

# **BUILDING CONTRACTORS ASSOCIATION OF SOUTHWESTERN IDAHO**



## **2002 LEGISLATIVE SESSION REVIEW**

*Dear BCASWI Member,*

*We are pleased to provide you with the 2002 BCASWI Legislative Session Review summarizing new laws that might affect your business. In addition, we have included a review of legislative issues that did not pass but may resurface, and a comprehensive voting record detailing how legislators supported the Building Industry this Session.*

*Please take the necessary time to examine these laws so you are prepared for any benefits or repercussions that may affect your business. The Government Affairs Committee routinely reviews legislation during the Session, and recommends positions to the Board of Directors. If you would like to be involved in this process, simply contact the office to check for scheduled meetings.*

*The Second Regular Session of Idaho's 56<sup>th</sup> Legislature adjourned after just 68 days, marking March 15, 2002 as the earliest going-home day since the 1996 session – which also ended on March 15 (but in only 66 days). At 68 days, this year's session would be a full 14 days shorter than last year's. Earliest "sine die" dates in the last 3 decades were March 13 sign-offs in 1973 (65 days) and 1985 (66 days). Over those same 3 decades, average session length has been 74 days.....including 7 straight years from 1986 through 1992 when every session ran more than 80 days.*

*Legislators spent a good deal of time focusing on budget shortfalls, determined to keep the budgets balanced – without a tax increase. The fact that we will not see a tax increase this year is a tribute to legislative focus on making the spending fit the available revenue. That's a major victory! On the regulatory side, we faced a number of large issues from new Building Codes to new annexation procedures. The BCASWI played a significant role in helping to mitigate the effects of these new laws on the Building Industry.*

*All in all, this was a successful session for the Building Contractors Association of Southwestern Idaho, and it's members.*

*Our thanks goes out to each of you who played a role in electing Building Industry friendly legislators this last election cycle and for assisting the Association whenever "Call for Actions" were sent out. Your continued support and involvement with the Building Contractors Association of Southwestern Idaho is genuinely appreciated.*

*Sincerely,*

*Pat Minegar  
Government Affairs Chair*

# 2002 Session Wrap Up

*The 2002 Legislative Session wrapped up on March 15 with a flurry of action. Some legislators you talk to will tell you this was the most contentious session they'd seen in awhile. Here's a look at some of the action that took place, as well as an update on the key pieces of legislation BCASWI was active on this year.*

## **TERM LIMITS**

The 2002 Session started off with a bang with the Term Limits debate. BCASWI supported H425 to repeal the term limits initiative, and the bill is included in the voting record at the back of this document. The bill passed the 50-20 in the House, 27-8 in the Senate, and was vetoed by the governor. The legislature then came back with the same majority and overrode the veto.

A group of out-of-state contributors has vowed to place the issue back on the ballot this fall. Ironically, many legislators proved term limits to be unnecessary in April when the deadline for filing for re-election passed. Eighteen legislators (one out of six) from the 2002 Session did not file – including many members of leadership in both the House and Senate. Even if no other incumbents lose (a highly unlikely event given the large number of candidates this year), the legislature is already guaranteed a 17 percent turnover.

## **DEVELOPMENT IMPACT FEES**

House Bill 607, sponsored by the BCASWI and others, was signed into law on March 27, 2002. H607 amends the impact fee statute to clarify several sections that have been misinterpreted by the Ada County Highway District (ACHD) in the development of their latest impact fee schedule, and mandate them to base the fee off of a Capital Improvements Plan (CIP). ACHD will now be required to adopt a current CIP, and base their impact fee off the projected costs of future expansions attributable to new development.

H607 also makes clear that a residential developer can apply for an individual assessment. ACHD is currently operating under a legal opinion from their staff attorney that a residential developer is not a developer as defined by the statute, and therefore is not allowed to apply for an Individual Assessment. For the record, the definition of a “developer” in the

statute was: “any person or legal entity undertaking development.” This deliberate misinterpretation of the statute in order to limit the fee payers access to impact fee reductions is the typical kind of action fee payers have been dealing with from ACHD, and that were addressed in H607.

We remain hopeful, now that H607 has pass into law, ACHD will work with the development community to help draft a new Impact Fee Ordinance that conforms to the statute, and that we can all support. ACHD has begun the process by forming a Impact Fee Task Force and soliciting some input from various sectors of the community. Unfortunately, they have also made several comments in the media demeaning the intent of the fee payers that sponsored the legislation, and have generally taken a “Chicken Little” approach to the issue.

## **BUILDING AND ENERGY CODES ADOPTED**

The legislature passed HB 586 to mandate adoption of the 2000 International Building Code, International Residential Code, and the International Energy Conservation Code in jurisdictions that currently have building codes.

BCASWI and IBCA were both co-sponsors of the legislation. The National Association of Home Builders supports adoption of the I-Codes, and BCASWI was heavily involved in reviewing the potential effects of the legislation. The new codes will have to be in place by the beginning of 2003.

BCASWI has already started meeting with local jurisdictions regarding adoption of the new codes, and will be working with them to smooth the transition throughout Ada County. We will also be working to provide educational opportunities to our membership to help make you aware of the any changes in building practices necessitated by the new codes.

## **ANNEXATION REFORM**

A large-scale annexation in the West Boise area a few years ago spawned a three year battle by a local citizens group to pass legislation severely restricting the right of municipalities to annex without a vote of the people. The proposed legislation would have wrecked the cities ability to plan effectively for land use, and would have created great uncertainty in the building and development community with regard to future projects.

The BCASWI joined with the Association of Idaho Cities to oppose the citizen group legislation, and helped draft Senate Bill 1391 as competing legislation. After spending two prior sessions dealing with annexation bills, several key legislators were intent that 2002 would be the year to resolve the issue. SB 1391 passed the legislature, and has been signed into law. SB 1391 will provide more notice to local residents when any controversial annexation procedures are begun by a municipality, but will continue to allow for annexations to occur in an orderly and predictable fashion in order to accommodate new growth and development.

## **TRANSFERABLE DEVELOPMENT RIGHTS**

Two years ago the legislature passed a bill allowing local jurisdictions to transfer development rights from a designated "sending zone" to a "receiving zone". For instance, Boise City could set up a plan to allow a developer with land in the foothills (where development is limited) to sell their development rights to another developer in West Boise. The West Boise developer would then be allowed to build to a greater density than was previously zoned.

Last year, Blaine County set about writing an ordinance to set up a program to allow transferable development rights (TDRs). They discovered the law, as written, only allowed TDRs to be designated as a commodity for a period of ten years. This limited window creates a pseudo-commodity with limited viability in the marketplace.

House Bill 443 would have amended current law to allow local jurisdictions (at their option) to create permanent TDRs in their jurisdiction – thereby creating a solid marketplace.

H443 died in the House Local Government Committee primarily due to the efforts of Rep. Kent Higgins (R-Idaho Falls) and Rep. Dave Callister (R-

Boise). BCASWI supported the legislation, and will work with the sponsors to bring this issue back in the 2003 Session.

## **REAL ESTATE COMMISSION DISCLOSURES**

The Idaho Real Estate Commission (IREC) filed RS 11453, relating to disclosure of information obtained during an inspection, with the legislature early in the session. BCASWI worked with the Idaho Association of Realtors to convince IREC to pull the legislation for 2002, and give the industry a chance to thoroughly review the consequences of the proposal before reintroducing the idea in 2003.

RS 11453 stated: "The commission may disclose information obtained from an inspection, survey, audit or investigation, and any matter related thereto, to a state or federal regulatory agency or law enforcement agency, or to the association of real estate license law officials, where the such information is deemed relevant to the enforcement of regulatory or criminal laws by such agency."

If this legislation had been passed, it would have given IREC investigators that do routine audits of real estate transaction files the ability to disclose any information in those files to whatever agency they deem necessary. For instance, sensitive environmental information about a real estate project could be released to DEQ or EPA without the knowledge or consent of the landowner. BCASWI will continue to monitor this issue during the interim.

## **UNIFORM ARBITRATION ACT**

The Idaho Uniform Law Commission introduced Senate Bill 1280 to adopt the "Uniform Arbitration Act" in the State of Idaho. This Act was drafted and approved by the National Conference of Commissioners on Uniform State Laws at its 2000 annual meeting.

Although the intent of the law was to bring uniformity to Arbitration Laws throughout the country, one significant addition to Idaho Code in the legislation includes a provision to allow punitive damages to be awarded in binding arbitration settings without judicial review.

BCASWI joined with the Idaho Association of Commerce and Industry to oppose this legislation on the grounds that allowing punitive damages to be awarded without judicial oversight opens the

arbitration process to abuse. In the face of this opposition, the legislation was pulled for 2002 and will be reworked for next year. BCASWI will continue to monitor this issue during the interim.

## **DIG BILL**

A number of large Utility Companies introduced legislation to stop “repeat offenders” from excavating without calling the Dig Line and locating utilities. The Utility Companies claimed that the existing fines in the Statute were too small, and did not deter some excavators from digging without calling first. Representatives of IBCA met with the Utilities and were successful in changing many aspects of the legislation that could have harmed contractors that were trying to follow the law. The original bill included fines for repeat offenders of up to \$75,000, with the Utility company having the ability to prosecute the offenders without having to go through the Attorney General’s office. The final bill removed the ability of the Utilities to seek punitive damages, and dropped the fine to \$10,000.

## **STATE LAND MANAGEMENT**

Senator Clint Stennet (D-Ketchum) introduced Senate Joint Resolution 102 relating to State Land Use Management. The legislation would have added language to the Idaho Constitution making State Lands subject to the Local Land Use Planning Act. BCASWI took a position against the legislation, and worked with the Idaho Association of Commerce and Industry to point out the potential impacts of the change on state land management practices. If enacted, the legislation would have had a devastating effect on any commercial activity on state lands. The legislation was not scheduled for a hearing. BCASWI will continue to monitor this issue in the future.

## **LOCAL OPTION TAXES**

The BCASWI has traditionally taken a hard stance against Local Option Taxes. Currently these taxes are extremely limited in use, however some legislators have been trying for years to allow local jurisdictions to levy taxes on top of state taxes at the discretion of local voters. BCASWI and many representatives of the business community oppose the taxes because of the potential for abuse by local jurisdictions. At the end of Session, Rep. Frank Bruneel (R-Lewiston) and Sen. Joe Stegner (R-Lewiston) introduced House Bill 725 to allow local

jurisdictions to levy the taxes with a 60% vote of the people. The legislation was introduced too late in the Session to have a chance of passing, however it could signal the intent of some legislators to take up the issue at the beginning of the 2003 Session. BCASWI will continue to oppose Local Option Taxes whenever they are introduced.

## **TAKINGS LEGISLATION**

House Joint Resolution 3 was introduced by Speaker Bruce Newcomb in combination with the Water Users and Cattleman’s Association’s. The legislation would have amended the Idaho Constitution to allow for partial takings claims. Several concerns were raised by the BCASWI and others in the business community as to the effects of the legislation on local land use planning. Specifically, it was unclear what effect the legislation would have on local jurisdictions undertaking zoning for the purposes of a Comprehensive Plan. Ultimately, the legislation was held until next year, and a study committee was put in place to review possible implications. BCASWI will be present and have a voice on the study committee.

## **LIEN LAWS**

One of the most contentious political issues of the Session for builders was an amendment to the state’s Lien Laws proposed by the Idaho Land Title Association. First drafts of the legislation put significant burdens on builders to take more responsibility for lien claims on potential job sites. Representatives of the Idaho Building Contractors Association worked with the sponsors, and ultimately drafted compromise legislation. Senate Bill 1454 will require general contractors to provide the business names, addresses and telephone numbers of *first-tier* subcontractors, materialmen and rental equipment providers to the homeowners and residential real property purchasers within a reasonable time prior to the closing on any purchase and sale agreement with a prospective residential real property purchaser or prior to final payment to the general contractor by the homeowner or residential real property purchaser for construction, alteration, or repair of any improvement of residential real property.

# New Laws Passed in 2002

## **ELECTRICIAN LICENSING**

*Chapter 53 (H407)*

The Division of Building Safety, Electrical Bureau, renews licenses for master, journeyman and specialty electricians on an annual basis. (July of each year). The Electrical Bureau proposes to increase the duration of licenses to three years rather than each year, and stagger the renewals based on the original issue date. This would be more convenient for the licensee. By staggering the license renewals every three years, the bureau could provide a timelier processing of the renewals and a more even distribution of workload and service.

## **INTERNATIONAL FIRE CODE**

*Chapter 86 (H409)*

This legislation amends the State Fire Marshall Act to adopt the International Fire Code in place of the Uniform Fire Code. Legislation is being proposed by the Division of Building Safety to adopt the International Building Code in place of the Uniform Building Code. This legislation is needed to maintain consistency between the building code and the fire code.

## **ENGINEER'S SIGNATURE**

*Chapter 6 (H410)*

The purpose of this amendment is to define "signature" as used in conjunction with the professional seals used to identify the engineer or land surveyor who has been in responsible charge of a work product and to allow that signature to be either a handwritten message or a digital identification which meets certain security parameters. Approval of the amendment would allow the electronic exchange of documents with the assurance that the documents are unaltered. This legislation also allows the Board of Professional Engineers and Professional Land Surveyors to waive the requirement for passage of an examination in the fundamentals of engineering for exceptional persons with a minimum of 12 years of appropriate experience in engineering. The current requirement of 25 years is excessive, and the Board believes that the public will remain protected if persons with 12

years of experience are not required to take and pass the exam.

## **LAND SURVEYORS**

*Chapter 7 (H411)*

The purpose of this amendment is to eliminate an obsolete reference to engineers who, since 1978, have not been licensed to practice land surveying and also to replace obsolete terminology with more current terminology.

## **TERM LIMITS REPEALED**

*Chapter 306 (H425)*

Repeals Term Limits for the State of Idaho, and declares an emergency. This bill was vetoed by the governor, and overridden by the legislature. The emergency clause allowed candidates that would have been term limited to file for the May primary.

## **PROPERTY TAX / RURAL DEVELOPMENT**

*Chapter 341 (H488a)*

The purpose of this bill is to outline the method of assessing small rural housing developments, in counties below 100,000 population, for taxing purposes. The present system allows the county assessor to assess platted parcels as residential property before such property is actually sold for building purposes. In many cases this limits the development process to large developers with finances adequate to fund the higher property taxes during the development and sales period. In many instances this precludes the original owner of agricultural land, with limited resources, from participating in the development process. Assessment of platted lots in a rural subdivision will be classed as agricultural until each lot is sold to the first purchaser.

## **ELECTRICAL BOARD**

*Chapter 98 (H504)*

This legislation will align the State Electrical Board with the law applying to other appointed professional boards by allowing an existing board member to serve until a new appointment is made.

## **IRRIGATION DISTRICT CONTRACTS**

*Chapter 100 (H506)*

Increases the amount of an expenditure for which bidding and contracting is required for irrigation districts e from \$15,000 to \$25,000 to match the dollar limit for other political subdivisions.

## **SIDEWALKS – PMD’S**

*Chapter 160 (H550a)*

Relating to transportation, this legislation provides that a person using an electric personal assistive mobility device is, for the purposes of the motor vehicle statutes, a pedestrian and that such devices are not a motor vehicle. The specific type of vehicle to which this legislation relates is the Segway Human Transporter. The Segway HT is a two wheeled electrically powered vehicle with the two wheels positioned side by side and a platform for the rider placed between the wheels. The vehicle is self balancing through a sophisticated computer balancing system. The speed of the vehicle is limited to 15 miles per hour or less. The United States Postal Service is currently using the vehicle in tests to determine whether the vehicle provides greater delivery efficiency. Under this legislation, riders of these vehicles would be treated as pedestrians in the same manner as the riders of motorized wheelchairs.

## **MANUFACTURED HOMES**

*Chapter 61 (H559)*

Allows a manufactured home on a permanent foundation to be considered real property if the permanent foundation on leased land. Previously the land had to be owned by the home owner.

## **REAL ESTATE / DISIPL. INVESTIGATION**

*Chapter 116 (H567)*

This bill amends existing law regulating disciplinary investigations and administrative actions of the Idaho Real Estate Commission. The bill provides that the commission shall review an investigative report prepared by the executive director of the commission and, upon a finding by the commission that such report merits further proceedings, the commission shall authorize the filing of an administrative complaint against the licensee being investigated. This bill clarifies and enhances the commission's administrative oversight of the investigatory and disciplinary process.

## **ELECTRICIAN LISCENCE APPLICATION**

*Chapter 123 (H585a)*

Deletes the requirement for an apprentice to wait until 4 years have elapsed to apply for a journeyman license. An apprentice may apply after proof of completion of the prescribed education training, (144 hours classroom training per year for 4 years, and at least 2000 hours of on the job training each year for four years.)

## **INTERNATIONAL BUILDING CODE**

*Chapter 345 (H586a)*

Requires all jurisdictions in Idaho that currently adopt building codes to adopt the 2000 International Building Code, International Residential Code, and International Energy Conservation Code. All Codes must be adopted by the local jurisdictions by January 1, 2003.

## **LAND SURVEYORS EXAM AND LICENSE**

*Chapter 125 (H589)*

The purpose of this legislation is to revise the general requirements for examination and licensure of professional land surveyors and land surveyors-in-training effective as of July 1, 2010.

## **PUBLIC WORKS CONTRACTORS**

*Chapter 127 (H592)*

The purpose of this legislation is to establish the criteria for the licensing and regulation of contractors engaging in public works construction.

## **DEVELOPMENT IMPACT FEES**

*Chapter 347 (H607a)*

Amends existing law relating to development impact fees to govern the process for individual assessment of proportionate share; to require an update of the capital improvements plan and inclusion of tax and revenues invested in system improvements in determining proportionate share; and to provide for adjustments of proportionate share.

## **HIGHWAY DISTRICT COMM. SALARIES**

*Chapter 133 (H608a)*

Allows Highway District Commissioners to set their own salary. Previously the salary had been set by statute.

## **SMALL LAWSUIT RESOLUTION ACT**

Chapter 137 (H627)

*Offers an Alternative Dispute Resolution (ADR) option for the resolution of lawsuits valued under \$25,000. This new program may well prove to be an attractive alternative for resolving small lawsuits, thereby reducing court congestion, costs and the time required to resolve these types of cases.*

## **ELECTRICIAN LICENSING FEES**

Chapter 139 (H631)

This legislation clarifies that only the State of Idaho, Building Safety Division, may issue electrical licenses. Currently some cities are requiring registration fees rather than license fees in order to circumvent the current legislation disallowing the issuance of an electrical license by other than the State.

## **DEQ REGULATORY STRINGENCY**

Chapter 144 (H658)

The purpose of the bill is to require that the Department of Environmental Quality notify the public, the Board of Environmental Quality, and the Legislature when it proposes a rule that is more stringent or broader in scope than federal law or regulation or when it proposes to regulate an activity not regulated by the federal government.

## **EXCAVATION – UNDERGROUND UTILITIES**

Chapter 351 (H678a)

Amends the Underground Facilities Damage Prevention law. Increases the potential maximum civil penalties that may be imposed on excavators (\$5000), and particularly on those excavators who repeatedly cause damage to underground facilities (\$10,000). The legislation also makes technical changes in current law to clarify marking requirements for the areas of proposed excavation by the excavator and of existing underground facilities by the owners of the facilities.

## **FIRE DISTRICT PROPERTY TAX LEVIES**

Chapter 172 (H724)

To provide a uniform means of allowing all fire districts which were impacted by abnormally low levies prior to the enactment of §63-2220A Idaho Code to reach a district levy of .24% with the

approval of the voters within the fire district. This amendment seeks to avoid penalizing fire districts which traditionally have been frugal from obtaining adequate funding as a result of the enactment of §63-2220A Idaho Code.

## **PROFESSIONAL SERVICE LLC**

Chapter 218 (S1316)

*Provides that one or more persons meeting designated criteria may organize and become a professional service limited liability company. Previously the statute had required “a group of individuals” be in place to form a PSLLC.*

## **REAL ESTATE LICENSES**

Chapter 220 (S1322)

Removes current requirements that force the Real Estate Commission office to retrieve existing license certificates and print and deliver new certificates every time a licensee updates personal or business information. The bill "paves the way" for the licensees to transact business with the Commission on line. A variety of housekeeping items are also addressed in the bill, including the addition of definitions previously contained in rule; clarification of the license expiration date; correction as to when licenses are "terminated" rather than made inactive; clarification that only entrusted moneys relating to a "regulated real estate transaction" may be deposited in the broker's Real Estate Trust Account.

## **REAL ESTATE LICENSEE EDUCATION**

Chapter 280 (S1340)

*This bill increases the number of hours of continuing education (CE) required to renew an active real estate license, from twelve (12) hours every two years, to sixteen (16) hours plus a "core course" every two years. At the same time, the bill expands the educational opportunities available to meet the CE requirement.*

## **ANNEXATION PROCEDURES**

Chapter 333 (S1391a)

Provides for annexation by municipalities to occur based on three categories of land classifications. This legislation would provide for more notice to citizens effected by proposed annexations, while still allowing annexations to occur and land use planning

to continue. Allows uncontested annexations to continue to follow the current regulations.

### **HIGHWAY DIST. COMMISSIONER ELECT.**

Chapter 298 (S1400)

This legislation amends Idaho Code section 40-1305, Title 40, to provide for, upon unanimous agreement of the highway district commissions, or upon petition of the highway district commissioners, the adoption of an election cycle where one Commissioner is elected every three years, with none being elected on the fourth year of the cycle.

### **INSURANCE RATES / CREDIT RATING**

Chapter 264 (S1408)

Adds to existing law to provide that no insurer regulated pursuant to Title 41, Idaho Code, shall charge a higher premium or cancel a policy or coverage based primarily upon an individual's credit rating or credit history; to define "based primarily"; and to limit application to certain property or casualty insurance.

## **LIEN INFORMATION DISCLOSURE**

Chapter 307 (S1454)

This legislation is designed to address issues relating to liens. First, the legislation will extend the time for delivery of a claim of lien to owners of property from 24 hours to five days. Second, the legislation requires a disclosure by general contractors to homeowners and residential real property purchasers of certain options that homeowners and residential real property purchasers may have when they are remodeling an existing home, building a custom-built home or buying a home from a general contractor. Third, the legislation requires general contractors to provide the business names, addresses and telephone numbers of first-tier subcontractors, materialmen and rental equipment providers to the homeowners and residential real property purchasers within a reasonable time prior to the closing on any purchase and sale agreement with a prospective residential real property purchaser or prior to final payment to the general contractor by the homeowner or residential real property purchaser for construction, alteration, or repair of any improvement of residential real property. Failure to provide these disclosures shall constitute an unlawful and deceptive act or practice in trade or commerce under the provisions of the Idaho Consumer Protection Act.

#### **Key for Types of Legislation:**

H = House Bill (i.e. H102)

S = Senate Bill (i.e. S1102)

a = Amended Bill (i.e. H102a, S1102a)

HCR or SCR = House or Senate Concurrent Resolution (i.e. HCR2 or SCR102)

HJM or SJM = House or Senate Joint Memorial (i.e. HJM2 or SJM102)

HJR or SJR = House or Senate Joint Resolution (i.e. HJR2 or SJR102)

HR or SR = House or Senate Resolution (i.e. HJ2 or SJ102)

*NOTE: Copies of legislation and session laws from the 2002 Session are available for review at <http://www2.state.id.us/legislat/legislat.html>*