must have valid E&O insurance, and must agree to be bound by Idaho license law. There is no limit on how many cooperative licenses an out-of-state agent can have in Idaho, and there is no limit on how many cooperative licenses an in-state Broker can supervise. Each cooperative license will have a fee paid to the Commission of up to $150.

The goal of this legislation is to remove the current incentive for Idaho agents to break the law and cooperate with non-Idaho licensees.

**HB 209 Electronic Notaries –** This legislation was brought forward by the Secretary of State after a large group of stakeholders met this past year to see about the possibility of bringing electronic notarization to Idaho. The result of those meetings, and some legislative input, was HB 209. The bill allows existing and new notaries the option of applying to be an electronic notary as well. To become an electronic notary, a person will have to pay a fee and purchase some prescribed software. The software will allow for an electronic stamp and an electronic signature to be attached to a document as notarization. All aspects of the notarization process remain the same for notaries and e-notaries.

This means that an in-state transaction where the parties are hours apart can be done in minutes through email. Also, if another state allows electronic notarization (Washington, Oregon and California all have e-notaries), the transaction can be done via email with e-notaries on both sides of the transaction.

HB 209 does not allow for what is called “remote” notarization where a notary can verify a person as the legitimate signer of a document over a webcam. All of the current rules for notarization will still have to be followed in Idaho by an e-notary.

**HB 205 Recording Fees -** This legislation changes the recording fees for some types of documents from a per-page fee to a flat fee. Currently the fees to record are $10 for the first page and $3 for each additional page. With the passage of HB 205, a few of the documents regularly recorded in the course of a real estate transaction will be flat instead of having a per page fee. These include: deeds, grants and conveyances of real property ($10); trust deeds or mortgages of real property, including fixture filings, security agreements and assignments of leases and rents if contained within the same instrument for recording ($45); reconveyances of trust deeds, including substitution of trustee if contained within the same instrument for recording, and releases of mortgages ($15); and powers of attorney ($25).

The purpose for this legislation was to help make sure the Closing Disclosure documents are consistent and do not have to be changed because a document was a page or two longer or shorter than originally estimated. Any change in the numbers during the disclosure process can trigger a three-day delay, which is part of what HB 205 is trying to avoid. In addition, the flat fee helps the Title companies comply more easily with certain provisions of the Dodd-Frank Act.

**HB 301aa Oil and Gas –** There has been a lot of debate in the Idaho Legislature about how to regulate oil and gas production. Idaho is relatively new to the oil and gas business, passing legislation to allow for production just a few years ago. Oil and gas producer Alta Mesa has been really the only player in the industry in Idaho to this point. Most of Alta Mesa’s projects are in rural counties in the southwest corner of the state represented by District 9 legislators. All three legislators from that district drafted legislation early in the year to provide for more transparency in the production process as well as inspections and record keeping to make sure Idaho and the citizens with mineral rights leases are getting their fair share of the proceeds from production.

After much negotiation with legislators from the district, legislative leadership, the Governor’s office and Alta Mesa, HB 301aa was drafted and ultimately passed the Legislature unanimously and was signed by the Governor. The new law will go into effect July 1, 2017.

Of importance to property owners, the law codifies existing rules that say a well cannot be located within 300 feet of an existing structure. The legislation also increases the number of mineral rights holders (by acre) needed for integration from 55 percent to 67 percent. Integration is a process whereby the state deems it necessary to compel mineral rights holders to participate in the development of oil and gas whether they want to or not. The state had deemed development to be of importance to the future of the state, and using the integration process they will not allow a small number of landowners to block a project. Idaho was relatively low on the percentage at 55 percent of the total amount of land having to buy in for the rest to be forced in. HB 301aa moves that number to 67 percent, but it also allows for an alternative process and possible integration at 55 percent if the Idaho Department of Lands finds developers cannot meet the higher standard and integration is necessary at the lower level.

**HB 334 Safe Routes to Schools –** Idaho has many places where there is a need for funding safety improvements along roads and highways where kids walk or bike to school. However, the state has no funding mechanism to pay for these projects. In many cases kids are walking or biking on rural streets with no sidewalk or crossing mechanism, and where the speed limit can be more than 45 miles per hour.

Idaho receives some limited federal funds to pay for some projects, but the last round of federal funding left $13 million in eligible projects unfunded.

HB 334 was a “trailer” bill to the big transportation package and amended Idaho code to allow the Transportation Department to use surplus eliminator monies sent into ITD’s Special Initiatives Account to pay for “children pedestrian safety on the state and local system.” The legislation also allows local units of government to apply for these funds.

There is likely more work to do in the future on this issue, as the funding sunsets again in two years. In addition, child pedestrian routes will be competing with all of the other demands for funding at the state and local level – including maintenance of bridges, road safety projects, and right-of-way purchases. HB 334 is likely the first step in a long path for helping fund safe routes to schools, but it does mean the legislature is beginning to understand the need for these projects.

**Conclusion:** The 2017 Session was very successful for the Idaho REALTORS. We were engaged in a number of pieces of legislation that passed both the House and Senate and have been signed into law. We want to thank all the members who participated in the Legislative Committee for their input and knowledge, which helped us ensure that the concerns and desires of the Idaho REALTORS were heard during the legislative session. There will be a number of interim committees taking place before the 2018 Session and we will continue to monitor those committees as we prepare for the coming Session. As always feel free to reach out to us with your questions or comments. We look forward to traveling to some of your local associations throughout the coming months to discuss our legislative priorities and to provide additional information to our members.

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