

2017 IDAHO LEGISLATIVE REVIEW

ISB Employment & Labor Law Section

**April 26, 2017
The Law Center
Boise, Idaho**

Grant T. Burgoyne

2203 Mountain View Drive

Boise, Idaho

208-859-8828

Grant@ADRnw.com

www.ADRnw.com

Grant T. Burgoyne
Boise, Idaho

Grant T. Burgoyne is an AV rated solo practitioner with an alternative dispute resolution practice. He is a certified professional mediator with over 25 years of experience in litigation, mediation, arbitration, employment law, civil rights law, commercial law, contracts and torts. Mr. Burgoyne received his B.A. from the University of Idaho and his J.D. from the University of Kansas. He is a member of the Idaho State Bar (Employment and Labor Law Section Chair 1997 – 1998), the Federal Bar Association and the Idaho Trial Lawyers Association. He is admitted to practice law in Idaho, the Federal District Court for Idaho and the Ninth Circuit Court of Appeals. He has been a member of the Idaho Legislature since 2008 (the House of Representatives 2008 – 2014, and the Senate 2014 – present), at various times serving in legislative leadership. He sits on the Senate’s Judiciary and Rules, Commerce and Human Resources, and Local Government and Taxation committees. He is also a member of the Idaho Criminal Justice Commission, and the Idaho Supreme Court’s Guardian and Conservatorship Committee. Mr. Burgoyne’s past affiliations include service as a full time hearing officer with the Idaho Department of Employment, practice with the Boise law firm of Mauk & Burgoyne where he was the managing partner (1997 – 2013), and service as an adjunct professor of employment law at Boise State University (2002 – 2007). He has lectured and written widely, and is a coauthor of the *Idaho Employment Policies Handbook* (Idaho Law Foundation, 1998; rev. eds. 2001, 2012).

INTRODUCTION

The descriptions of the bills below are taken from the Key Actions Summary prepared by the Legislative Services Office, except for edits made, and bills added, by the presenter. Except as otherwise noted, all bills herein are law effective July 1, 2017 or on such other date as provided for in the legislation.

BIG ISSUES

Legislation by the Numbers

There were 770 pieces of draft legislation. Two-thirds, or 530, of these drafts became bills.

State Revenue

Estimated revenue growth for FY '18 is expected to be 4.6% over that of FY17 (which will end on June 30, 2017).

State Employee Pay

The Legislature funded a 3.0% merit pay increase for state employees.

K-12 Education Budget

H 286 The FY18 General Fund appropriation increased 6.3% and includes money for the third year of the career ladder compensation system, restoration of field trips and increased funding for classrooms.

Higher Education

Idaho's community colleges will see a General Fund increase of approximately 6.7%, while Idaho's four year colleges and universities will see a 2.7% increase (**S1152**).

Transportation

The Legislature authorized \$52 Million in emergency infrastructure funding in response to damaged caused by this last winter's harsh conditions (**S1141**). The Legislature also authorized \$300 Million in GARVEE bonds for projects in critical transportation corridors (including I-84 from the Franklin Interchange in Nampa to Caldwell), appropriated approximately \$15.2 Million in sales tax revenue for a new Transportation Expansion and Congestion Mitigation Program for

state and local projects, and authorized two more years of the continued use of General Fund money for the Strategic Initiatives Program which funds projects across the state (**S1206**).

Tax Relief

H 067aaSaaS (VETOED) The Legislature rejected an income tax cut in favor of repealing the sales tax on groceries, and repealing the grocery tax credit. The bill held local units of government harmless from the repeal due to an adjustment in the sales tax revenue sharing formula. The revenue cost was estimated at \$79.3 Million. Proponents contended this cost was a high end estimate and would be offset to some degree by a number of factors including increased economic activity in border communities, and internet sales taxes remittances from amazon.com beginning this spring.

Oil and Gas

H 064 Revises the permitting and hearing processes used for applications filed with the Oil and Gas Conservation Commission and simplifies the integration process. The bill also clarifies time frames and processes for notification, publication, review, and approval.

H 301aa Revises the membership and duties of the Oil and Gas Conservation Commission and the duties of the Department of Lands as it relates to oil and gas, and provides for well spacing and setback requirements, unit integration, reporting requirements and rights and remedies of royalty owners.

S 1098 Requires oil and gas producers to file monthly reports with the State Tax Commission. The reports will include the name, description and location of wells and the fields in which those wells are located. The report will also include information relating to the oil and gas produced, saved and sold or transported.

A New West Boise Capitol Annex?

H 315 The Department of Administration is working with the Idaho State Building Authority to purchase the Hewlett Packard Campus in West Boise. HP currently has tenants leasing space on the campus and will itself lease space from the state if the deal goes through. The bill allows the Division of Public Works to accept management of the tenant leases. The Department will use lease fees to maintain the campus. The state plans to move the Tax Commission and other agency offices to the HP campus. **HCR 29** authorizes the Idaho State Building Authority to sell up to \$140 million in bonds to finance the acquisition of the HP campus.

F-35s

H 124 Appropriates an additional \$100,000 to the Department of Commerce for fiscal year 2017; and authorizes carryover of any unspent balances of those moneys into fiscal year 2018. Funding will be used to support education, promotion, and outreach efforts to recruit the F-35 mission to Gowen Field.

OTHER BILLS OF INTEREST

Of Particular Interest to Lawyers

H 097 Clarifies that attorney's fees in civil actions may be awarded to the prevailing party when the judge finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation.

H 202aaS (VETOED) Would have reformed of Idaho's civil asset forfeiture law by providing that vehicles and other property would not be subject to forfeiture unless connected with illegal drug trafficking (in other words mere possession and proximity of illegal drugs to vehicles and other property would not support forfeiture); providing that mere possession of cash without indicia of criminal activity would not support forfeiture; providing for replevin during the pendency of civil asset forfeiture proceedings, unless items seized constitute evidence in the underlying criminal case; consistent with existing Idaho case law, providing that forfeiture must be proportionate to the crime; and providing for the reporting and public disclosure of civil asset forfeitures.

H 209 Repeals current notary statutes and establishes the Revised Uniform Law on Notarial Acts so that notarial acts may be performed electronically. Also requires the Secretary of State to provide a course to educate applicants and notaries on provisions of the new law.

S 1020 Supplies an additional \$2,222,200 to the Secretary of State for fiscal year 2017 for upgrades to the secretary's Business Entities IT system.

S 1021 Provides for a net-zero object transfer of \$100,000 from trustee and benefit payments to operating expenditures in FY 2017, so, that the Public Defense Commission can contract with Boise State University to conduct a public defender workload study.

S 1116 Provides an additional \$690,400 to the Department of Correction for FY 2017 to pay for an evaluation of the department's offender management system and for litigation fees. The bill also reduces the department's FY 2017 appropriation by \$1,071,700 to account for updated offender forecasts and bed utilization counts. These changes represent a net reduction of \$381,300.

S 1159 This bill makes available \$5,827,700 to the Public Defense Commission for FY 2018 and caps the number of full time positions at six.

S 1160 This bill provides \$71,656,300 to the Supreme Court for FY 2018. Ten line items are included, some of which are: \$3,734,500 for the fourth phase of the court's five-year court technology implementation plan; an increase of five full time positions and \$415,200 to expand the Court Monitoring of Protected Persons Program statewide; one full time position and \$123,700 for a magistrate judge to be chambered in Bonneville County and \$467,500 for the recruitment and training of approximately 187 additional volunteer guardians ad litem for appointments in proceedings under the Child Protective Act.

S 1108 Increases the salaries of judges at different levels of the judiciary throughout the state. *See also S 1201* appropriating an additional \$707,800 for judicial salary increases.

S 1199 Allots an additional \$307,900 to the Commission of Pardons and Parole for FY 2018 to address the fiscal impact of **S 1113** (increasing the number of commissioners from five to seven); allows the commission to address disposition of parole violations with a panel of two commissioners; and increases commissioner pay from \$200 per day to \$300 per day.

S 1202 Repeals, amends, rewrites and adds to existing law to revise the process for garnishments.

SCR 122 Reauthorizes the Administrative Hearing Officer Interim Committee. *See also S 1155* (introduced for purpose of obtaining comment, not passage) reforming and modernizing the Idaho Administrative Procedures Act.

Criminal Justice and Public Safety

H 093 Allows any person who is a current member of the U.S. armed forces to carry a concealed handgun in Idaho.

H 146 Provides that sexual assault victims will receive medical examinations regardless of ability to pay, specifying the periods of time for retaining sexual assault evidence kits, and requiring that the victim be notified upon the kit's destruction.

S 1023 Revises the penalties for knowingly interfering with a funeral procession. Intentional interference is a misdemeanor and all other violations are an infraction.

S 1083 Establishes standards of training, education and certification of emergency communications officers, emergency call takers and dispatchers.

S 1088 Requires registered sex offenders to submit DNA samples for the DNA database.

S 1089 Allows facility dogs to remain at the witness stand with a child witness in cases involving abuse, neglect or abandonment of a child.

S 1105 Amends existing law to provide that the willful or intentional failure to return rental equipment within 48 hours of when it is due constitutes theft.

S 1109 Amends existing law with respect to executive (i.e., closed) and public meetings and hearings held by the Commission of Pardons and Parole, prohibits the public disclosure of individual commissioner votes, but permits the disclosure of aggregate votes in pardon, parole, commutation and firearms restoration cases.

S 1113 Revises the composition of the Commission of Pardons and Parole to allow decisions to grant or deny parole without a quorum and provides that certain sanctions and rewards may be imposed without a hearing, and the legislation also directs the commission to consider certain factors such as risk assessment, criminal history, misconduct, and program participation, compliance and completion in making any parole or commutation decision.

S 1125 Amends existing law pertaining to tax refund seizures for debts owed to the Idaho courts; providing requirements for payment agreements enforceable by tax refund seizures; and amending the statute's definition of delinquency justifying the seizure of tax refunds.

Education

H 018 Expands the class of Idaho National Guard members eligible to participate in the State Tuition Assistance Program when furthering their education.

H 142 Requires state institutions of higher education to obtain property through a state open contract unless it is able to obtain an equal or better price from another vendor.

H 185 Increases the annual individual state income tax deduction for contributions to a college savings program from \$4,000 to \$6,000.

Elections

H 013 Removes the waiting period for a change in party affiliation to take effect for a partisan office holder.

H 149 Authorizes the use of a concealed weapons permit or an enhanced license to carry concealed weapons as acceptable voter identification that may be presented at the polls.

H 188 Provides for the electronic filing of campaign finance reports with the Secretary of State and local clerks.

Employment

H145aas Revises the definition of "employer covered under PERSI" to provide that all new employers added to PERSI must be in compliance with IRS regulations on governmental retirement plans.

Guardianships

H 148 Permits the appointment of co-guardians for minors in certain instances, sets the standards for co-guardians and clarifies the standards for the appointment of temporary guardians.

Health and Human Services

H 041 Provides that Idaho residents who have set up an Achieving a Better Life Experience (ABLE) account in another state will have the account disregarded in determining their eligibility for public assistance programs, and authorizes the State Independent Living Council to provide technical assistance and financial literacy information to those who are eligible to set up accounts. *See also H 312* (appropriation for technical assistance and financial literacy information).

H 043 Establishes Medicaid eligibility for children with serious emotional disturbances whose families have incomes up to 300% of the federal poverty level (the 2017 federal poverty level for a family of four is \$24,600). Serious emotional disturbance is an emotional or behavioral disorder or a neuropsychiatric disability that results in a substantial impairment of the child's ability to function in his or her family, school or community.

H 222 Enables the Department of Health and Welfare to establish a secure treatment facility for persons with intellectual or developmental disabilities who pose a threat to others while simultaneously providing them treatment.

H 250 Repeals Idaho Code Sections 18-617(2)(e) and 54-5707(3) which together had the effect of prohibiting telehealth prescriptions for abortifacients. The repeal arises from the settlement of a federal suit challenging the constitutionality of the prohibition.

S 1060 Provides that the Department of Health and Welfare shall make information available about cytomegalovirus (CMV), a disease that can affect infants in utero and cause serious disabilities.

Immigration

H 081 Revises the Idaho Conrad J-1 Visa Waiver Program, which allows the placement of foreign-trained physicians in federally designated shortage areas, to provide that no more than 10 of the 30 annual waiver slots may be used for certain specialties. The purpose of the revision is to preserve slots for those types of physicians who are needed most, including those practicing in pediatrics, internal medicine, family medicine, obstetrics, gynecology, psychiatry and general surgery.

Insurance

H 244 Requires that the holder of an individual life insurance policy be afforded the option of designating one person, in addition to the holder, to receive notice if the policy is about to lapse or be terminated due to nonpayment of premiums.

Medical and Allied Professional Practice

H 191 Allows pharmacists to prescribe drugs and devices to patients when the patient's condition is minor or does not require a new diagnosis, or when the condition threatens the health or safety of the patient if the drug or device is not immediately dispensed. No controlled drug, compounded drug or biological product may be authorized under the rules.

H 195 Establishes standards and educational requirements for chiropractic physicians who wish to be certified in clinical nutrition. Certified chiropractic physicians may administer vitamins and minerals through injectable or intravenous routes in the treatment of their patients.

H 212 Allows psychologists who meet certain educational and clinical experience requirements to obtain a certificate to prescribe drugs or controlled substances to their patients. The drugs or controlled substances must be relevant to the practice of psychology and must appear in a formulary established in rules of the Board of Psychologist Examiners.

S 1139aa Provides that physicians, physician assistants and advanced practice nurses may be granted the privilege to admit patients to hospitals or other health care facilities if the admitting privileges are recommended by the medical staff and approved by the governing board of the hospital or facility. The purpose is to ensure that enough practitioners at the hospital or facility have admitting privileges so that someone is available at all times to admit patients.

Natural Resources

H 170 Provides for Idaho's assertion of primacy over the management of its water resources, and further provides that any introduction or reintroduction of aquatic or terrestrial species into state waters, without state consultation and approval, is against state policy and prohibited.

State and Local Government Purchasing

H 143 Establishes that the administrator of the Division of Purchasing may authorize agencies to participate in cooperative purchasing agreements and to utilize contracts of other agencies.

H 166 Replaces the existing statute on unlawful state contracts with a new statute that is intended to be more equitable to the contracting parties. Contracts found to be unlawful may be terminated, with compensation paid to the contractor for any goods delivered or services provided prior to termination. A contract may also be voided if the contractor acted fraudulently

or in bad faith. Penalties for state officers or employees who acted fraudulently or in bad faith are also clarified.

S 1074aa Revises and updates the political subdivision procurement laws to allow for greater efficiency in the procurement process. Revisions include increasing the dollar threshold amounts for bidding processes and clarifying the ability of county commissioners to delegate their procurement authority.

Taxation

H 024 Establishes the right of a taxpayer to an independent administrative redetermination of a notice of deficiency (protest), and provides restrictions on ex parte communications among State Tax Commission staff.

H 026 Conforms Idaho's income tax law with the 2016 Internal Revenue Code.

H 031 Excludes nontaxable Roth individual retirement account distributions from a person's income calculation for the purposes of property tax relief eligibility.

H 032 Increases the time a nonresident can use a tax-exempt motor vehicle in Idaho from 60 days to 90 days.

Transportation

H 020 Removes the additional registration fee for all-gasoline hybrid vehicles while continuing to charge the fee for plug-in hybrids, and electric vehicles. Exempts neighborhood electric vehicles from the electric vehicle fee.

H 132 Allows drivers of passenger cars, motorcycles and pickup trucks, not towing any other vehicle, to drive an additional 15 miles per hour over the posted speed limit while passing on the left on two-lane highway, and requires a return to the posted limit within a practicable distance.

S 1069 Provides that, when the Idaho Transportation Board and the Idaho Transportation Department achieve approval by the Department of Homeland Security for issuance of REAL ID compliant driver's licenses and identification cards, applicants shall be offered a choice of compliant or noncompliant cards.

Water

H 319 Provides that temporary approvals may be granted for use of water, not intended to become an established water right, for prevention of flood damage, for groundwater recharge, for ground or surface water remediation or for any other use, which shall not exceed a total diverted volume of five acre-feet for the duration of the approval, and also provides that temporary approval shall not be required for reservoir flood control authorized by state or federal law.

S 1063 Provides that lands belonging to the state, to which an irrigation district has apportioned benefits, are subject to the levy and collection of assessments for those benefits.

S 1101 Provides that fees for stock watering right claims, regardless of the number of claims filed, shall only be imposed on the first four claims per claimant and provides that there shall be no other fees or costs imposed on such claims.

S 1111 Provides that no agency of the federal government, nor any agent acting on its behalf, shall acquire a stock water right unless the agency owns livestock and puts the water to beneficial use for the watering of livestock. The bill also provides that those with permits on federally administered grazing allotments will not be considered agents of the federal government.