



2014 Legislative Session Review

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The Second Regular Session of the 62nd Idaho Legislature wrapped up on March 20, 2014. At just 74 days, the 2014 Session was the shortest in a decade. Legislative Leadership set an early target date and beat it by one day.

In 2014, 839 bills were drafted, 542 were introduced and 357 were passed. In addition, 173 rules packets were reviewed (totaling 1,633 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.

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NEW FACES: In 2013 the House of Representatives experienced a 43 percent turnover and the Senate experienced a 36 percent turnover. In 2014 the Freshman class hit the ground running and introduced a number of new bills.

BUDGET ISSUES: The Governor and the Legislature estimated a growth rate in revenues of 6.4% for FY 2015 over FY 2014's estimate of 2.1%. This is the fourth straight year of revenue growth. Overall spending increased 5.6%. Public schools received a 5.1% increase, higher education received a 6.6% increase, Medicaid received a 3.1% increase, and the Department of Correction received an 11.0% increase.

Total general fund expenditures were \$2.936 Billion for fiscal year 2015. The estimated budget surplus is about \$69.5 million.

The Legislature is working to restore funding to many of the programs cut during the recent recession and appears to be cautiously optimistic that revenue growth will continue for the immediate future.

CONTINUING ED FOR REALTORS®: The Idaho Real Estate Commission and the Idaho Association of REALTORS® formed a joint task force in 2012 that spent two years looking at various aspects of the real estate license law with respect to

continuing education. The results were discussed at the October 2013 IAR Board of Directors meeting, and legislation was introduced this year (<http://www.legislature.idaho.gov/legislation/2014/S1206.htm>) to implement the recommendations. SB 1206 passed the Legislature and was signed into law by the Governor on March 11, 2014. The new law becomes effective on July 1, 2014. IREC has approved an implementation plan for the new law. SB 1206 reduces the number of elective CE credits a licensee needs during their renewal period from 16 to 12 hours, while at the same time requiring licensees to take the Core Course every year. This would maintain the approximately 20 hours needed to renew a license, while ensuring that the licensees are up to date on the legislative and legal changes that impact the industry every year. SB 1206 also requires new licensees to take prescribed courses for their 12 elective hours during their first renewal period. These courses will be aimed at helping them gain a better understanding of their new career. After their first renewal period licensees would then be able to choose from any courses that are available for CE. A separate IAR/IREC task force has been working on the new CE requirements for new licensees. Eight of the twelve hours will be devoted to contract principles, agency and forms. The other four hours will consist of modules the licensee can choose from. The modules will cover professionalism/negotiation, CMA pricing, commercial real estate, and pricing and marketing (including advertising). This concept is somewhat based off of the Rookie REALTOR® program developed by IAR and should provide good value to new agents. In addition, the legislation provides for a new class for owners of real estate

schools (likely a two hour course every two years). That would provide the owners with the same type of education that course providers receive.

Because of the development of SB 1206, the Commission also implemented a temporary rule this past summer with regard to CE offerings. That rule was made permanent by the 2014 Legislature. The rule expands CE offerings for licensees to include classes that “promote the professionalism and business proficiency of the licensee.” This welcomed change has already allowed IAR to expand its educational offerings to members.

IDAHO TAX COMMISSION RULES AND REGULATIONS: 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. In the case of the cloud computing legislation, a bill was passed which the business community and a number of legislators had worked on with the Tax Commission. From the side of the business community and the Legislature, it was very clear what the intent of the law was. Unfortunately, during the rules process last summer the Tax Commission attempted to write rules that severely devalued the law for Idaho citizens, in direct conflict to the intent of the Legislature. Those rules were ultimately pulled back and the coalition of business interests and legislators involved last year wrote HB 598 to resolve the issue and make sure these types of services are not taxed in Idaho. You may recall we had this same problem in 2012 when the site improvement legislation passed and we had to go back to the Legislature again in 2013 to fix the issue. There are a number of other examples that kept the Tax committees busy this year as well.

The concern over the direction the Commission has gone also prompted Governor Otter to appoint a task

force to look into the structure of the Tax Commission and see where improvements can be made. They will meet over the summer and present their findings later this year. Here is a good video with Senators Jim Rice and Cliff Bayer (both members of the Senate Local Government and Tax Committee) discussing the issues with the Tax Commission.



<http://www.youtube.com/watch?v=G2wGE-KIU1Q&feature=youtu.be>

HB 598 – CLOUD COMPUTING SERVICES:

HB 598 is an expansion of HB 243 from 2013. HB 598 amends the definition of “tangible personal property” to eliminate software that is downloaded over the Internet from the sales tax, with the exception of entertainment software (digital books, music, videos and games). Unless it is entertainment software, all other software downloaded over the Internet should be exempt from taxation in Idaho after July 1, 2014.

HB 598 is a result of a ruling issued in the fall of 2012 by the Tax Commission that declared their intent to start taxing previously exempted sales of cloud computing type services, including things such as MLS dues. They proposed to tax millions of dollars in services without legislative authorization simply by reinterpreting language in their existing rules. This is a very unusual way for tax policy to be made in Idaho. The business community took the issue to the Legislature to address this shift in policy. In 2013 the Legislature overwhelmingly passed HB 243 to address the specific areas we believed the Tax Commission overstepped their authority by creating a new tax. The Commission refused to implement HB 243 as intended and we were forced to return to the Legislature in 2014 to make the intent of the law more clear to the Commission. After much discussion it became clear that the only effective way to draw a line on taxing cloud services was to remove all software downloaded over the internet, or installed by the load and leave method, from taxation as long

as it is not entertainment software (defined as digital books, music, videos and games). HB 598 was introduced to do exactly that and was again overwhelming approved by the Legislature (including unanimous support from the Senate).

In an unusual move, the Tax Commission testified against the fiscal note on the bill in both the House and the Senate Committees. The Statement of Purpose for HB 598 recognized that the legislation was an expansion of the more nuanced HB 243, which became law in 2013. As such, an estimated fiscal note was attached of \$2-\$5 million. The Tax Commission repeatedly told us during discussion of the issue that they were unable to estimate an accurate fiscal impact because they do not track what types of sales occur to generate sales tax revenue for the state on that type of level. Their original estimate was around \$8 million, which we believed was too high. After discussions with many taxpayers involved in the legislation we revised the number down to a top of \$5 million. During testimony in the House and Senate Committees the Tax Commission testified that the actual amount could end up being nearly \$40 million dollars annually. This was a shocking statement given their earlier assertions and cannot be backed up with empirical data in any form. Their testimony did not draw any votes or appear to persuade any of the elected officials. In fact, one Senator remarked about how the Tax Commission seemed to have created a whole new category of taxation (to the tune of millions of dollars) without any legislative authority, and compared it with the Stamp Act that helped start the American Revolution. That might have been going a little far, but the tenacity with which the Tax Commission tried to kill HB 598 (despite the support of the Governor) was shocking.

Despite the clear language in the statute now, we expect the Tax Commission to put up a fight during the rulemaking process and we will be fully engaged in that effort on behalf of our members. The Legislature has given very strong signals to the Tax Commission with regard to their actions on a number of fronts over the past year or so. They have routinely passed legislation to stop the direction the Commission has tried to go, killed rules proposed by the Commission, and last year barely passed a needed supplemental funding bill. This year the Legislature largely ignored the Commission's "sky is falling" rhetoric and cut eight positions from the agency. For his part the Governor has formed a task force that is meeting this summer to discuss restructuring the

Commission. It appears that all of these actions have fallen on deaf ears at the Commission so far. It should be an interesting summer for tax policy in Idaho.

PATENT LITIGATION REFORM: IAR worked with a coalition of business groups to pass SB 1354 aimed at what are commonly called patent trolls. Patent trolls are companies (often tied together and controlled by a handful of individuals) that buy patents and then send demand letters to businesses asking for payment for using their technology. Often times the threat of a lawsuit is also used against the business.

Why is this important to REALTORS? Many times we think of patent issues as the domain of companies like Apple or Micron Technology - and they are huge targets - but a new practice has emerged targeting small and medium-size businesses. Brokerages around the country have been receiving letters from these companies demanding payment. It is a scam aimed at businesses that might not have the legal resources to fight back. Often the trolls ask for just enough money to make it painful, but not enough to make it worthwhile to hire an attorney.

The most common demand letter is from a single individual that controls more than 100 subsidiaries and is aimed at people who use scanner technology that has the ability to be connected to a network and transmit the scan to someone's email. Pretty much every business falls into this category. The demand letters will say that the troll holds the patent on this technology and demand a license payment of somewhere around \$1000 per employee using the technology. According to the online magazine Wired, this company and its subsidiaries have targeted over 16,000 small businesses around the country. Here is a good article that explains the issue in detail, including a copy of a demand letter:

<http://arstechnica.com/tech-policy/2013/01/patent-trolls-want-1000-for-using-scanners/>

The National Association of REALTORS is a leader in the Main Street Patent Coalition, and has been working with Congress to pass legislation to reign in the practice. They have posted a lot of information about their efforts here:

<http://www.realtor.org/topics/patent-litigation-reform>

At the state level we passed SB 1354 to give Idaho businesses an affirmative defense against patent trolls. The legislation created standards for the courts

to identify when a company is patent trolling, and provide damages that can be awarded against the trolls. It also makes patent trolling a violation of the Idaho Consumer Protection Act and allows the Attorney General to pursue claims against these companies. Many states are working on this type of legislation this year including many of our neighbors.

We are not sure how widespread the practice is yet in Idaho but the passage of SB 1354 will hopefully make our state an inhospitable place for these scammers.

NPDES PRIMACY: IAR supported HB 406 regarding NPDES Primacy. NPDES stands for National Pollutant Discharge Elimination System. HB 406 passed the Legislature unanimously. Idaho is one of only four states that don't currently have NPDES primacy. The business community has studied this issue in depth for a number of years and HB 406 begins the process of taking primacy from the EPA for this program. NPDES is the Clean Water Act program regulating discharges into Idaho's waters by municipalities, businesses, construction sites, and more. These permits impact just about every industry in Idaho. Idaho does not have primacy over the program. Therefore, EPA Region 10 out of Seattle runs our permitting process. Primacy would move the permitting and enforcement process to DEQ. A recent US Supreme Court case won by the National Association of Home Builders clarified the benefits of state primacy and showed some of the cost saving that can be achieved through primacy. For the construction industry this permit primarily impacts construction storm water runoff permitting. IAR has been part of the coalition that included permittees and DEQ to create a path forward for primacy. HB 406 provides for a seven-year phase in of the program with a lot of legislative oversight during that process.

HOME OWNERS ASSOCIATIONS:

Senator Jim Rice introduced SB1310 (<http://www.legislature.idaho.gov/legislation/2014/S1310.htm>) to deal with some problems with fines made by Homeowner's Associations (HOA's) in Idaho. The first draft of his legislation would have eliminated the ability of an HOA to fine. After IAR communicated their concerns with the draft, Senator Rice asked for help in drafting a bill IAR could support. The IAR Legislative Committee discussed the issue, made some recommendations, amendments to subsequent drafts and ultimately supported SB 1310.

SB 1310 requires that in order to fine a homeowner the HOA Board must vote to fine the homeowner. In addition, the HOA must provide 30 days notice to the homeowner of the meeting where the fine will be discussed. In addition, the HOA cannot levy additional fines if the homeowner is making a good faith effort to correct the issue, and none of the fine money can be used to increase the pay of a board member or an agent of the board. In other words, all fines have to be voted on and cannot be at the discretion of an association manager hired by the board.

Idaho is one of a few states that does not license these types of property managers, and previously had no law regarding how HOA's may operate. SB 1310 puts some sideboards on a HOA's ability to fine.

LAND USE PLANNING: As usual, there were a number of bills introduced during the Session that were aimed at land use planning. IAR supported HB 480 regarding design review. HB 480 would have put some sideboards on design review committees used by many local governments in Idaho. Currently, the law allows for the Comprehensive Plan of a local government to address "beautification". While the law does not mention design review, many local governments have used this beautification statement to create design review committees. The design review process varies widely across the state and in some cases can add significant time and money to a project.

HB 480 would have allowed local governments to regulate surface finishes of buildings but would not have allowed them to require structural changes to compliant building simply for aesthetic reasons. It would also have left in place the ability for a city to regulate signage, lighting, landscaping and screening requirements for businesses.

The bill overwhelmingly passed the House but was held in the Senate Local Government and Taxation Committee and not given a hearing. The Association of Idaho Cities expressed concerns with the bill but a number of businesses also brought to light a lot of abuses by local government in this area. The need for some sideboards on this practice seems to be gaining momentum and the sponsors will continue to work on the legislation over the interim with the hope of getting a hearing next year.

In addition, IAR supported HB 490, which was ultimately redrafted as HB 573. HB 573 would have required that if an Urban Renewal District wants to use urban renewal funds to build a city hall or a library (non tax-producing government owned buildings), they would have to get voter approval to do so. The urban renewal agencies objected to the bill and pointed to some technical problems they said existed in the language of the bill. The bill passed the House but was held by the Chairman of Local Government and Taxation in the Senate without a hearing. The sponsors are planning to return next year as well.

HOMEOWNER'S EXEMPTION: IAR and the Idaho Farm Bureau introduced HB 594 (<http://www.legislature.idaho.gov/legislation/2014/H0594.htm>) regarding the Homeowner's Exemption (HOE). HB 594 would have removed the Housing Price Index from the HOE and set the amount of the exemption at \$90,000 or 50 percent of value, whichever is less. In 2005 the HOE was responsible for a \$105.7 million in taxes being shifted from owner occupied homes to other classes of property. After the index was added and the exemption rose to \$104,471 in 2009 the total shift was \$179.5 million – a nearly \$74 million increase in just four years. When the exemption was declining (hitting a low of \$81,000 in 2013), \$26.5 million in tax liability was shifted back onto owner occupied homes. The result was that while home values were dropping the taxes for those homes were going up. This exacerbated the foreclosure crisis during the recession. IAR believes it is better tax policy to set the HOE at a static number so everyone knows what their tax liability is and periodically review the number through the legislative process. HB 594 passed the House but was held in the Senate Local Government and Taxation Committee without a hearing. IAR will continue to work with Legislators to revive this bill during the 2015 Legislative Session. In addition, IAR is working with the Idaho Association of Counties to look at the April 15 deadline to apply for the HOE.

DEPARTMENT OF LANDS: During the summer of 2013, the Idaho Department of Lands held a public hearing regarding their intent to introduce 2014 legislation that would have severely restricted the ability of landowners along lakes and rivers to build docks and access the water. The proposal said that only property in a platted subdivision would have the littoral or riparian rights necessary to build a dock. Of course, the vast majority of Idaho properties along lakes and rivers are not part of a subdivision, with

most of them predating the Land Use Planning Act entirely. This legislation would have resulted in a massive taking of private property rights in Idaho. Under pressure from IAR and others IDOL pulled the legislation but they are looking at coming back in 2015 with a similar proposal. IAR will be involved in that process and will continue to fight to protect the private property rights of the citizens of Idaho.