



Employers Advocating Economic Opportunity in Idaho®

2023 Session Wrap Up

The 2023 Legislative Session wrapped up on April 6, 2023. At 88 days it tracks as a typical length of a normal Session for Idaho.

The Session was defined by progress on IACI priorities on several fronts, while also continuing the trend of hostile attacks on the business community and government institutions by the more populist members of the Legislature. Here is a look at some of the actions that took place, as well as an update on some of the key pieces of legislation IACI was active on this year.

EXPANDING IDAHO LAUNCH

Governor Little's signature legislative priority for 2023 was expansion of the Idaho Launch Grant Program. Idaho Launch was already a successful program under the Workforce Development Council helping thousands of Idahoans access career technical training through hundreds of programs in Idaho. During his State of the State address the Governor outlined his vision of expanding the program to provide grants to all Idaho high school graduates interested in in-demand jobs.

The legislation was ultimately passed as a two-bill package. HB 24 called for an \$8500 grant program that could be accessed by high school graduates to attend a public or private career technical program, community college or university. SB 1167, which passed as a trailer bill to HB 24 with the Governor's support, focused the program on public and private career technical programs and community colleges. The final legislation also narrowed the use of the funds to just tuition and fees and capped it at an 80

percent match up to \$8000. The legislation also kept in place the existing Idaho Opportunity Scholarship for high school graduates attending an Idaho university.

This program is set to begin with the graduating class of 2024. Next Session legislators will have to appropriate the funds to pay for the program. This year the earmarked funding for the program was appropriated to Idaho's colleges and universities to make capital improvements to their campuses (SB 1197) as well as \$5 million to the Workforce Development Council (SB 1212) to get the software and the Grant Program up and running.

IACI has long believed that education opportunities for high school graduates must be addressed beyond just going on to a four-year university. This step by the Governor and the Idaho Legislature has the potential to be a game-changer for Idaho high school students, offering a clear line of sight to careers in Idaho in hard to fill positions.

WORKFORCE DEVELOPMENT

In addition to the Launch program, the 2023 Legislature made significant strides in addressing workforce development needs in several other areas supported by IACI.

SB 1179 was the Workforce Development Council budget that included \$15 million in funds for Childcare Infrastructure Grants. This is in addition to the \$15 million appropriated last Session. These grants have been successfully used to help stand up sustainable new programs around the state, mostly benefiting small to medium sized employers. The additional funding will go quickly. It is anticipated that these two rounds of funding could help nearly build back the more than five thousand slots Idaho lost in childcare during the pandemic. A 2022 study estimates Idaho will still need approximately 15,000 additional slots to meet existing demand. The Childcare Infrastructure Grants are an important way to help get slots open and workers back into the workforce.

HB 267 created the Idaho Career Ready Students Program to fund \$45 million in new CTE programs at Idaho's public secondary schools. The program is specifically aimed at rural areas of the state that lack the startup funds to develop these programs. In addition, the legislation adds \$5 million in added-cost funding for existing CTE programs that are currently underfunded. A key component of the legislation prioritizes programs that have a partnership with local industry. The legislation also creates a Board that will have oversight of the grant approval process. Taken together with the Idaho Launch program this is a significant expansion of Idaho's commitment to Career Technical Education.

SB 1070a relaxes the requirements for added-cost funding to be available to school districts who stand up a Career Technical School. Currently the school must have 15 percent of their students coming from another school to qualify for the funding. The legislation fixes some technical issues to allow certain students to be counted and allows for a three-year ramp up to the 15 percent. Taken in context with the funding in HB 267, this should remove barriers and allow for more Career Technical Schools to be formed in Idaho.

SB 1211 appropriated \$15 million to the Workforce Development Training Program for semiconductor workforce grants.

IACI is excited to see the focus on Career Technical Education by the Legislature. We look forward to collaborating with them in the future on additional programs to address critical workforce needs in our state.

HISTORIC PROPERTY TAX RELIEF

After months of negotiation, the House and Senate moved quickly at the end of the Session to pass HB 292 relating to property tax relief for all Idaho property taxpayers.

The legislation combines previous proposals from the House and Senate into one proposal with some modifications and additions. HB 292 would create and fund both the Homeowner's Property Tax Relief Fund and the School Districts Facilities Fund to provide targeted property tax relief to taxpayers. In addition, there are other sources of revenue dedicated to direct relief for all property taxpayers.

The Homeowner's Property Tax Relief Fund will be distributed to counties on a proportional basis to buy down owner-occupied property taxes. This amount will be reflected on each tax notice.

The School District Facility Fund will be distributed to school districts using the average daily attendance formula and be used, in order of priority, to:

1. Pay off or reduce existing school bonds.
2. Pay off or reduce existing school levies.
3. Save in a reserve account for future school facility construction or renovation needs.

In addition, the legislation also allows school districts to bond against their revenues from the School District Facilities Fund. This has the potential to bring fundamental changes to school district funding without increasing property taxes and will be especially impactful in rural communities that struggle to pass bonds.

There is also direct property tax relief to all taxpayers anticipated in the legislation in addition to the funds described above. According to the fiscal note, the legislation provides property tax relief of between \$205 million and \$355 million in year one, with \$122.5 million to \$272.5 million in year two and \$182.4 million to \$332.4 million in year three. These numbers fluctuate because the legislation dedicates

percentages of taxes collected in various funds as well as certain excess general fund revenue.

HB 292 also removes the March date for schools to run bonds and levy elections, increases Circuit Breaker eligibility, and removes the sunset from the “Wayfair” account, dedicating a portion to property tax relief.

Governor Little initially vetoed the legislation citing a possible inadvertent disruption of critical transportation funds because of some of the wording of the bill, as well as opposition to the removal of the March election date. The Legislature choose to override the Governor’s veto while passing a trailer bill to fix the transportation issues. In doing so the elimination of the March election date was retained.

IACI supported HB 292 to provide meaningful property tax relief to all Idahoans while also addressing the backlog of deferred school maintenance and providing new funding programs for capital improvements at our schools. IACI applauds the Legislature’s willingness to look at other funding mechanisms for school construction and maintenance beyond property taxes.

ESG LEGISLATION

The rise of populism has seen some Republican lawmakers shift away from traditional values of the lightest hand of government being applied to the private sector. Instead, some lawmakers are now openly advocating for the government to mandate how private businesses make business decisions, and who they can do business with. This is true across a number of sectors that we will touch on but seems to be a national trend when it comes to Environmental, Social and Governance (ESG) programs which most large businesses are dealing with.

With large volumes of misinformation being spread by national organizations and others about what ESG actually is, legislators have been presented with an incomplete and inaccurate portrayal of the issue.

Three bills were introduced this year regarding ESG with HB 189 dealing with boycotts of public contracts being the most egregious. HB 189 passed the House of Representatives but was held in the Senate. This is model legislation from the State Financial Officers Foundation, brought through the Idaho Treasurer’s office. IACI has warned legislators frequently about the dangers of model

legislation from out-of-state groups seeking to impose their agenda on Idaho.

HB 189 would not allow any public entity in Idaho to do business with companies that “boycott” companies in the mining, energy, timber, or agricultural arenas. The main issue is that “boycott” was defined as not doing business with someone who, “does not commit to pledge to meet standards beyond applicable federal or state law.”

Most companies routinely require their suppliers to meet standards beyond federal and state law because that is what their customers are asking for.

IACI represents many businesses in these sectors, and not one of them has asked for the “protections” they are told are in this legislation to help them do business. In fact, all of them opposed the meddling in their business operations this legislation represents.

Similar legislation in Texas saw the banning of several of their largest lenders from their municipal bonding arena. A recent study from the Warton School of Business now shows the impact of that legislation on taxpayers to be more than \$300 million in increased borrowing costs following the ban, with local governments that were the most dependent on banned banks seeing costs rise by 20 percent.

The Idaho proposal goes further than just lenders, bringing in any company that does business with any governmental entity in the state. This would have severely limited the number of suppliers state and local governments can rely on, directly increasing costs. Simply put, this is an unfunded mandate on local governments that would have resulted in a direct property tax increase.

Requiring companies that compete for contracts with the state to attest that they do not boycott companies in certain industries puts Idaho government squarely in the middle of business-to-business decisions and contracts. Idaho government has no business dictating to private employers who they can and cannot do business with.

The proposed definition of “boycott” is so broad as to pull in companies that have contracts with their suppliers that often have other contracts with private clients that dictate a certain method of operation in order to do business with those clients.

The Biden Administration is already attempting a federally mandated over-reach by requiring companies to release information about their carbon footprint as well as those of their suppliers. The answer to more federal mandates is not conflicting state mandates. All these types of mandates create uncertainty and new liability for businesses and do nothing to help employers keep their doors open and contribute to the advancement of Idaho's economy.

IACI will continue to oppose this type of overreach by lawmakers into private business contracts.

HB 190 dealt with banks and credit unions that function as depositors for the state, requiring them to attest that they do not boycott industries. Representatives of the banks and credit unions found their way to neutral on the legislation and it did pass and become law. IACI was neutral on this legislation as well.

HB 191 was an example of where the state government does have a role in legislating with regard to ESG. The legislation banned the use of ESG ratings by state officials when awarding contracts. HB 191 passed and became law as well. IACI was also neutral on this legislation.

ENVIRONMENTAL BILLS PASS

IACI worked on two priority issues in the environmental arena this year. The first was legislation designed to allow the Director of the Department of Environmental Quality to enter into voluntary funding agreements with public agencies, municipal corporations, and private parties. This flexibility is important to many of our members as they work through necessary permitting processes with DEQ. SB 1098a sets up the framework for these agreements, while SB 1193 allowed the spending authority to do so.

SB 1098a was important for many of our members that may need help with cyclical permitting requirements and could find it easier to enter into an agreement to fund an expert on a one-time basis to help with the permit processing. DEQ currently does use these types of agreements when EPA is involved but lacks the ability to use them for other purposes.

The Legislature also considered and passed HJM 4 which communicates the opinion of the state of Idaho to Congress and the President that the Environmental Protection Agency should pull back on rulemaking to

interfere in state water quality standards and potentially cause water rights in Idaho to have to be re-adjudicated.

HJM 4 addresses rulemaking that has been fast tracked by the US Environmental Protection Agency entitled *Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights*. The proposed rule goes beyond the statutory authority of the EPA by overriding states' rights to develop water quality standards as required in the Clean Water Act.

Idaho has some of the most sophisticated water quality standards in the country due to a study funded by the Idaho Legislature to set science-based standards for fish consumption in the state. The proposal from EPA would set those standards aside in favor of a subjective set of standards industry is likely to be unable to meet. This type of uncertainty is terrible for our economy and business not only in Idaho but nationwide.

The proposed rule also implies reserved rights to water quantity by tribes outside of a Reservation. This issue was firmly rejected by Idaho courts during the Snake River Basin Adjudication. A similar proposal from another state is scheduled for argument in front of the US Supreme Court later this month. If EPA were to recognize these reserve rights, and the courts upheld them, it would require re-adjudication of most of the water rights in Idaho in clear violation of Idaho's sovereignty over its own water.

ENERGY CODES AND REGULATIONS

The Legislature acted on energy issues on several fronts this Session.

IACI supported HB 106 to preempt local governments from banning any types of energy consumption. Unfortunately, natural gas bans in new construction for both residential and commercial development have been a growing trend around the country. Idaho now joins more than 20 other states to preempt local governments from banning natural gas, as well as other types of energy consumption.

The Legislature also passed HB 287 which was a follow up to HB 660 from the 2022 Session. HB 660 set the Idaho Energy Code with a base of the 2018 Energy Conservation Code as modified by rule of the Idaho Building Code Board. The legislation also preempted local jurisdictions from adopting standards that are more stringent than the state code while

retaining standards that were adopted by local jurisdictions prior to 2018. Legislators contended that the language grandfathering some standards was being abused to create new regulations. HB 287 removed the grandfathering language and as a result local jurisdictions are now preempted from requiring more stringent standards than the state code. IACI took no position on HB 287.

ELECTRICIANS

For several years IACI has been engaged in the debate around electricians and how they are licensed, including apprenticeships requirements and ratios. This Session HB 337 passed after a series of negotiations by lawmakers, representatives of the AFL-CIO and others. HB 337 marks what is hopefully the final compromise with regards to Idaho's regulations and requirements for electricians. The legislation does several things.

First, HB 337 adopts the 2023 version of the National Electrical Code.

Second, it creates a new "residential electrician" category. Residential electricians are allowed to work in residential dwellings but must be supervised as an apprentice in situations beyond a residential dwelling. To qualify for licensure, a residential electrician must pass a test with the state and complete a two-year course of related instruction with four thousand hours of experience as an Idaho registered apprentice. This provides an off-ramp from becoming a journeyman electrician for most electricians that only plan to wire houses for a living.

Third, the legislation removes the ability for an apprentice to continue to renew their apprenticeship for more than 10 years.

Fourth, it sets the ratio for residential apprentices at 6:1. Apprentices outside of residential remains 2:1 except that fourth-year apprentices with more than six thousand hours of work experience are exempted from the ratio.

Finally, the legislation preempts local jurisdictions from creating more stringent standards for electrician licensure or apprenticeship.

IACI supported HB 337 to get more electricians into the residential field where they are desperately needed. The change to allow fourth-year

apprenticeships outside the ratio also helps in commercial and industrial settings.

URBAN RENEWAL

Most years legislators are dealing with some aspect of the state's urban renewal laws. This year the focus became on urban renewal districts that include a data center. The issue came to light after the first data center to be located in Idaho in Kuna was drawn into a new urban renewal district (URD) by the city prior to construction being completed. To complicate matters the URD was on open farm ground, not a deteriorated area which is how most URD's are focused.

The massive property value of the data center promised to offset local property taxes for residential taxpayers, but by putting it in a URD that value was shifted away from residents and instead would be used to pay for improvements within the district. This was contrary to the discussion that occurred in the Legislature when the sales tax exemption designed to lure data centers to Idaho passed a few years ago.

The House introduced three pieces of legislation to address the issue. The first, HB 46, would have removed the sales tax exemption from the data center if it were in a URD – effectively killing the data center project. IACI opposed this approach and instead encouraged legislators to look at the core urban renewal issue and potential other options for developing open farm ground.

Ultimately, HB 328 passed and was signed into law which states that data centers that meet the criteria for the sales tax exemption will have their value added to the base assessment roll. This ensures that the value of the data center will benefit all taxpayers while also guaranteeing the value cannot be used for a URD. IACI was neutral on HB 328.

Legislators have pledged to use this interim to review other options for local governments to fund infrastructure projects beyond urban renewal. IACI expects to take part in those discussions and has provided information regarding options in other states.

PRIVATE RIGHTS OF ACTION

In recent years IACI has tracked the increase in legislation attempting to use private rights of action

as an enforcement mechanism to address societal issues.

It has been the stated goal of some in the populist movement to use the courts to bankrupt governmental institutions they do not like. This year saw a noted uptake in legislation creating these new private rights of action with two bills being signed into law.

The IACI Legislative Committee has opposed all legislation creating a private right of action as an enforcement mechanism regardless of the subject matter of the legislation.

While a private right of action, more commonly known as a “tort,” is appropriate in certain circumstances we do not believe it is the right tool for the enforcement of law. Torts are tools to deal with harm done by one person to another. In most instances the tool uses lawsuits to evaluate the harm done and determine an appropriate payment to compensate the harmed. We believe the utilization of torts to enforce the law is a misguided attempt to create a bounty system of justice bordering on vigilantism sanctioned by the state. This is an unacceptable and inappropriate use of an important citizen right.

Simply put, turning citizens against each other undermines the confidence in the rule of law and general trust we put in our governmental structures necessary to have a functional society. Private rights of action as a law enforcement tool are a threat to that structure.

IACI communicated our opposition to the inclusion of this language in any legislation in a letter to all legislators. Unfortunately, this trend is not likely to end soon and IACI will continue to oppose these bills.

UNEMPLOYMENT INSURANCE

Idaho has enjoyed one of the most successful unemployment insurance programs in the country. Our program is well funded and solvent while providing competitive rates for businesses in the state and allowing them to keep their seasonal workforce in Idaho.

Just last year legislators adjusted the formula to freeze an unnecessary spike in rates because our system was fully funded.

This year legislators introduced HB 115 which would have upended the unemployment insurance system by tying the number of weeks available for benefits to the unemployment rate in the state. The legislation proposed a 40 percent reduction in the number of weeks available when the unemployment rate in the state is 5 percent or below, ramping the numbers up a week for each .5 percent above that number until you reach 8.5 percent which would put us at the current number of weeks allowed.

IACI opposed this unnecessary reform to our unemployment insurance program. The proposal would have driven hundreds of millions more into the fund with a minimal decrease in costs for business and would have devastated seasonal businesses such as construction and agricultural production. IACI will continue to oppose tying weekly benefits to the unemployment rate moving forward.

IMMIGRATION REFORM

While generally the purview of the federal government, Idaho’s business community has pushed to address immigration locally by supporting legislation to allow our workforce that may be here illegally to obtain a restricted drivers license to be able to legally drive on our roads. This year SB 1081 would have ensured that more drivers on Idaho roads are covered by insurance as well as having enhanced driver education and training. Many states have implemented a similar program and have seen significant results in terms of less crashes and improved safety. SB 1081 was championed by the dairy industry, with support from the Idaho Farm Bureau, IACI and many other business groups. The legislation made it out of the Senate Transportation Committee, only to be held by the full Senate and returned to committee.

A compromise by Senate leadership was Senate Joint Memorial 101 which was a memorial to Congress and the President asking them to take action to solve our boarder crisis while providing a guestworker Visa program that can meet the labor demands of the domestic businesses. IACI supported SJM 101 and it did pass the Senate 25-10 but failed to receive a hearing in the House Agriculture Committee.

While it is disappointing to see legislators continue to ignore our immigration issues, IACI will continue to work with our partners in agriculture to advance these issues. We would like to thank Senator Jim

Guthrie, (R-McCammon) for his continued leadership on this critical issue.

TAX COMMISSION RULES

During the interim the Tax Commission promulgated two sets of rules that were presented to the Legislature. The first was zero-based rulemaking to remove unnecessary language from their income tax rules. This came with a mandate from the Division of Financial Management that all examples be taken out of the rules and put into a guidance document on their website. This is standard practice for all agencies under the Governor's executive order to reduce regulations. IACI, the Associated Taxpayers of Idaho, and the CPA Society all objected to removing the examples from the rule, but the Commission proceeded anyway. The rules were presented to the Senate and rejected. The full Senate passed SCR 105 to reject the rules, but the House Revenue and Taxation Committee did not schedule a hearing due to the lateness of the Session. This trend of removing examples in the tax code is problematic and will continue as the Tax Commission is set to do the same thing to its property tax rules this summer.

The second set of rules implements the single sales factor / market-based sourcing legislation IACI pushed last Session. We supported this rulemaking, but the House Revenue and Taxation Committee also failed to hear the rule.

We are told by DFM that because the rules were not acted upon, they go into effect as written.

CORONAVIRUS ISSUES LINGER

Three years after the pandemic some coronavirus related issues continue to be brought up. Some populist legislators appear only too happy to bring the government in between the employee/employer relationship. HB 27 would have made it a crime for an employer to require a coronavirus vaccine or ask if an employee was vaccinated. HB 154 and HB 307 would have made it a crime to administer any vaccine created using mRNA. IACI opposed this gross overreach, and the bills did not receive a hearing.

SB 1088 would have made it a crime, enforceable by a private right of action with a \$5000 award, for employers to require a coronavirus vaccine of their employees, or for a business in Idaho to refuse to do business with someone without a vaccine. While the

legislation contained language to allow employers to require a vaccine in cases where an employee was traveling to a place that requires a vaccine, IACI opposed the legislation with the inclusion of the private right of action.

SB 1130 included the same language as SB 1088 but removed the language with the private right of action and left enforcement up to county prosecutors and the Attorney General. IACI took a "not opposed" position to deter further legislative fights over the issue. It is important to note that employers can still require a vaccine if an employees job requires one for travel or interfacing with clients or customers.

SB 1130 passed and was signed into law.

ABSENTEE VOTING UNDER ATTACK

The House introduced several pieces of legislation designed to make it harder to vote absentee in Idaho. This type of legislation is targeted voter suppression under the guise of ballot security. HB 75 would have severely restricted absentee ballots to a very narrow set of circumstances such as illness, military service, or work. The legislation also would have outlawed anyone sending pre-filled absentee request forms to voters – a common campaign tactic. The bill was subsequently repackaged as HB 205 which slightly broadened the exemptions to receive a ballot. IACI opposed both pieces of legislation as poorly worded and an affront to voter access to the polls. HB 205 was defeated on the House floor by a vote of 30-40.

HB 259 was then introduced to state that a voter had to request an absentee ballot request form from an election official to be able to apply for an absentee ballot. IACI again opposed this legislation which did pass the House but was held in the Senate State Affairs Committee.

These bills were brought with the idea that there is some sort of potential for fraud with absentee ballots when there is no demonstrable evidence that is the case. Idaho is in no danger of becoming a vote-by-mail state, and there is no compelling reason to restrict voter access to the ballot in this manner. IACI will continue to oppose additional restrictions on absentee voting.

TRANSPORTATION FUNDING AND BROADBAND

As usual transportation funding legislation was one of the last pieces of legislation passed by the Legislature.

HB 354 appropriated \$647.8 million in funds for additional investment in Idaho infrastructure including road and bridge maintenance and capacity projects.

This is the second year of a three-year plan to use one-time money to address Idaho's deferred maintenance on its roads and bridges.

SB 1129 also appropriated \$124 million from ARPA funds to the Department of Commerce for broadband capital projects.

REVAMPING RULES REVIEW

After a number of years of discussion, the Legislature finally passed legislation dealing with their rules review process. HB 206a was signed into law and will revamp the way administrative rules are reviewed by the Legislature.

Idaho is one of a few states that allows for the Legislature to review and approve administrative rules from the executive branch. The right of Legislative review is now enshrined in our Constitution, but debate on how the process should work has been the subject of several pieces of legislation in recent years. The business community has largely opposed changes that would require both the House and Senate to approve pending non-fee rules, or that would allow a chair to have the ability to pocket veto a rule by not having a hearing.

As originally drafted, HB 206 would have allowed for both of these things to occur, and IACI once again opposed the legislation.

The bill was amended in the Senate to require Committees to have a hearing on all rules but did require both bodies to approve a pending non-fee rule. The new process requires a Concurrent Resolution be passed to approve or reject a rule. The Legislature is also directed to make a finding of fact as to why the rule does not meet the legislative intent of the statute in the resolution when rejecting a rule. This should help agencies understand how to proceed with a new rule when one has been rejected.

HB 206a also includes language stating that an agency cannot issue a rule that is "substantially

similar" to a rejected rule, "unless it is consistent with the legislative intent of the statute as expressed in the concurrent resolution."

Additionally, HB 206a requires that all agencies make remote testimony available during rulemaking and requires all testimony to be stored online for up to 3 years.

HB 206a also sets up a process for the Legislature to review all agency rules on a rolling schedule every eight years.

After the changes in the Senate IACI changed its position to neutral on the amended legislation. We look forward to working with this new process in years to come. It is likely some tweaks to the system will be necessary as we work through the process. IACI would like to thank the members of the Food Producers of Idaho for taking the lead in negotiating the amendments to the legislation.

JUDICIAL COUNCIL

After two years and a full interim committee, the Idaho Legislature passed significant legislation (SB-1148) that reforms the Judicial Council. The Judicial Council is the organization responsible for recommending judges for appointment to the Governor. Previously that was a Council largely controlled by the Idaho State Bar. The reforms include expansion of public representation and opens more of the process of selection to the eyes of the public. It makes public the information around judicial applicants to fill vacancies on the Bench. It also opens the process the Bar uses to solicit information from members regarding potential candidates.

IACI believes providing comments to applicants can increase accountability for comments submitted in support or opposition of someone to become a judge in Idaho. Finally, it removes ballot information that typically gave incumbent judges an advantage in contested elections. IACI along with the Idaho Liability Reform Coalition (ILRC) have been interested in this kind of change for some time.

MORE MODEL BILLS

The Legislature is increasingly beset by model bills brought by individual legislators on behalf of national organizations with a particular axe to grind. Almost uniformly these national models cause more problems than they solve. Years ago, many of the think tanks cranking out these bills used to adopt model policy and leave the actual bill writing to the states. This was often helpful in understanding how to address an emerging national issue. The trend toward moving to model legislation has seen more legislation introduced that simply does not fit in Idaho's legal structure and causes headaches for industry trying to address the problem when the think tanks are trying to enforce uniformity of language.

Many of the anti-business pieces of legislation came from model legislation this Session. IACI has repeatedly warned legislators of the dangers of model legislation and will continue to do so.