

CAPITOL



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Education is learning what you didn't even know you didn't know.

-Daniel J. Boorstin

January 21, 2019
Issue 2

SLOW START FOR EDUCATION LEGISLATION

I don't know if it's good or bad that we are not seeing any education related legislation. It's good if that means we aren't going to see much this year, it's bad if it just means that it is going to hit all at once.

I think part of the reason for the slow start is that everyone is focused on the Public School Funding Formula. While the spreadsheet is out there for everyone to see and work with, we have yet to see the actual legislation that will implement the spreadsheet. Until we see the actual language, we can't even begin to start negotiating it. The longer into the session we get, the more difficult this is all going to become.

RULES 101

Another reason for the slow start is Administrative Rules. The first few weeks of the session are always devoted to the review of State Agency, Executive Branch, administrative rules. Once legislation is passed, that legislation will oftentimes direct a State Agency to more clearly outline the rule. For instance, the law says we must possess a driver's license to drive an automobile. The rule clarifies that we must be at least 14 years old, have taken driver's training, and we must drive with another licensed driver in the car etc. The same is true for education related laws and rules.

As the scope and complexity of public policy issues such as education increase, legislatures have difficulty keeping abreast of the need to adopt and amend legislation. Furthermore, the slow and cumbersome nature of the legislative process necessitates that government increasingly rely on administrative agencies to carry out its work. To this end, the Idaho Legislature has delegated authority to certain executive agencies to "fill in the blanks" and "flesh out" the legislation it passes through the promulgation of administrative rules. In the education arena, those executive agencies are the State Board of Education (SBOE) and the State Department of Education (SDE).

The Process

The process for making a rule (or rules) is lengthy, but reveals much about the checks and balances in place to ensure that the SBOE and the SDE are following the legislative intent. All rules are published in The Idaho Administrative Bulletin (Bulletin) on the first Wednesday of every month.

The following are the steps in the rulemaking process:

- **Step 1. Negotiated Rulemaking:** The SBOE and the SDE may, but is not required to, publish a Notice of Intent to Promulgate Rules in the Bulletin. This process is used when the agency wishes to negotiate the content of the rule. One or more meetings are scheduled with the affected stakeholders. At those meetings, the stakeholders and the SBOE or SDE craft the content of the rule. The SBOE and the SDE make it a habit to participate with the stakeholders in negotiated rulemaking.
- **Step 2 or 1. Proposed Rulemaking:** The first required step in the rulemaking process is to publish the proposed rule. The purpose of the proposed rule is to allow a timeframe and forum for those affected by the rule to provide comments. The SBOE or SDE must provide a comment period of no less than twenty-one (21) days after the date of publication in the Bulletin to gather input from schools, the public, and other interested parties. During this time the SBOE or the SDE may also hold hearings, either in person or telephonically, to allow stakeholders to provide verbal comments.

At the same time the rule is submitted to the Administrative Rules Coordinator, the rule is also submitted to the Legislative Services Office (LSO). After LSO staff reviews the rule and offers comments, the rule is then forwarded to the legislative germane joint subcommittee to afford them the opportunity to submit data, comments, or arguments in writing to the SDE or the SBOE.

- **Step 2 or 1. Temporary Rulemaking:** Temporary Rulemaking can only be done if it has been authorized by the Governor. Temporary rules are usually done at the same time as the proposed rule. In addition, there are certain criteria under which the Governor can approve a temporary rule. A temporary rule goes into effect immediately. In reality, the vast majority of rules are temporary. It can take in excess of one year to fully promulgate a rule. Most agencies and stakeholders want a rule to be in place before then. Consequently, the agency will adopt a temporary rule. That rule will remain in place until the rule has been fully promulgated.
- **Step 3 or 2. Agency Review:** After the comment period closes, the SBOE or the SDE reviews any comments that have been submitted. They may or may not make amendments to the rule based on the comments that were received. It is important to note that the SBOE or the SDE are not required to make amendments, only to review the comments.
- **Step 4 or 3. Pending Rule or Pending Fee Rule:** This is the second required step in the process. The Pending Rule, the full text of the rule is, once again, published in the Administrative Bulletin.
- **Step 4 or 3. Amended Temporary Rule:** It is important to note that the SBOE or SDE may also amend the temporary rule as well as the proposed rule. If that is the case, the rule would be published as a Pending and Amended Temporary rule. This is usually done in conjunction with the Pending Rule.

Legislative Oversight – The Next Step in the Process

Idaho is one of the few states in the nation that allows the legislative branch to have any part in an executive branch functions such as rulemaking. Idaho's legislature has the prerogative to accept or reject all, or any part, of an administrative rule. They cannot amend rules. As such, once rules go through their entire process with the State Agency and stakeholder input, the Legislature has the right to review them. This oftentimes makes for a lengthy and cumbersome process.

Actions Taken by the Legislature

The Legislature has several options related to the actions they can take on administrative rules. Those actions also depend on what type of rule it is.

- **Temporary Rule.** If the Legislature does not take formal action, a temporary rule will expire at the end of the session. Formal action is taken when both chambers adopt a concurrent resolution.
- **Pending Rule.** These rules comprise the bulk of what the Legislature reviews each year. A pending rule is not enforceable until it has gone through the entire process, including legislative review. They are literally “pending” review by the Legislature.
 - If the Legislature takes no action, a pending rule automatically goes into effect at the end of the session.
 - Remember that the only action the Legislature can take is to accept or reject.
 - In order for a pending rule to be rejected or amended, **BOTH** the House and Senate need to **AGREE** to reject or amend it.
 - Therefore, if one chamber accepts the rule and another either rejects or amends the rule, the rule will go into effect because they could not agree.
- **Pending Fee Rule.** This rule is actually a pending rule but contains a fee that will be imposed on those that it impacts. For instance, fish and game licensing or permit fees are found in rule.
 - Even though they are pending rule, the action that needs to be taken is the same as a temporary rule outlined above.
 - To my knowledge, there are no education rules that impose fees.

Why Rules are Important?

Administrative rules generally contain the details of the requirements placed on local school districts by the Legislature. For example, the vast majority of the requirements for local district and charter school teacher and principal evaluations, including what must be included in evaluation policies, are found not in statute, but in administrative rule. Thus, if district or charter policymakers only reference and/or examine the relevant statutes that reference employee evaluations, their local evaluation policies and procedures would not meet the requirements found in the administrative rules, which are quite detailed.

So What Is Happening With Rules This Year

Neither the SDE nor the SBOE passed as many rules as they have in past years, and they were all negotiated. All of the education stakeholders agreed to the text of the rules, so we were hoping for a quick and easy review and approval.

The Senate Education Committee chose to review the rules as a full committee rather than as subcommittees. While there has been some discussion and questions on the rules, they have been moving easily and quickly through the process. They have approved all rules that have been presented to them thus far.

The House Education Committee broke into two subcommittees of five members each. Those subcommittees will report back to the full Committee. These two subcommittees have struggled with the review of rules. The subcommittees have already rejected two rules. Both of the rejected rules give school districts and charter schools more flexibility. One rule is related to hiring out-of-state teachers and one is related to the senior math requirement. The rules will still need to go before the full Committee. We have written to Chairman Clow and told him that we will want to testify in support of the rules when they come before the full Committee.

If you remember from the process outlined above, the action of the House Education Committee will not have an impact on either of these rules. The Senate has already approved both of the rules. Remember, because they are Pending Rules, both chambers must agree to either reject or amend.

PUBLIC SCHOOL FUNDING FORMULA

There isn't much to update here. The House and Senate Education Committees had a joint meeting on Thursday for the ceremonial pass off from the Public School Funding Formula Interim Committee. Speaker Bedke spent most of the afternoon explaining to the Committee how the spreadsheet works. He encouraged everyone to "mess" with the spreadsheet. Put in numbers and take out numbers and see what will work and what doesn't work. We encourage you to work as a Board and Leadership team to review the spreadsheet. Here is a link to the spreadsheet:

<https://legislature.idaho.gov/sessioninfo/2018/interim/psff/>

In any case, once we see the actual legislation, we will have a better idea of what is actually being proposed. We will most definitely be asking you to contact your legislators once the bills start making it through the Legislature so please stay tuned for "call to action" emails from either Quinn or me.

ONE LAST THING

Governor Little adjusted his budget this week to include funding for 38 new support units. That means that student enrollment has increased again this year. Those 38 support units equate to \$3,529,900. That takes the budget for public schools next year from a 5.94% increase to 6.14% increase in the state general fund.

DON'T FORGET

In addition to our weekly Capitol Notes, Quinn and/or I will be doing a weekly Facebook Live. We will do that at 2:15 every Friday afternoon. It will be a quick and abbreviated version of Capitol Notes. So, if you don't have time to read all of this, please tune in live on Fridays. If you can't make it to the live version, you can always go back and listen to it later. This week's version is less than ten minutes. Here is a link:

<https://www.facebook.com/StandUp4IdahoPublicSchools/>

ISBA LEGISLATION BASED ON RESOLUTIONS

Below is our progress on each of the ISBA Resolutions.

Revision of Idaho Code on Excision (2018) – Legislation Needed

Status: We have drafted legislation, and the sponsoring district is working with their local legislator in hopes of finding a sponsor.

Education Allocation for Out of State Teachers (2018) – Legislation Needed

Status: We are hoping to include language amendments in the Funding Formula bill if and when that surfaces.

Card Check for Negotiations (2018) – HB647

Status: This legislation passed last year and is now law.

CTE Teachers Experience Factor (2018) – Legislation Needed

Status: We are hoping to include language amendments in the Funding Formula bill if and when that surfaces.

Contracts for Teachers Holding an Interim Certification under an Alternate Route (2018) – Legislation Needed,

Status: Although it passed the Senate unanimously, this legislation failed to pass the House Education committee last year. We are working to see if the House Committee would be willing to hear it again this year.

Move School Board Trustee Elections to November of Odd Years – (2018), SB1280

Status: This legislation passed and is now law.

Transportation Reimbursement (2018) – Legislation Needed

Status: This legislation needs a sponsor. However, there would be winners and losers under this legislation. We are asking to see if there would be any chance to refund the \$7.5 million that was removed during the recession. This is the only recession era cut that has not been restored. We are not hopeful that the funding will be available.

K-12 Funding Principles (2018)

Status: This resolution addresses the work of the Funding Formula Committee. Now that the Committee has finished their work, we will work closely with the House and Senate Education Chairs.

Discussion of the Sale of Public Property in Executive Session (2018) – Legislation Needed

Status: We were unable to come to terms with the Press Club on this language last year. We will try again this year but are not hopeful.

Permissible Education Activities in School Bond and Levy Elections (2018) – HB620

Status: This legislation passed and is now law.

Salary Based Apportionment for Classified Salaries (2019) – Legislation Needed

Status: We have drafted legislation. The sponsoring districts are working to find a legislative sponsor. Because this legislation carries a very large fiscal note and because some legislators are working on the funding formula legislation, we are not sure if the Legislature will be willing to address this issue this year.

Reduce Super Majority on Facility Bonds (2019) – Legislation Needed

Status: We have drafted legislation. As usual, we don't expect to see any movement on this legislation this year. We are hoping to convince some Legislatures to put a group of people together to discuss this issue. We are hopeful that we make some headway with a task force discussion.

Executive Session on Simple Majority (2019) – Legislation Needed

Status: We have drafted legislation and secured a sponsor for this legislation. We are hopeful that this legislation will be printed in the next couple of weeks.

Funding for Full Day Kindergarten (2019) – Legislation Needed

Status: We have drafted legislation. We may have a legislator who would be willing to print this bill as a personal bill. A personal bill means that it will likely never get a hearing but does make a statement that we need to discuss this issue.

Opposition to Public Funds Diverted to Private Schools (2019)

Status: This resolution does not require any legislation. We are hearing that a Representative will be bringing full blown tax credit legislation. We are hopeful that we can keep it from moving forward again this year. We will be reaching out to you to contact your legislators on this issue when it comes forward.

Amending School Age Statute for Flexibility (2019) – Legislation Needed

Status: We have drafted legislation and secured sponsors for this legislation. *We continue to work to try to get this heard in the Senate Education Committee even though the Chairman does not want to hear it. We believe we have the votes to at least pass it out of Committee.*

Recourse for Charter School Renewals (2019)

Status: After speaking with a representative from the State Board of Education, we believe that we can accomplish the tenets of this resolution through Administrative Rule. The SBOE will work on a rule after the legislation session and, if passed, it will go into effect in 2020.

Strategic Plans and Reporting Requirements (2019) – Legislation Needed

Status: *We have been provided with a copy of the SDE's version of the legislation. It was a recommendation from Superintendent Ybarra's Red Tape Committee so we expect that the SDE will carry this legislation. We have forwarded the SDE's version of the bill to the sponsoring districts to see if they approve of the compromise.*

Threats on School Grounds (2019) – Legislation Needed

Status: This legislation has been drafted, we have secured a sponsor, and the bill already has a Routing Slip (RS). The Legislature works on rules for the first week or two of the session, so we likely won't see this bill for a couple of weeks.

HOW TO CONTACT YOUR LEGISLATOR

Here is a link to the Idaho State Legislature page. It can help you find out who your legislators are and how to contact them: <https://legislature.idaho.gov/legislators/>

STAY TUNED

You can view any bills that are moving through the Legislature at the following link:

<https://legislature.idaho.gov/sessioninfo/>

If you want to listen to committee meetings or watch debate in JFAC or on the floor of either chamber, the links to do so can be found at:

<http://idahoptv.org/insession/leg.cfm>

ISBA Bill Tracker 2019

Bills highlighted in purple are based on ISBA Resolutions
Bills highlighted in red are dead
Bills highlighted in green have become law

Bill #	TITLE	STATUS	POSITION
	No Bills Affecting Education		