

2015 Legislative News

by Senior Judge Barry Wood

You can access the **Idaho Legislature**, including the text of proposed legislation, calendars and agendas, a legislative directory, live streaming video with audio on line, and other useful information on their home page at: <http://www.idaho.gov/government/legislative.html>.

The **Bills of Interest** may be accessed on the Court's Website at: http://www.isc.idaho.gov/current_legislative_session

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Legislative News for the week ending January 30th [Week 3]

Week 3 of the Idaho Legislature opened at 8 a.m. sharp with a large crowd already gathered for the House State Affairs Committee being held in the Lincoln Auditorium on [H0002](#) -- the "Add the Words" bill seeking to provide civil rights protections regarding sexual orientation and gender identity. The size of the initial crowd required three overflow rooms being opened in adjacent Senate Committee hearing rooms to accommodate interested persons; both those wishing to testify as well as observers. The hearings then lasted over three days, with the measure ultimately failing in Committee on Thursday along a straight party-line vote, 13-4.

Two Gubernatorial Appointment hearings with relevance to the Idaho Judiciary were held this week before the Senate Judiciary and Rules Committee. Sara Thomas was reappointed as the Idaho State Appellate Public Defender, and Gary Scheihing was appointed to the Commission of Pardons and Parole.

By at least one measure of how the session is moving forward, and as reported last week, the last day for filing a "personal bill" by an individual legislator in the Senate was last Friday, January 23, and in the House is today, January 30. This means that the deadline for any individual legislator to ask that a bill be introduced has now passed. Following this personal bill deadline, there is a "germane committee" deadline of February 16 (the 36th legislative day). Following the germane committee deadline, any bill must come from a "privileged committee."

The Legislature continued devoting much of its time this week to a review of administrative rules (IDAPAs) which have been drafted by the various State of Idaho executive branch agencies since the last session. Because each Legislative chamber reviews and votes on these rules independently of the other, this is a time consuming process. Readers can access the rules coming before the respective Committees for review by visiting the Idaho Legislature Home Page, and clicking on the link Administrative Rules http://adminrules.idaho.gov/legislative_books/2015/index.html.

Two areas of IDAPA rules developed since the 2014 legislative session which involve the Courts were heard by subcommittees of germane committees on January 21. The first of those related to [SB 1357 \(2014 - JRI\)](#) and the Rules Governing the Supervision of Offenders on Probation or Parole, and the Rules governing establishment and operation of a Limited Supervision Unit by IDOC. Steve Bywater presented testimony to the House Judiciary and Rules subcommittee. The subcommittee voted to send the proposed rules to the full Committee for approval. These two IDAPAs are tentatively scheduled to come before the full House Judiciary and Rules Committee on February 3 at 1:30 pm MST. The date the Senate Judiciary Committee will take these up has not been established as of this writing; but may be as early as February 2.

The second were IDAPA rules developed by PERSI relating to the transfer of the Judges Retirement Fund (JRF) to PERSI for administration following [HB 660 \(2012\)](#) and the receipt of the required IRS Letter of Determination that the JRF was a qualified plan. The actual transfer of the JRF to PERSI for administration was effective July 1, 2014. These IDAPAs were before a subcommittee of the House Commerce and Human Resources Committee on January 21. The subcommittee voted to recommend approval of the Rules as drafted to the full Committee. These IDAPAs will also be scheduled for hearings before the full Senate and House Commerce Committees, but as of this writing the dates have not been set.

The first JFAC appropriations bill of the 2015 session of major significance is advancing through the House floor calendar. The bill is [H0026](#), and seeks to appropriate almost \$18 million for the Fire Suppression Deficiency Fund. Deficiency warrants are worth paying attention to because they relate to paying "last years" bills, and basically "come off the top" of the money available for appropriation for the upcoming fiscal year (FY 2016).

On January 28 a panel of Magistrate Judges made a presentation to the Senate Judiciary & Rules Committee. This educational outreach to the Legislators was well received. A similar presentation has already been arranged in 2016 before the House Judiciary and Rules Committee. The presenters and topics were:

Administrative Office of the Courts – Senior District Judge Barry Wood (Introduction)

District 4 – Judge Michael Oths (Who we are and where we come from)

District 1 – Judge Debra Heise (Child Protection)

District 2 – Judge Kent Merica (Family Court Services)

District 3 – Judge Dayo Onanubosi (Juvenile Courts)

District 5 – Judge Rick Bollar (Domestic Violence)

District 6 – Judge Rick Carnaroli (Criminal Courts)

District 7 – Judge Ryan Boyer (Problem Solving Courts)

On January 29, Michael Henderson and Barry Wood appeared before the House Judiciary and Rules Committee for print hearings on the Court's proposed four pieces of Legislation for the 2015 session. Each was approved for printing by the Committee and will soon be assigned a House Bill number. As of early Friday morning, the bill numbers had not yet been assigned to enable the listing here.

On January 30, Michael Henderson is scheduled to appear before the Senate Judiciary and Rules Committee at 1:30 pm MST for print hearings on the Court's proposed four "Defects in the Law" bills. This hearing just got finalized January 28 and there was not time to provide you notice.

On the Radar

February 2: Chief Justice Roger Burdick will deliver the *State of the Judiciary* to the Legislature. The schedule is 11:10 am MST before the Senate Chambers; 11:35 am MST before the House Chambers.

February 2: Elected Clerks and Judges Conference/ New Clerk Orientation at the Supreme Court

February 3: Administrative Conference

February 4: Idaho Department of Water Resources, together with Judge Eric Wildman, will present the water adjudication budget before JFAC

February 5: The Second Annual **Senator Denton Darrington Lecture on Law and Government** is scheduled to begin at 4 pm MST in the Idaho Supreme Court Courtroom. The featured speaker is Jeffrey Rosen, President and CEO of the National Constitution Center, Philadelphia, Pennsylvania. The program also will be live via web-cast through Idaho Public Television. The annual lecture is sponsored by the University of Idaho College of Law, the Idaho Supreme Court, and the Idaho State Bar and Law Foundation. The lecture was established to address a wide range of topics related to the improved administration of the justice system and feature well respected national, state and regional speakers of interest to Idaho citizens, students, and officials from all three branches of government.

February 11: A special hearing on Justice Reinvestment – Implementation, Status, Cost Savings, and Use of FY 2015 Appropriations will be presented to JFAC by the JRI Steering Committee (IDOC Director Kevin Kempf, Executive Director of the Idaho Pardon and Parole Commission Sandy Jones, and Patti Tobias on behalf of the Idaho Judiciary). The hearing is presently scheduled for 8:00 - 8:40 am MST.

February 12: Former Chief Justice Linda Copple Trout, Interim Administrative Director of the Courts, will deliver the Court's budget presentation to JFAC, presently scheduled for 8 :00 - 8:50 am MST.

February 18 or 19: Germane Committee Reports to JFAC (as it relates to the Idaho Judiciary, this means the Co-Chairs of the respective Senate and House Judiciary and Rules will address JFAC. Exact date and time have not yet been posted).

February 20: Public Hearing for budget-related issues has been scheduled by JFAC where general members of the public will be able to address the Committee.

February 23: JFAC starts setting FY 2016 Budgets. The exact date for the Idaho Supreme Court Budget Setting has not yet been posted.

March 13: JFAC's target date to complete all budget setting.

As a reminder for our remote on-line listeners who are interested in following legislative proceedings, first look for the appropriate agenda at <http://legislature.idaho.gov/sessioninfo/agenda.htm> . Then if you locate something of interest, at the designated time, tune in on-line to "Idaho in Session" at <http://idahoptv.org/insession/> . From there, click on the "Legislature" icon and follow the

prompts to the desired committee. Please note that JFAC has its own icon. In 2014 the Committee rooms were upgraded to include video as well as audio.

As always, if you have any thoughts, suggestions, or questions, please send them back this way -- <mailto:bwood@idcourts.net>. Thanks for reading.

Legislative News for the week ending January 23rd [Week 2]

Even though the Legislature has really just begun, there is already a prediction of an ending date, with some suggesting March 27 as *adjournment sine die*.

Other dates of interest which have been established by Legislative Leadership are the last day for filing a “personal bill” by an individual legislator in the Senate is January 23, and in the House is January 30. This means that any individual legislator can ask that a bill be introduced up to these dates. After the personal bill deadline has passed, there is a “germane committee” deadline of February 16 (36th legislative day). Following the germane committee deadline, any bill must come from a “privileged committee”. Monday was the official state Martin Luther King Jr./Idaho Human Rights Day Holiday but the Idaho Legislature had a full day of legislative activities on the schedule. Chief among them were JFAC beginning a full week of hearings on Health and Human Services budgets. Next week beginning January 26 is Education week before the Committee.

On the actual legislation side of things, [H0001](#), which was a renewed effort to get the Giant Salamander designated as the Official State of Idaho Amphibian, received a House State Affairs Committee hearing. The bill never made it through Committee amid lawmaker’s concerns about “federal overreach.” There have been annual attempts over the last five years by a young lady who is now an 8th grader to get this legislation through the process.

Court reporters may want to be aware that [H0030](#) dealing with certified shorthand reporters has been printed. We have not had time to evaluate what impact, if any, this may have.

The Legislature devotes much of its time in the first few weeks of every session to a review of administrative rules (IDAPAs) which have been drafted by the various State of Idaho executive branch agencies since the last session. These rules are drafted to implement or interpret laws enacted in prior sessions. This year is no exception, and the review process by the respective germane committees has begun in earnest. Idaho Law provides that the legislature can veto agency rules in whole or in part. Many of those rules do not attract very much attention; however some draw considerable attention. A few ultimately get rejected. Each Legislative Chamber reviews and votes on these rules independently of the other. Readers can access the rules coming before the respective Committees for review by visiting the Idaho Legislature Home Page, and clicking on the link [Administrative Rules](#).

[HJR 2 \(2014\)](#), which was on the ballot in November, 2014, sought to amend Article III of the State’s Constitution by adding a new section 29 preserving to the Legislature the ability to approve or reject, in whole or in part, these executive branch rules; and to provide that the legislature’s approval or rejection of a rule would not require the approval of the Governor. The stated purpose of this proposed amendment was to protect the separation of powers because these rules, once enacted, have the force and effect of law. The proposed Constitutional Amendment required a simple majority to become law; it failed by 4,705 votes or 49.4% to 50.6%.

Two areas of IDAPA rules developed since the 2014 legislative session which involve the Courts were heard by Sub-Committees of Germane Committees on January 21. The first of those related to [SB 1357 \(2014\) \(JRI\)](#) and the Rules governing the Supervision of Offenders on Probation or Parole, and the Rules governing establishment and operation of a Limited Supervision Unit by IDOC. Steve Bywater presented testimony to the House Judiciary and Rules Sub-Committee. The subcommittee voted to send the proposed rules to the full Committee for approval. These two IDAPAs are tentatively scheduled to come before the full House Judiciary and Rules Committee on either January 27 or 29.

The second were IDAPA rules developed by PERSI relating to the transfer of the Judges Retirement Fund (JRF) to PERSI for administration following [HB 660 \(2012\)](#) and the receipt of the required IRS Letter of Determination that the JRF was a qualified plan. The actual transfer of the JRF to PERSI for administration was effective July 1, 2014. These IDAPAs were before a subcommittee of the House Commerce and Human Resources Committee on January 21. The subcommittee voted to recommend approval of the Rules as drafted to the full Committee. These IDAPAs are also tentatively scheduled for hearing before the full House Commerce Committee next week.

President Obama made a visit to Boise on the afternoon of January 21, 2015, which required some accommodation of schedules for Legislators who wished to take time off and attend the President’s speech at BSU.

On the Radar

January 28: a panel of Magistrate Judges will make a presentation to the Senate Judiciary & Rules Committee

January 29: the Court's proposed four pieces of legislation are tentatively scheduled before the House Judiciary and Rules Committee for a print hearing beginning at 1:30 pm MST. [Click here](#) to check the Committee's agenda online, beginning late afternoon of January 28 for confirmation of the schedule.

February 2: Chief Justice Roger Burdick will deliver the *State of the Judiciary* to the Legislature

February 2: Elected Clerks and Judges Conference/ New Clerk Orientation at the Supreme Court

February 3: Administrative Conference

February 4: Idaho Department of Water Resources, together with Judge Eric Wildman, will present the water adjudication budget before JFAC

February 4: The Court's four "Defects" bills are tentatively schedule for a print hearing before the Senate Judiciary and Rules Committee

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Legislative News for the week ending January 16th [Week 1]

For those who wonder how the beginning date of the Legislature is set each year, see [Idaho Code § 67-404](#), which provides the session begins on the Monday closest to the 9th of January. In 2013 the date was January 7. In 2015 it was January 12. In 2016 it will be January 11.

The 1st Regular Session of the 63rd Idaho Legislature opened Monday, January 12, 2015. A Joint Session of the House and Senate, together with both the Idaho Supreme Court and the Court of Appeals in attendance, heard Governor Butch Otter's 9th [combined State of the State and Budget Message](#).

Additional written materials provided included *FY 2016 Budget Highlights* which included: “. . . the Governor recommends a 3% change in employee compensation (CEC) to be based on merit with flexibility for directors to address agency needs. He also recommends “fully funding increased health benefit costs, thus cancelling the scheduled shift of costs to employers.” This is a recommendation for executive branch agencies, and will be considered by the Legislature. A legislative committee held meetings and heard testimony from affected state employees last week and continued this week. The CEC discussed above does not apply to judicial employees (Justices and Judges because of SB 1394 from the 2014 session), but will likely apply to the Court's non-judicial employees. Other priorities of the Governor for this session include:

- Funding for an additional Crisis Center like the one put in Idaho Falls in 2014
- Calls for hearings on Idaho Medicaid redesign following the findings of a Workgroup
- Calls for collection of sales tax on internet sales of goods
- Significant funding increases for Public Schools
- Re-bidding of the Idaho Education Network Wi-Fi contracts for public schools
- Increase the numbers of Community Colleges
- Increased funding for Transportation infrastructure
- Reduce the rate of the State's income tax

Following the Governor's presentation to the Joint Legislative Session, the Department of Financial Management released the [Idaho General Fund Revenue Report](#) for January, 2015 listing FY2015 General Fund Revenues to date which shows the revenues are exceeding the FY 2014 actual collections but are slightly below projected revenues.

In other budget related news, Governor Otter – working through his staff – has predicted a 5.5% growth in state general fund revenue next fiscal year (but is recommending a spending increase at a level of 5.2%). The Legislature's joint Economic Outlook & Revenue Assessment Committee set their own revenue projection, which closely mirrored the Governor's. This determination is key because the dollar figure adopted by the Legislature's joint committee provides the basis for setting the state's budget. Idaho is clearly in a much better financial position than it was just a few short years ago during the big economic downturn. This is particularly good news for the Court's large Odyssey project and its continued funding needs.

On January 12, the members of the Joint Legislative Oversight Committee received a report from the Legislature's Office of Performance Evaluation which concluded that when the Legislature doesn't allocate monies for pay raises for state employees and instead directs agencies to use any salary savings for raises, the result is an inequitable distribution of raises and a “perverse incentive” for state agencies to not follow their budgets. [Click here for OPE's report](#).

The District Judges were in town January 12-14 for the annual District Judges Conference. On the evening of January 12, an award was presented to outgoing Director of the Idaho Department of Correction Brent Reinke (see photo in today's E-News). On January 13, the district judges appeared at the Capitol and the seven Administrative District Judges made a presentation to the House Judiciary, Rules and Administration Committee. The Committee members asked questions of some of the presenters and the program was well received. This presentation was broadcast statewide over Idaho Public Television's [“Idaho in Session” network](#).

The Justice Reinvestment Steering Committee (JRI) also met this week. This working group consists of the Director of IDOC, the Director of the Idaho Parole Commission, and Patti Tobias on behalf of the Idaho Supreme Court, together with a representative of the Governor's Office. Of significant interest legislatively, there may be a proposal to amend certain effective date provisions of [SB 1357 \(2014\)](#). This group is also working closely with the Court's Felony Sentencing Committee (FSC) on the implementation of SB 1357.

The Supreme Court justices and Court of Appeals judges met with Governor Otter and members of his staff on January 15 for lunch and an informal discussion on matters of interest to both Branches. Similar meetings with each legislative leadership team from both houses are being scheduled as well. These are annual events during the legislative session and we are very fortunate in Idaho to have such close working relationships with leadership from the other Branches of government.

On the actual legislation side of things, three bills have been introduced in the House as of this writing:

- [H0001](#) is a renewed effort to get the Giant Salamander designated as the State Amphibian. There have been multiple attempts over the last several years by a young school student to get this legislation through the process and it has provided some good humor along the way.
- [H0002](#) seeks to amend existing law to provide that freedom from discrimination because of sexual orientation or gender identity is a civil right. This printing is mentioned because it relates to the so-called “Add the Four Words” movement which resulted in numerous protests in the Capitol building during the 2014 Legislative Session, resulting in arrests of protesters, which in turn resulted in court proceedings for some of our magistrate judges.
- [H0003](#) seeks to clarify by amendment the statute containing the qualifications required to serve in the Idaho Legislature to match the requirements contained in the State’s Constitution. In a 2014 court case (Caleb Hansen v. Ysursa), the district judge recommended that the inconsistency be addressed to help eliminate confusion by someone looking only at the statute for the requirements. This proposed legislation is mentioned in part because there is also a bill being proposed to clarify appointment and election criteria related to judges. This proposal is being circulated to all judges for comment before it is actually printed, so our readers are encouraged to examine this proposal and provide feedback.

In other news around the Capitol which will have some impact on the Courts as they work with the Idaho Department of Correction, Governor Otter appointed Debbie Field as chair of the Idaho Board of Correction. Field is a former chair of the House Judiciary, Rules and Administration Committee, and replaces Robin Sandy who recently retired from the board.

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Pre-Session Legislative News [Week -0-]

The first *Legislative News* for the 2015 Session will be included in the E-News on Friday, January 16. However, here is a brief primer on how and what to follow the first week.

[Click here](#) to access the 2015 Legislative Home page. From this page, you can access many different matters of interest including calendars and agendas of the various legislative committees, the budget hearing schedules, the newly updated 2015 Legislative Directory, create your own individualized Bill Tracker, and you can watch live coverage of House and Senate floor proceedings, as well as legislative committee hearings. Just click on the link you are interested in.

On Monday, January 12 at 1:00 pm MST you can tune in to the Governor’s combined State of the State and Budget address. On Tuesday, January 13 at 1:30 pm MST you can listen live to the House Judiciary and Rules Committee where there will be a presentation by the Administrative District Judges. From the Legislative Home page link above, just click on the “Video and Audio Streaming” link and you will be taken to the “Idaho in Session – Legislature Live” page (www.idahoptv.org/insession/leg.cfm). From there, click on the appropriate links.

For Committees, scroll down to the “Committees/Locations” section and follow the prompts.

As of this writing, Committee agendas are not yet available or posted, but you can check the “Calendars and Agendas” link on the Legislative Home Page starting Monday, the 12th. These are usually posted by late afternoon for the next day’s business.

- >> Monday, January 12th is the first day of the session
- >> [Building Productive Legislative-Judicial Relationships](#)
- >> [2015 Legislative Review Teams](#)

2015 Budget & Legislative Priorities

[The Court’s Budget Priorities for the 2015 Legislative Session](#)

[The Court’s Legislative Priorities for the 2015 Legislative Session](#)

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