

Idaho Building Contractors Association

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Idaho 2021 Legislative Session Overview

The Idaho Senate adjourned sine die on Wednesday, May 12th after 122 days in session, making it the longest session in Idaho history. On May 12, the House of Representatives passed a resolution to recess (not adjourn) until a date no later than December 31st. This unpaid, extended recess technically keeps them in session and allows the Speaker to call the House back at any time for the remainder of this year. If the House reconvenes, the Senate will also have to return within three days. It has been a challenging session and this end-without-an-end raises many questions. At a minimum, it keeps us on the watch until the year is done.

Worth noting, the session was so long that the Legislature had to pass HB394 to ensure proper enactment of all bills without emergency clauses on July 1, 2021. Following the passage of HB394, both bodies passed HB407, ensuring all bills from the final days of session and not included in HB394 are properly enacted.

There were plenty of bills this year with over 900 pieces of legislation drafted and 628 bills introduced. In addition to having higher than average bill production, there were also a significant number of bills introduced at the tail end of session. The Senate printed 220 bills while the House printed 408 bills, with over 179 House bills printed after the transmittal date. There were a total of 54 resolutions and memorials, with only 25 being adopted.

The Idaho Legislature commenced on January 11th with Governor Brad Little outlining his key policy and budget priorities, to include his new plan, Building Idaho's Future. Building Idaho's Future includes strengthening education, providing tax relief to Idahoans, and investments in infrastructure such as transportation, law enforcement, broadband, agriculture, and water. Several of these strategic investments were passed by the Legislature and signed into law.

Emergency Powers

A priority for legislative leaders this session was to enact legislation addressing the balance of power between the Legislature and the governor during emergency declarations. To ensure future legislative involvement, the House and Senate introduced multiple bills addressing sections of code relating to disaster declarations and extreme disasters. Two bills that made it to Governor Little's desk, S1136aaSaaH, and HB135aaS. Both were vetoed over concerns with both the constitutionality and functionality of the proposed laws. Veto override votes were attempted on both bills, with the House successfully overriding the veto on HB135aaS, but ultimately the Senate failed by one vote to override the veto of the two bills. Both, HB135aaS and S1136aaSaaH, raised concerns about functionality for business, industry, and agriculture around the state.

Following the unsuccessful veto override votes, the House introduced three bills, HB391, HB392, and HB393. Each bill contains separate provisions found in HB135aaS. HB391 declares that an Idahoan's constitutional rights cannot be suspended due to a declared emergency. HB392 clarifies that the Legislature alone has the power and authority to create and change laws and the executive branch cannot alter or suspend laws during an emergency. Lastly, HB393 declares that all jobs are essential and limits the ability to close businesses based on classification. Provisions contained in the vetoed bills that had

caused business, industry, and agriculture concerns regarding the functionality of the emergency declaration processes were not included in any of these bills.

The Senate introduced S1217, which contains revised provisions found in S1136aaSaaH. S1217 limits the powers of the governor, without concurrence by the Legislature, to 90 days when an extreme emergency is declared, and 12 or more counties are involved. The bill also prohibits a governor from unilaterally altering or suspending code but would maintain authority not to enforce code.

All four bills moved quickly through the legislative process and were sent to the Governor on May 6. Governor Little signed all four bills into law. In his transmittal letter the Governor stated that the four bills will not hinder the state's ability to respond to an emergency. He also expressed his appreciation for those willing to work with him and his office.

Taxes

Another priority for Governor Little and lawmakers this session was tax relief. One-time federal relief monies provided to Idaho businesses in 2020 were made non-taxable through HB251. This includes Idaho Small Business Grants, forgiven Paycheck Protection Program loans, and the Economic Injury Disaster Loan advance funds. This bill was signed into law by the Governor and is retroactive to January 1, 2021.

Idaho's annual tax conformity bill, HB58, updates Idaho's income tax code to the changes made to the Internal Revenue Code affecting the 2020 taxable year. Conformity this year will cost over \$100 million and was included as tax relief in Governor Little's budget. Since HB58 did not conform to the removal of noncorporate loss limitations, HB170 was introduced to fill that gap and allows for the carrying forward of excess losses as net operating losses for up to 20 years. Both bills were signed into law by the Governor and are retroactive to January 1, 2021.

Income tax relief was signed into law this session in the form of HB380. The bill reduces the number of tax brackets to 5 and sets the top individual and corporate tax bracket to 6.5%- retroactive to January 1, 2021. A one-time sales tax rebate for Idaho taxpayers is included and is based on 9 percent of income tax paid in 2019, with a base rebate minimum of \$50 per person. Additionally, HB380 clarifies that the one-time tax relief rebate is funded by the existing Tax Relief Fund. This bill provided \$220 million in one-time rebates, and \$170 million per year in on-going income tax relief.

After multiple iterations of property tax relief and personal property tax relief bills failed to move, the House introduced HB389, an omnibus tax bill containing multiple provisions addressing property tax relief. HB389 exempts transient personal property tax and by 2022 increases the personal property tax exemption to \$250,000. Additionally, HB389 caps the new construction and annexation portion of a local government's budget and reduces the amount of foregone revenue a taxing district may take. Lastly, HB389 raises the homeowner's exemption from \$100,000 to \$125,000 and increases the circuit breaker. HB389 drew criticism from an array of groups and legislators. Those in opposition expressed that this bill will not provide significant property tax relief to Idahoans and may even unintentionally move some low-income Idahoans off the circuit breaker. Governor Little signed the bill into law on May 12. In his transmittal letter he expressed concern that it may not provide as significant property tax relief as intended and pledged to work with the Legislature on the issue into the 2022 session.

Transportation Infrastructure Funding

Funding for road maintenance and repair also continues to be a critical priority in Idaho. House Bill 362 carried support from both the House and Senate Transportation Committee Chairs as well as Governor

Little and House and Senate leaders. It increases the sales tax distribution to transportation from 1% of total sales tax to 4.5% and dedicates the first \$80 million to the state for bonding. Any funds in excess of \$80 million will be distributed to local governments. Very little excess is anticipated during the first few years of implementation but is expected to grow thereafter.

As part of the Governor's Building Idaho's Future plan, \$126 million of this year's surplus funds were dedicated to one-time transportation projects (H308). This included \$71 million to ITD for state highway projects, \$47.2 million to local highway jurisdictions, and a total of \$8 million for rail safety, child pedestrian projects, and the state aeronautics department.

Workforce Training

Workforce development continues to garner good support. The Joint Finance and Appropriations Committee (JFAC) appropriated a total of \$9.3 million to the Workforce Development Council in HB263. Additionally, S1154, appropriates \$84 million to the Division of Career Technical Education. Both appropriations were strongly supported to further advance workforce training and career readiness. Both bills passed the Legislature and were signed into law by the Governor.

Additional bills of significance were signed into law this session that are worth noting and include:

- HB149, an extension of Coronavirus liability protections provided under HB6. HB6 became law during the 2020 special session and provides liability protection for business, education, higher education, and local government entities with respect to exposure to the coronavirus. HB6 also contained a sunset date of July 1, 2021. HB149 extends the sunset date for Covid-19 transmission liability protections to June 30, 2022.
- S1041, updates Idaho's Consumer Protection Act. The bill clarifies that excessive increased prices applies to the consumer and retail pricing, not the margin between wholesale and retail prices.
- S1110, a bill changing the signature requirement for ballot initiatives and referendums. S1110 requires that signatures for a voter initiative must be obtained by 6% of registered voters in all 35 legislative districts (previously 18 legislative districts).
- SJR102, a constitutional amendment allowing the Legislature to call themselves into session. The measure will be placed on the ballot for the 2022 November general election. Should a majority of voters approve this measure, the Legislature will be able to call themselves back into session when 60% of the members of each body make a request to their respective leadership to do so. The Legislature will only be permitted to legislate on the topics included in the request for a special session.

For the third consecutive year the Legislature failed to authorize administrative rules for the state. The Senate introduced and passed SCR108, on administrative fee rules, and SCR109, extending all temporary rules. Both concurrent resolutions would have extended temporary administrative rules and fee rules that weren't rejected by the Legislature until the end of the 2022 session. Unfortunately, the resolutions stalled in the House State Affairs Committee. We anticipate that the Governor will again re-issue all rules as temporary rules to ensure state agencies, departments, boards and commissions can continue to function.

Idaho is expected to receive \$1.1 billion from The American Rescue Plan Act of 2021 (ARPA). This is \$90 million less than Idaho expected to receive due to Idaho's quick economic rebound. ARPA funds must be allocated by December 31, 2024, with projects completed by year end 2026. To ensure appropriate utilization of the ARPA funds, the Legislature created an ARPA funds interim committee. The committee will review the uses of ARPA funds and make recommendations on how the money should be spent. This committee will be made up of House and Senate majority and minority leadership, Joint Finance and Appropriations Committee co-chairs, and at-large members.

Several legislative interim committees were established to meet throughout the year. The list below is complete for our 2021 interim period.

2021 Interim Committees

- Natural Resources Committee
- Property Tax Study Committee
- ARPA funds Study Committee
- Occupational Licensing and Certification Laws Committee
- Committee on Federalism

2021 Special Committees

- Citizens' Committee on Legislative Compensation

Idaho 2021 Legislative Session Profile

- **Governor:**
- Brad Little (R)
- **Legislative Majorities:**
- Senate 28 – 7, Republican Majority
- House 58 – 12, Republican Majority
- **Legislative Leadership:**
- Senate President Pro Tem: Chuck Winder (R-Boise)
- Senate Majority Leader: Kelly Anthon (R - Burley)
- Senate Minority Leader: Michelle Stennett (D - Ketchum)
- Speaker of the House: Scott Bedke (R - Oakley)
- House Majority Leader: Mike Moyle (R - Star)
- House Minority Leader: Ilana Rubel (D - Boise)