

# Capitol Reflections



2018 LEGISLATIVE SESSION

“Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place.”

-Frederic Bastiat, author of *The Law*, 1849

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## TAX REDUCTIONS ARE ON THE WAY

This week the Senate approved H463 on a vote of 26-9. The bill is now headed to the Governor for his signature. This is the bill sponsored by the Governor and majority leadership in both the House and Senate. It reduces the corporate and individual income taxes at all brackets by .475%. Now, the top marginal rate will go down to 6.925% from the current 7.4%. Everyone

in Idaho who makes more than \$11,000 of taxable income is paying the top rate.

The bill also creates a non-refundable child tax credit of \$130 and fully conforms with the tax reforms made recently at the federal level for the 2018 tax year forward. This will provide net tax relief of more than \$104.5 million for Idaho taxpayers, when federal conformity is figured into the mix.

The question remains, will additional tax relief surface before the end of the session? If the income tax rate was reduced another .5% for both corporate and the top marginal rate for individuals, that would provide another approximately \$117 million in tax relief for Idaho taxpayers. That would bring the top marginal rate down to 6.425%, within striking distance of the elusive 5%. IFBF supports reductions in income tax rates; especially when the state continues to receive hundreds of millions of dollars of excess tax revenues each year.



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## PROPERTY RIGHTS PROTECTION

One of the most fundamental rights we have in America is private property rights. In fact, the Idaho Constitution states in its very first sentence that the right to acquire, possess and protect property is an inalienable right, meaning it cannot be taken away by government. The Declaration of Independence states that our inalienable rights are given by God and that "to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

Furthermore, the U.S. Supreme Court has ruled repeatedly, consistently and historically as well as recently, that the right to exclude others from private property is a fundamental right. For example:

"An essential element of individual property is the legal right to exclude others from enjoying it."

**Justice Louis Brandeis**, *International News Service v Associated Press*, 248 U.S. 215, 250 (1918)

"We have repeatedly held that, as to property reserved by its owner for private use, "the right to exclude [others is] *one of the most essential sticks in the bundle of rights that are commonly characterized as property.*" **Justice Antonin Scalia**, *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).

To secure these rights, Idaho, just like every other state in the Union, has laws against trespass on private property. Unfortunately, over time Idaho's laws have become a patchwork of inconsistent and unworkable changes which confuse landowners and the public as well as prevent effective law enforcement and prosecution.

Therefore, to ensure that private property owners receive the legal and practical protection they deserve, a coalition of more than 30 organizations, business entities and other interests have proposed a major overhaul of our current laws protecting private property rights. H658 would ensure that there are

consistent definitions and protections across all relevant Idaho code sections. It significantly increases penalties for trespass, which have not been updated since 1976, and it adds enhanced penalties for those who trespass and cause damage while on someone else's property.

The posting requirements are more common-sense under H658, and more in-line with other western states who do not have burdensome requirements such as posting every 660 feet. Under H658, a person must know or have reason to know that their presence is not permitted. Under current Idaho law, no posting is required in certain circumstances. This includes land that is cultivated and property that is fenced. These are all presumed to be private property, just like other western states. H658 maintains these current protections and adds land that is reasonably associated with a residence or a place of business as land that is presumed private and need no posting, just like other western states. However, under certain circumstances, posting will still be required such as when fenced land is adjacent to or contained within public lands; and on unfenced, uncultivated lands. In those instances, the land will need to be posted in a way to put a reasonable person on notice that it is private property. The bill clarifies what is necessary to do so, again similar to other western states.

Finally, both the Attorney General's office and the Prosecuting Attorneys have given their suggestions which have been incorporated into H658. Both have indicated that they are OK with the new bill. This bill will also provide additional protections against trespass that do not exist under the current trespass law for other valid rights of entry such as meter readers, girl scouts, surveyors, bail bondsmen, ditch riders, etc. This bill has received a lot of input and has been very inclusive of all legitimate issues that were raised. **IFBF supports H658.**

## ELDS, GVWS, HOS AND CDLS GET ATTENTION

The acronyms in the title are causing real headaches for small business, independent truckers and ag commodity haulers.

The Idaho Senate crafted SJM 104 to address electronic logging devices (ELDs) and hours of service (HOS). The Federal Motor Carrier Safety Administration (FMCSA) mandated a rule requiring all trucks newer than model year 2000 to utilize electronic logging devices as a replacement for handwritten, driver logbooks. Implementation deadline was December 18, 2017. Independent truckers and ag haulers requested and were granted a 90-day waiver from this requirement which expires March 18, 2018.

Large commercial fleets already utilized much of the mandated technology to keep track of truck location, driver hours and other information. Most of these companies have no problem with the ELD rule. The ELD is tied to the truck's engine and engages whenever the truck is started or running. Related to this is the hours of service (HOS) rule which says a driver may not drive more than 11 hours in a 14 hour "on duty" day. This is why you see trucks parked in the middle of the day and the driver sleeping.

The ELD rule does not consider waiting time. If a truck is idling while waiting to be loaded, the ELD is running and HOS accumulating, even if the driver is resting. This is the major issue small trucking firms and ag haulers have with the mandate.

Sen. Mark Harris (R-Soda Springs) is SJM 104's sponsor. SJM 104 asks Congress to grant a permanent exemption

for ag commodity and livestock haulers from the ELD mandate. Also, Senate Leadership, the Transportation Chairman- Sen. Bert Brackett (R-Rogerson) and Senator Harris all signed and forwarded a letter to the entire Idaho Congressional delegation asking for permanent exemption.

Rep. Jason Monks (R-Nampa) has sponsored HJM 12, a memorial to the U.S. Congress asking for a review and revision of commercial driver's license (CDL) requirements. Federal regulations require a CDL if a vehicle's gross vehicle weight (GVW) rating or GVW exceeds 26,000 pounds. This rule does not consider commercial trucks towing trailers or recreationists towing large travel trailers. **HJM 12 asks that the weight of the trailer being towed not be included in the GVW trigger weight computation.**

HJM 12 has resulted because many small businesses use 1-ton pickups to pull utility trailers. If the trailer is large enough, the combined weight can exceed 26,001 GVW. Per Rep. Monks, one local landscaper without a CDL was stopped, cited and told to unhook the 1-ton pickup from the trailer and go get a ½ ton pickup to pull the trailer in order to comply with the federal regulation. This is unsafe as the ½ ton truck was inadequate to safely pull the trailer. The same situation could play out for vacationers using a 1-ton Duramax or Super Duty to pull a monster travel trailer or farmers and ranchers using a 1-ton pickup to pull a livestock or utility trailer.

**Idaho Farm Bureau Federation supports SJM 104 and HJM 12.**

## S1306 NOTICE TO WATER DELIVERY ENTITIES—AMENDED

On Thursday, the House Resources and Conservation Committee, chaired by Rep. Mark Gibbs (R-Grace), considered S1306 – Notice to Water Delivery Entities. This Farm Bureau bill amends Idaho Code 67-6519 to require planning and zoning authorities to notify those water delivery entities who have requested notice in writing of any proposed rezoning, subdivision, or any other site-specific land development proposals. These water delivery entities are irrigation districts, Carey Act operating companies, nonprofit irrigation entities, lateral ditch associations, and drainage districts. The legislation also allows for notice to be provided by email, if agreed upon by both parties. This notice is to be provided at least 15 days prior to the public hearing date concerning the proposed development, so water users can review the project proposal and raise any potential concerns.

It was brought to our attention that groundwater districts should also be included in the bill. If a land-use proposal

includes a development that would drill new wells, or add any additional pressure on groundwater resources, the groundwater districts would like to request and receive notification. The House Committee voted to send the bill to the amending order to add "groundwater districts" to the list of water delivery entities who can request and receive notification of such proposals as are identified in the bill. Rep. Clark Kauffman (R-Filer) has agreed to run the amendment for the bill and will be the House floor sponsor.

The House will likely go to the amending order/general orders at the first of next week. S1306 will be taken up at that time. After approval by the House, the bill will have to return to the Senate for consideration and approval.

Idaho Farm Bureau policy #138 supports legislation that would provide water users notice of proposed changes to land-use planning that might affect water delivery and/or water rights. **IFBF supports S1306**

## NET-METERING PROPOSED CHANGES

Though not a legislative issue, there has been significant talk about Idaho Power's proposal to make net-metering customers a rate class of their own. The Idaho Public Utility Commission (PUC) held a public hearing Thursday night in Boise, and will hold another one next week in Pocatello, to listen to concerns and issues from the public regarding the proposal. The PUC plans to then hold a Technical Hearing on Thursday of next week to further explore and analyze the topic.

Rooftop solar has become increasingly popular over the past several years, with many residences throughout the state installing solar panels on their homes, barns, and sheds, offsetting energy consumption and putting the excess power generated on the grid. This excess power can be used to offset or eliminate the customer's power consumption each month. This process is called net-metering, referring to the "net" energy amount consumed by rooftop solar customers during a billing cycle.

Idaho Power launched its net-metering program in 1983, and the utility has seen a significant increase in the program as consumer interest in renewable energies increase and the cost of solar panels goes down. By mid-summer of 2017, Idaho Power had 1,468 active and pending net-metering customers with 11-megawatt nameplate capacity. By 2021, the utility anticipates the number of net-metering customers to exceed 7,000.

Idaho Power contends that this growing segment of net-metering customers do not pay a fair share for the operation and maintenance of the company's electric distribution system. The utility claims that this shifts the financial burden of maintaining and running that system onto traditional customers. In Idaho Power's filing to the PUC, the company states that this creates a wealth transfer from lower-income to higher-income customers. The company states, "From a consumer protection perspective, the Company does not believe it is fair for its customers

without the financial ability or desire to install solar to subsidize those who do,".

Many current net-metering customers are concerned about the company's proposal, pointing to the large initial cost to purchase and install rooftop solar systems. Some customers made the decision to purchase solar panels and participate in the net-metering program based on its current structure and ability to offset their power consumption. Many also claim that the "benefit to the environment" that the solar panels provide should not be punished with rate increases.

Idaho Power proposes to separate net-metering customers into two distinct customer classes, Residential and Small General Service. The company said this would allow it to better understand those customers' impact on the distribution system. The proposal would apply to customers with on-site generation who sign up for new service on or after Jan. 1, 2018. Those existing net-metering customers would be transitioned over the next several years to one of the newly proposed customer classes.

The technical hearing on Idaho Power's proposal is on March 8 at 9:30 a. m. at the PUC, 472 W. Washington St. in Boise.



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## WOLF COLLARING BILL STALLS IN HOUSE RESOURCES

Thursday, Sen. Abby Lee's (R-Fruitland) bill to codify wolf collaring as a management practice was held until Monday as committee members expressed a variety of concerns.

**Idaho Farm Bureau Federation (IFBF) policy no. 93-Wolves** says in part ". . . We support a mandate for the Idaho Fish and Game Department to collar wolves for depredation management. . ." IFBF supports S1275.

The bill adds legislative intent language for the Idaho Fish and Game Department to continue its current policy of wolf collaring as part of wolf management in Idaho and codifies that practice. New language says, *"It is the expectation of the legislature that wolf collaring will be continued as one of the proactive management tools for packs that are predisposed to depredation on domestic livestock."*

# IDAHO FARM BUREAU'S GOVERNMENTAL AFFAIRS REPORT

Representative Judy Boyle (R-Midvale) expressed significant concern to the House cosponsor, Rep. Ryan Kerby (R-New Plymouth) about the collaring program's funding source within IDFG budget and asked if Wolf Depredation Control Board (WDCB) funds would be used for that purpose. Most have assumed since the wolf collaring program predates the WDCB, that the current funding source within IDFG's budget will continue to be utilized. This question will be answered Monday.

Rep. Mat Erpelding (D-Boise) questioned placement of the new language within the bill saying it tied wolf collaring to U.S. Fish and Wildlife Services and USDA

APHIS activities and implied collaring would be carried out by those federal agencies. Rep. Erpelding's question was answered by other committee members who said wolf collaring is conducted by IDFG.

Former IDFG Commissioner, Rep. Fred Wood (R-Burley), questioned IDFG's absence and said only they could answer the questions before the Committee. He suggested the bill be held until IDFG representatives could be present to answer the Committee's questions. S1275 will be held until Monday, March 5.

## ODDS AND ENDS

This week a bunch of bills supported by Farm Bureau were passed in the House and sent to the Senate for consideration. Here is an overview:

**H594** would ensure that equipment used in the production of hops are not subject to personal property tax. This equipment has not been subject previously, but since hops production is expanding with the growing popularity of craft brewing, some assessors are attempting to force producers to pay the tax. H594 passed the House on a vote of 69-0 and will now await a hearing in the Senate Local Government and Taxation Committee chaired by Senator Dan Johnson (R-Lewiston). **IFBF supports H594.**

**H604a** would require cities to receive the written permission of the landowner before annexing land actively devoted to agriculture into the city. The land must be five acres or more to qualify. This has been a problem in some areas in the past. The land receives no additional services from the city, yet receive significant tax increases. Therefore, under H604a, as long as it is still in agricultural production, it cannot be annexed without permission. H604a was approved by the House on a vote of 58-11 and will now await a hearing in the Senate Local Government and Taxation Committee. **IFBF supports H604a.**

**H603** would require the Director of the Idaho Department of Water Resources to send a "show cause" letter to the federal government, asking why their stockwater rights should not be forfeited under Idaho law. The Idaho Supreme Court ruled in the Joyce decision, stating federal agencies cannot own stockwater rights since they do not own livestock and therefore cannot put the water to beneficial use. Therefore, the rights that were adjudicated to them in the SRBA are really not rights at all, but really a "legal fiction", meaning they have the appearance of a legal right, but they really are not a legal right. H603 was approved by the House on a vote of 67-0 and will now receive a hearing in the Senate Resources Committee chaired by Senator Steve Bair (R-Blackfoot). **IFBF supports H603.**

**H578** would require online retailers who sell more than \$10,000 of merchandise into Idaho and have an agreement of some sort with an Idaho based entity, to collect and remit sales tax on purchases made by Idaho residents. IFBF policy #121 states "we oppose the collection of use tax on out-of-state goods purchased by Idaho residents. Despite our opposition, H578 passed the House on a vote of 46-21 and will now move to a hearing in the Senate Local Government and Taxation Committee. **IFBF opposes H578**

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