



CAPITOL REVIEW

A WEEKLY LEGISLATIVE REPORT

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SINE DIE - 2018 ADJOURNMENT

Wednesday, March 28, will likely mark the final day of the 2018 Legislative Session. Though yesterday was the 74th legislative day and the last time the legislature heard and voted on legislation on the floor, an Idaho Supreme Court ruling last year changed the procedure. Last July the court upheld Gov. Butch Otter's veto of legislation removing the state's 6% sales tax on groceries. The court also overturned a 39-year-old precedent and ruled that the Idaho Constitution requires the legislature to present all bills to the governor before they adjourn for the year. In ***Cenarrusa v. Andrus***, the court held that once lawmakers have adjourned their session for the year, the governor has **10 days** from the time he receives any particular bill to either sign it, veto it, or have it become law without his signature. The 3-2 ruling had gone unchallenged for nearly four decades. Two of the current justices signed a concurring opinion strongly suggesting they thought the ***Cenarrusa decision was wrong***. The lawmakers who sued contended that the exact wording of the state constitution only gave the governor 10 days from their session's adjournment, not from when he received the bill. Under their approach, Otter's veto of the grocery tax bill came too late, and the bill became law without his signature. Under ***Cenarrusa v. Andrus***, the veto was valid. In previous years, Idaho lawmakers could leave once they were done passing legislation. Instead, they will be sticking around for **five days** (including Saturday but not Sunday) to see if Governor Otter vetoes any of the bills sent to his desk. The final bill was delivered at 5:26 AM on Thursday, March 22.

PRIVATE PROPERTY RIGHTS UPDATE

H658a passed the **House 51-18-1** on the last day the legislature voted on bills this session. The Senate-amended version of the anti-trespassing bill was heard in the Senate earlier in the week and passed **29-6 on a party line vote**.

Most of the criticisms we have heard are criticisms of existing law and had little to do with the proposed legislation. Proponents and critics agree that current Idaho **trespass laws are broken**, resulting in widespread confusion about what constitutes a trespass and what is required for posting fenced and

cultivated lands. **Definitions and penalties are inconsistent** and scattered throughout the Code. Current trespass laws are confusing, contradictory and not well understood by law enforcement, landowners or the public.

What H658a does: It creates a consistent definition of trespass; increases fines and penalties for individuals convicted of criminal or civil trespass; specifies that criminal trespass requires that the individual "knew or had reason to know" he was on private property; specifies posting requirements for landowners; closes current loopholes which allow individuals to trespass until asked to depart; clarifies that both written and oral permission are permitted; and leaves Fish & Game fines and penalties in place.

What H658a does not do: It does not criminalize innocent behavior; it does not eliminate posting requirements; it does not criminalize the Girl Scouts, missionaries, door-to-door salesman, or business customers; and it does not provide a mechanism for landowners to bring unsubstantiated suits against others.

How Senate amendments changed H658: They clarified that oral permission is allowed; defined "remains" as it pertains to the meaning of trespass; specified that investigation costs must be reasonable and approved by the court; allowed for the prevailing defendant to recover attorney's fees for actions brought without foundation; protected tenants' rights to trespass claims; reduced a first-time offence to an infraction with a \$300 penalty rather than a misdemeanor if no damage was done; retained law enforcement's authority to cite an individual if they refuse to depart; and specified that all Fish & Game remedies apply to recreational trespass.

After being passed by the House, amended and passed by the Senate, and passed by the House again, H658a now goes to Governor Otter for his consideration.

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