

2016

Idaho REALTORS®

SESSION REVIEW



The Second Regular Session of the 63rd Idaho Legislature began on January 11, 2016 and adjourned on March 25th, 2016 lasting 75 days.

In 2016 831 bills were drafted, 557 were introduced and 377 were passed. Four of the passed pieces of legislation came without the signature of the Governor and two were vetoed. A special “Thank You” is owed to all of the members of the IAR 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 2016 Legislative Session was again dominated by education issues. The Legislature’s annual Sine Die Report notes:

“For fiscal year 2017 the Legislature increased the General Fund appropriation for K-12 education for the second consecutive fiscal year by 7.4%. The Legislature also provided colleges and universities a sizeable increase in General Fund appropriations, with an increase of 8.0% over the prior fiscal year. Other notable increases in General Fund appropriations include an 8.7% increase for community colleges and a 10.4% increase for career technical education. The Legislature approved \$2,000,000 for grants,

scholarships, and programs, and another \$2,000,000 for startup initiatives that promote Science, Technology, Engineering and Math (STEM) education throughout the state.”

While education again took a front seat this year, there were also a number of bills relevant to the real estate industry introduced this year.

Taxes – Taxes were a topic of great discussion again this year, but no meaningful action was taken to reduce or reform taxes this Session. A proposal from the House for a modest one-tenth of a percent reduction in the income tax was a non-starter in the Senate. A 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.

Once again legislation was introduced to review all sales tax exemptions and exclusions. HB 419 would have created a Tax Review Commission to look at all exemptions and exclusions every 5 years. IR opposed this legislation and it did not pass.

Legislation also passed the Senate to create an interim committee on taxes but was held at the desk in the House and not considered. It remains to be seen if Legislative Leadership will form a committee this interim or not.

Rules Review – The House and Senate passed a constitutional amendment to codify their rules review process. Idaho is one of only a few states where the Legislature has the ability to review and reject executive agency rules. This practice is essential in creating a business friendly environment in Idaho. The issue will appear on the November ballot. The Idaho REALTORS support this issue and urge our members to vote yes on this important amendment this fall.

HB 425 Tax Conformity - This bill relates to income taxes and was the annual bill to update references to the Internal Revenue Code (IRC). The bill will conform the Idaho income tax to changes made to the IRC that affect taxable years beginning during 2015. This legislation ensured that the tax extenders passed by Congress and supported by NAR, including the mortgage debt relief

act, would go into effect for the Idaho income tax. The Idaho REALTORS supported this bill and it has been signed into law.

HB 431 Homeowner's Exemption - This legislation will set the HOE at 50% of value up to \$100,000 and remove the index. After the index was put in place, just prior to the real estate bubble, it quickly moved from \$75,000 to \$104,000. This shifted nearly \$60 million in taxes onto second homes and businesses. When the economy collapsed and the exemption fell to \$81,000 it shifted \$26 million in taxes BACK onto owner occupied residential. This shift resulted in many homeowners seeing tax increases while their values were falling. In effect, taxpayers in their own homes were being punished for the bad economy because of the tax policy of the state. This legislation should stop the wild shifting that has taken place over the past decade with our property tax system. This bill has been signed into law.

HB 454 Underground Facilities Board – This legislation amends and adds to existing law to create the Damage Prevention Board and to provide for its duties regarding the prevention of underground facilities damage. This legislation is one that we have seen in previous years and the Idaho REALTORS worked to ensure that any of our concerns relating to that of homeowners were addressed prior to the passing of the legislation. The legislation creates a new board at the Division of Building Safety that will be made up of contractors and utility companies that will have jurisdiction over violations of the dig law. Homeowners who dig without calling dig line and hit a utility line will be sent a notice of violation and educational material on their first offense,

and could be fined for a second offense. The law was also necessary to comply with new federal regulations on major oil and gas pipelines. Without the passage of the legislation, federal regulators would have been in charge of enforcement of some violations which would not have been optimal for Idaho contractors. The bill has been signed into law.

HB 474 Taxing Districts - The Purpose of this legislation is to require non-school taxing districts that elect to take a foregone property tax increase to hold a hearing in conjunction with their annual budget hearing. The Idaho REALTORS supported this legislation and it has been signed into law.

HB 482 Boards- This legislation amends existing law to revise qualifications for various licensure boards so that all members serve at the pleasure of the Governor and each board has at least one consumer member. Since this legislation directly affected the IREC board, the Idaho REALTORS were sure to review it with our legislative committee and ensure their concerns were addressed. The legislation is a result of a US Supreme Court ruling that dealt with a dental board in North Carolina, but had broad reaching implications for all industry boards and commissions. The case required revision of our statutes to make sure a third party had outside oversight of Commission actions when the Commission was made up of a majority of industry members in order to avoid anti-trust issues. This is already the case with all rules and laws IREC proposes given our legislative process, but we were not compliant with regard to enforcement actions. The Governor's office spent a lot of time reviewing the case and concluded that

making members serve at the pleasure of the governor met that test. IREC was one of a few industry boards in the state that does not have a public member. This legislation has been signed into law and a public member will be appointed sometime after July 1, 2016.

HB 491 Liens - This legislation prohibited what are known as non-consensual common law liens. Liens are placed on property to secure financial interests which have either been granted consensually or imposed through due process of law. A non-consensual common law lien is typically placed on another person's assets without any stated rationale or legal basis. The person against whom the lien has been placed usually learns of it years later or when selling property or seeking credit. This proposed legislation prohibits such liens and provides an expedited procedure to remove the liens. Removing this type of lien, which is a vehicle for obvious abuse, does not take away or affect any other lien rights such as mechanics liens, mortgages, judgment liens, contractual liens or other liens provided for in law and which are obtained through consent or due process of law. Often these liens are used against public officials or others to harass them for their actions. This legislation did pass and was signed into law.

HB 503 Trust Deeds- This legislation was a minor change to amend existing law to revise and expand the definition of "trustee". Last year the Idaho REALTORS supported legislation to amend the mechanics lien laws of the state to clarify that a trustee did not have to be named in a lien for the lien to be valid. At the time we did not amend the trust deed statutes to reflect the same change. HB 503 clarifies that oversight. Both pieces of legislation were necessary to

address an Idaho Supreme Court ruling that said a lien needed to name the trustee as well as the owner of the property in order to be valid. This bill has been signed into law.

HB 511 Homeowner's Associations - This legislation confirmed the "right to rent" for homeowners by stating that the rules (the CC&R's) that applied to the property when it was purchased regarding renting the property remain in effect unless the owner of the property agrees in writing to changes. This would stop HOA's from prohibiting rentals (or limiting them to a certain percentage of the subdivision) after someone has bought the home. This ensures the property rights of the owner remain in place. HOA's can still amend and enforce their CC&R's to address any problems that may be caused by rentals such as parking issues, noise, etc. The legislation would impact cases where an HOA changed their CC&R's to prohibit rentals without written consent by an owner prior to that adoption of the law. HOA's could still outlaw rentals, and have it become effective at the time of sale if the new owner agreed. The Idaho REALTORS supported this legislation and it has become law.

HB 606 Urban Renewal- This legislation was the recommendation of the Urban Renewal Interim Committee created by HCR17 adopted in 2015. The purpose of this legislation is to provide transparency, accountability and modernization for the urban renewal process in Idaho while maintaining a vital economic development tool for local governments in Idaho. This legislation allows for local governments to decide if Board members should be elected; requires a vote of the people if urban renewal dollars are to be used for financing more than 50% of a public building;

addresses a serious concern about when the tax base for a district is reset if the agency plan is amended; and creates a repository at the State Tax Commission of all Urban Renewal plans. This bill has been signed into law.

HB 643 Submersible Well Pumps – This legislation adds to existing law to provide that listed submersible well pumps are approved for use in lakes, rivers, ponds and streams. HB 643 became necessary when the Division of Building Safety (with only a short time left in the Session) ruled that well pumps were not rated to be used in lakes, ponds and rivers. It is believed there are hundreds (if not thousands) of these pumps used all over the state to provide irrigation water for homes, golf courses, and businesses. In some cases, they are also used to provide all the potable water for lakeside homes as well. A quick review of just Kootenai County revealed \$600 million worth of property that would be effected. The legislation will allow for pumps to be installed and replaced for the next two years while DBS works with contractors and the real estate industry to create standards for safe installation in the future. The Idaho REALTORS were a key player in drafting this legislation to protect homeowners who are utilizing these well pumps. This bill has been signed into law.

SB 1315 Unclaimed Property - This legislation clarifies that following the tenth day of a trustee's sale the purchaser may remove any non-titled personal property remaining in unoccupied premises and place in suitable storage for a period of 90 days. Before disposing of any personal property from the unoccupied premises, the purchaser shall provide both a written notice to the last known occupant and a posted notice to the

premises. The notice shall describe the personal property which was collected and the contact information for the retrieval of said personal property. If the owner of the personal property fails to claim the property in 90 days, the purchaser may dispose of the property and shall have no further liability regarding said property

SB 1317 Homeowner's Associations - This legislation will provide that attorney fees (with regard to an HOA) can only be assessed or provided through a judicial action by a court of competent jurisdiction. This will stop the practice of attorneys sending demand letters to residents of an HOA on behalf of the Board and including a bill for services. Last year we changed the law to stop exorbitant fines by HOA's, so the law firm that was the problem simply stopped fining and started charging attorney fees to the residents of the HOA's they represent. Idaho REALTORS were in support of this legislation and it has been signed into law.

SB 1318 Appraisal Management Companies - This legislation will allow banks in Idaho to continue to use AMC's as part of their transactions. Recently FHFA passed rules that require the state to set up rules governing AMC's in order for them to continue operation in the state. SB 1318 regulates AMC's under the existing Appraisers Board. If legislation of this type were not passed in Idaho by the federal deadline of 2017, most banks in Idaho would not have a viable option for appraisals. It is thought that about 80 AMC's will register with the state. The Idaho REALTORS were in support of this legislation and it has been signed into law.

SB 1325 Regulatory Takings - This legislation fixed a problem created by a Supreme Court case that said a property owner had to request a regulatory takings analysis from the local unit of government prior to accessing the court and requesting compensation for their taking. Prior to this case it was thought that the analysis was optional. SB 1325 clarifies that the analysis is option and does not block your path to court. This bill has been signed into law.

SB 1388 Tax Deeds- The purpose of this legislation is to clarify the scope and effect of Idaho's statues governing tax deeds. The bill is a result of an Idaho court case which said interests in real property are vacated when a home is sold at auction for tax purposes. The issue in the court case was an access easement that had been in place on a piece of property. The court ruled that the easement was vacated when the property was sold at auction as part of a tax deed sale. A plain reading of the existing law did read that way, and could have been applied to all manner of easements and rights of way. SB 1388 amends the law to be clear that those easements stay with the property after a tax deed sale occurs.

Conclusion: The 2016 session, although rather short 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 2017 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.

Sincerely,

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