

MINUTES  
**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Tuesday, January 17, 2017

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Anthon, Ward-Engelking, and Burgoyne

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Patrick** called the Senate Commerce and Human Resources Committee (Committee) meeting to order at 1:30 p.m.

**PASSED THE GAVEL:** Chairman Patrick passed the gavel to Vice Chairman Guthrie to introduce the presenters for the rules review being heard.

**DOCKET NO. 09-0130-1601** **Unemployment Insurance Benefits Administration Rules. Joshua McKenna**, Benefits Bureau Chief, Department of Labor (Department), presented this docket. This current rule is being amended to remove references to outdated processes for handling claims and references to local offices. The change also would remove a section no longer required of a claimant coded (Code O) as attached to their employer.

This rule change removes reference to paper card reporting, reporting through a local office, and local office scheduling. Claims are now handled at the claim center or over the Internet. The change also removes the requirement for claimants attached to their employer to do more than maintain contact with their employer.

Negotiated rulemaking was conducted. There is no fiscal impact to the state.

**DISCUSSION:** **Senator Lakey** wanted to know if Code O was defined elsewhere other than on page 193. **Mr. McKenna** explained the code was an internal code used for the Department's computer system and there was no other place in the rule where it was defined. He stated that a Code O claimant must maintain regular contact with their employer(s) or union.

**Senator Burgoyne** pointed out that negotiated rulemaking was conducted and there were no comments. He said he understood that employees are job attached and on a temporary layoff. He said he thought this rule was consistent with what employers wanted.

**MOTION:** **Senator Burgoyne** moved to approve **Docket No. 09-0130-1601**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
48-0101-1601**

**Rules of the Idaho Grape Growers and Wine Producers. Roger Batt**, representing the Idaho Grape Growers and Wine Producers Commission (Commission), presented this docket. He said the passage of H 456 by the Idaho Legislature amended Idaho Code § 54-3610, and removed statutory assessment language that was inconsistent with and duplicative to the Idaho Grape Growers and Wine Producers Commission's administrative rules that were approved by the Idaho Legislature in 2010 with respect to grapes and grape juice purchased from out-of-state producers for the production of wine in Idaho. Omission of this duplicative language was inadvertently overlooked by industry prior to the 2016 legislative session. By statute, the Commission is charged with setting forth the assessment calculations in rule for Idaho's grape and wine industry. In reviewing the current assessment structure for grapes and grape juice, Idaho wineries have brought forth the request to simplify the assessment structure for future assessment cycles.

**Mr. Batt** stated the current assessment structure has proven confusing for industry members and requires them to convert wine grapes purchased in tons into gallons produced before applying assessment payments. In turn, the Commission has to reconvert gallons to tons in order to determine total tons harvested in Idaho for that year. The temporary and proposed rule streamlines the assessment process by requiring both wineries and vineyards to pay assessments based on tons rather than any conversion to gallons, as well as removes the need for the Commission to convert gallons to tons for proper harvest numbers.

**Mr. Batt** reported that no change to the assessment rate is proposed and the Commission will not experience a fiscal impact. The rule may allow wineries to reduce the time involved in submitting assessments, while reducing costs. Voluntary tax was changed from .04 cents per gallon to \$7 per ton of grapes purchased by producers in Idaho during the previous calendar year for the production of wine in Idaho. A \$7 tax per ton of grapes is assessed for purchases by producers outside Idaho during the previous calendar year for the purpose of the production of wine in Idaho. A .04 cent tax was assessed for grape juice purchased by producers outside Idaho during the previous calendar year.

Negotiated rulemaking was conducted.

**MOTION:**

**Senator Souza** moved to approve **Docket 48-0101-1601**. **Chairman Patrick** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
07-0205-1601**

**Rules Governing Plumbing Safety Licensing. John Nielsen**, Plumbing, Heating, Ventilation, and Air-Conditioning (HVAC) Program Manager, Division of Building Safety (DBS), presented this docket. The construction industry in Idaho is facing a critical shortage of skilled workers, including plumbers. As it currently stands, many plumbers come to Idaho from states that do not require schooling, which leaves them unable to qualify for testing as a journeyman. This rulemaking change would allow for such a person to qualify for a journeyman's exam by demonstrating they have eight years of plumbing experience defined as 16,000 hours, in lieu of the current requirement of four years' experience and four years of schooling.

**Mr. Nielsen** explained negotiated rulemaking was not conducted because the contents of this rulemaking related to the experience and education requirements for out-of-state plumbers who seek licensure as journeymen in Idaho. This proposal has been discussed at numerous Plumbing Board (Board) meetings over the past several years. Initially, a rule was established and approved by the Legislature in 2015 setting forth the licensure requirements; however, after further discussion with plumbing contractors, the Board determined to further revise the requirements for out-of-state applicants. This rule provides a benefit to Idaho plumbing contractors

who may need to hire journeymen who have plumbing experience acquired in another state, but who have not been required to perform schooling in that state. For those journeymen who have sufficient plumbing experience in the form of a minimum of eight years' experience working as a plumbing journeyman in the trade, this rule would allow them to be eligible to take the plumbing journeyman exam in Idaho. There is no fiscal impact to the state.

**DISCUSSION:** **Senator Martin** wanted to know if all of the work had to be performed in Idaho in order to qualify to take the journeyman's test. **Mr. Nielsen** said that not all of the hours had to be performed in Idaho and that experience could be from outside of the state.

**Senator Burgoyne** asked if the unions were in support of this change. **Mr. Nielsen** replied the unions were in support.

**MOTION:** **Chairman Patrick** moved to approve **Docket No. 07-0205-1601**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 07-0207-1601** **Rules Governing Civil Penalties.** **John Nielsen**, Plumbing, Heating, Ventilation and Air Condition (HVAC), Program Manager, Division of Building Safety (DBS), presented this docket. Currently, plumbing contractors are exempt from a civil penalty for failing to pay for or obtain a plumbing permit prior to making a plumbing installation, as well as exempt from a civil penalty for failing to make corrections of plumbing installations when notified by the DBS. As a result, short of licensure discipline, there is no recourse available to the DBS if a contractor chose not to comply with the permitting and inspection requirements in statute or rule. This rulemaking puts contractors on equal footing with plumbing specialty contractors and homeowners who are already subject to civil penalties for the same violations.

**Mr. Nielsen** explained negotiated rulemaking was not conducted because the rulemaking is simple in nature. This rulemaking was discussed at several DBS Board meetings over the course of the last year, and there was no opposition. The rulemaking includes plumbing contractors among those who may receive a civil penalty for certain violations of the plumbing statutes and rules. There is no fiscal impact to the state.

**DISCUSSION:** **Senator Martin** wanted to know what the procedure or activity was that required a permit. **Mr. Nielsen** said anything defined as plumbing would require a permit. **Senator Martin** queried if that included interior work repairs. **Mr. Nielsen** said that replacing fixtures and moving plumbing would require a permit. **Senator Martin** asked that if a homeowner wanted to replace a fixture, would a permit be required. **Mr. Nielsen** said that was correct.

**Senator Burgoyne** asked **Mr. Nielsen** to explain how the rule was changed. **Mr. Nielsen** stated that currently, a plumbing contractor can perform work and not apply for a permit. When a violation occurs, a letter of violation is sent to the contractor. If the homeowner does not apply for a permit, a civil penalty is imposed.

**MOTION:** **Chairman Patrick** moved to approve **Docket No. 07-0207-1601**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**, with **Senator Martin** requesting that he be recorded as voting nay.

**DOCKET NO.  
07-0701-1601**

**Rules Governing Installation of Heating, Ventilation and Air-Conditioning (HVAC) Systems.** **John Nielsen**, Plumbing and HVAC Program Manager, Division of Building Safety (DBS), presented this docket. Currently, electric and gas conveyor pizza ovens are defined as a "Medium-Duty Cooking Appliance" which requires the installation of a Type I hood. These pizza ovens do not produce enough smoke and grease to justify a Type I hood. Accordingly, by removing pizza ovens from the definition of "Medium-Duty Cooking Appliance" and redefining them as a "Light-Duty Cooking Appliance," only a Type II hood would be required to be installed. This is less expensive than a Type I hood and the installation requirements are less restrictive. Additionally, some manufacturers are already selling the ovens with Type II hoods as a single unit. These would not be allowed under the current code.

Finally, the DBS would like the ability to produce written interpretations of the rules in the event that it is advisable to do so in order to provide clarity or direction to those making HVAC installations. Such written interpretations would be available for public inspection and copying. There is no fiscal impact to the state.

**DISCUSSION:**

**Senator Lakey** asked if the ability to produce written interpretations was binding. **Mr. Nielsen** said that was correct. **Senator Lakey** asked if the same authority was given to other agencies or entities for a comparison. **Mr. Nielsen** referred to the rule and said that in accordance with Idaho Code § 67-5201, this agency may have written statements that pertain to the interpretations of the rules of this chapter, or in compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the DBS offices.

**Senator Burgoyne** remarked it sounded like the interpretations were not rules, but interpretation by the agencies of the rules.

**Senator Souza** stated the light hoods are significantly less expensive than the Type I hoods and the barrier to accessibility or the government regulation is being reduced for a person who wants to start a pizza business. **Mr. Nielsen** said that was correct.

**Senator Martin** asked if this rule applied to a residential home and **Mr. Nielsen** replied that it did not.

**MOTION:**

**Chairman Patrick** moved to approve **Docket No. 07-0701-1601**. **Senator Souza** seconded the motion.

**Senator Burgoyne** said he would like to vote aye but he would be more comfortable if he had more evidence. He stated hood fires in restaurants are not uncommon. He has seen pizza ovens as hot as 1,200 degrees. **Mr. Nielsen** replied the Type II pizza oven was similar to conveyor-type pizza ovens. **Senator Burgoyne** said that was helpful.

**Senator Lakey** said he was uncomfortable with whether written interpretations were binding or non-binding. He asked what kind of precedent was there with other agencies. **Mr. Nielsen** said the rule is binding and the interpretation would be along the lines as how the DBS would enforce the rules.

The motion carried by **voice vote**, with **Senators Lakey, Anthon** and **Burgoyne** requesting that they be recorded as voting nay.

**DOCKET NO.  
10-0101-1601**

**Rules of Procedure.** **Keith Simila**, Executive Director, Idaho Professional Engineers and Land Surveyors (IPELS), presented this docket. The amendments will update the education requirements for licensure as a professional land surveyor for applicants with unaccredited surveying or related programs. The update aligns Idaho's education requirements with those used in most states and broadens the course options for those with unaccredited or non-surveying four-year degrees. It provides more educational choices for those seeking to enter the land surveying profession.

Negotiated rulemaking was conducted. There is no fiscal impact to the General Fund or to the dedicated fund of the IPELS Board by this rule change.

**DISCUSSION:**

**Senator Souza** asked Mr. Simila to verify the intent of the rule changes to make it more generic, which would allow other institutions around the state to offer courses for students (other than Idaho State University (ISU)). **Mr. Simila** said this change offers a pathway for students to take courses anywhere.

**MOTION:**

**Senator Ward-Engelking** moved to approve **Docket No. 10-0101-1601**. **Senator Thayn** seconded the motion.

**Senator Lakey** asked if the number of required hours was the same or increased. **Mr. Simila** said the hours were in line with the national requirement and were increased from 27 to 30 hours or one additional course.

The motion carried by **voice vote**.

**DOCKET NO.  
10-0101-1602**

**Rules of Procedure.** **Keith Simila**, Executive Director, Idaho Board of Professional Engineers and Land Surveyors (IPELS), presented this docket. The amendments will provide a new section defining the process for applying for a Restricted Professional Engineering (PE) license available to Ph.D. faculty teaching upper division engineering courses at an Idaho university.

**Mr. Simila** explained negotiated rulemaking was conducted. There is no fiscal impact to the General Fund or to the dedicated fund of the IPELS Board by this rule change.

**DISCUSSION:**

**Senator Burgoyne** and **Mr. Simila** had a conversation about the need for the rule. Those that teach need a license, but do not have to take an exam. The purpose was to direct how the IPELS Board will implement the rule.

**MOTION:**

**Senator Ward-Engelking** moved to approve **Docket No. 10-0101-1602**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
10-0102-1601**

**Rules of Professional Responsibility.** **Keith Simila**, Executive Director, Idaho Board of Professional Engineers and Land Surveyors (IPELS), presented this docket. The amendments will clarify the requirement to base opinions stated in reports, statements or testimony when founded on adequate knowledge of the facts, adequate competence, and honest conviction of the accuracy and propriety of the information. The existing rule does not include this requirement for documents and testimony unless serving as an expert witness. The rule change clarifies the intent of the IPELS Board.

**Mr. Simila** stated negotiated rulemaking was conducted. There is no fiscal impact to the state General Fund or the agency dedicated fund.

**MOTION:**

**Senator Ward-Engelking** moved to approve **Docket No. 10-0102-1601**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**PASSED THE  
GAVEL:**

Vice Chairman Guthrie passed the gavel back to Chairman Patrick.

**RS 24825:** **Relating to Mediation of Disputes.** **Keith Simila**, Executive Director, Idaho Board of Professional Engineers and Land Surveyors (IPELS), said this Routing Slip (RS) authorizes the IPELS Board to require mediation of disputes between licensed land surveyors. The purpose is to reduce the prospect of litigation between property owners related to boundary disputes based on differing placement of corners by land surveyors. Land surveyors sometimes disagree on the validity of evidence used to locate property corners. This may create a dispute between land surveyors.

The amendment authorizes the IPELS Board to require that land surveyors make a reasonable effort at non-binding mediation to resolve their disputes. The use of a third-party mediator is intended to assist in evaluating the facts and working toward a resolution. Often, a land owner's only other recourse to resolve a dispute is litigation. The amendment is intended to assist in reducing the prospect of litigation by reaching a mediated settlement early in the process. There is no fiscal impact to the IPEL agency's dedicated fund or the General Fund.

**DISCUSSION:** **Senator Lakey** wanted to know whether mediation would be binding or non-binding and should this be classified in code. **Mr. Simila** said only courts can bind mediation and he assumed people would understand. He offered to revise the Statement of Purpose (SOP) in order to clarify and said arbitration would be binding, but not mediation. **Senator Lakey** stated he had no problem with printing the bill.

**MOTION:** **Senator Martin** moved to print **RS 24285**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**RS 24827:** **Relating to Basis of Bearing Must Have Two Existing Monuments.** **Keith Simila**, Executive Director, Idaho Board of Professional Engineers and Land Surveyors (IPELS), said the purpose of this Routing Slip (RS) is to clarify that the basis of bearing must have two existing monuments (angle relative to true north). Surveyors need to occupy two monumented corners in order to properly align the coordinates of different surveys. The basis of bearing enables succeeding land surveyors to set up on the same line to start their new survey. This creates maps that can be compared equally to each other, reducing the likelihood of misinterpreting the location of property boundaries. It is important that succeeding land surveyors be able to physically occupy the same two points in order for succeeding surveys to be comparable. The amendment clarifies that the two locations must physically be located on the ground and not calculated points or missing monuments. There is no fiscal impact to the IPELS agency or the General Fund.

**DISCUSSION:** **Senator Lakey** asked why the verbiage said between two corners or two monumental corners. **Mr. Simila** said all corners should have a monument. He said there can be a monument that is not on a corner. **Glenn Bennett**, IPELS Board member, said a corner marks a position and a monument marks a corner. The corner is the physical position and a monument marks that position. Surveyors need to be able to see the corners. **Senator Lakey** said he trusted Mr. Bennett's expertise.

**MOTION:** **Vice Chairman Guthrie** moved to print **RS 24287**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:30 p.m.

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Senator Patrick  
Chair

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Linda Kambeitz  
Secretary