

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, January 10, 2013

SUBJECT	DESCRIPTION	PRESENTER
	Welcome	Senator Tippetts
	Introductions	Senator Tippetts
	Assignment of Rules	Senator Patrick
	Review	Senator Patrick

COMMITTEE MEMBERS

Chairman Tippetts

Vice Chairman Patrick

Sen Cameron

Sen Goedde

Sen Guthrie

Sen Martin

Sen Lakey

Sen Schmidt

Sen Durst

COMMITTEE SECRETARY

Linda Kambeitz

Room: WW46

Phone: 332-1333

email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 10, 2013

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt, and Durst

**ABSENT/
EXCUSED:**

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 Tippetts** called the meeting to order at 1:32 p.m. and welcomed members of the Committee and thanked them for being willing to serve.

INTRODUCTIONS: **Chairman Tippetts** introduced **Linda Kambeitz**, Committee Secretary and **Chace Tolman**, Committee Page, from Bancroft. He asked each to say a little about themselves to the Committee. **Linda Kambeitz** said she was at the Senate last year as a substitute while another secretary was out on medical. She said she was happy and honored to be at the Senate. She said she rode her horse when the Legislature was not in session and that she was a retired administrator from a school district in California. She said she moved here with her husband after they retired and that they love Idaho. **Chace Tolman** said he was working here as a Page for the Senate. He is a senior at North Gem High School and has been in Student Government for four years. He has been interested in the Legislature and how government works. He was grateful to have been selected to serve at the Senate. He indicated he was excited to see how everything goes and so far he is loving it. **Chairman Tippetts** said **Chace** was a bit of a "teckie" and he was helping **Linda**. **Chairman Tippetts** asked each member of the Committee to introduce themselves.

Senator Durst said he had served for four years in the House and then he took a two-year break. He stated he was on the Business Committee in the House and he has a small business that does marketing research.

Senator Schmidt said he has been on the Committee for the past two years and has learned a lot. He said he was happy to be here.

Senator Goedde said he has spent his entire legislative career on the Committee and it has been a very fruitful time and he has learned a lot. He said he enjoyed debate. He stated he was a small business owner, but sold his business about two years ago. He then stated that he is semi-retired, which gives him the opportunity to focus on his legislative duties.

Senator Patrick said he was from Magic Valley and a farmer. He has been a bank director for 15 years and currently is a bank director for one of the largest state charter banks in Idaho. He is especially privileged to be on this Committee with the current members.

Senator Cameron said he was from District 27 and he was the former Chair of this Committee. He has been on this Committee almost every year. He indicated he enjoyed the issues and was grateful to be back. He was looking forward to working with everyone. He asked to be excused from this meeting as he was summoned to a meeting at the Pro-Tem's office. **Chairman Tippetts** excused **Senator Cameron**, who then left.

Senator Guthrie said he was from District 28 and came from the House where he was on the Business Committee. He said he was looking forward to working with everyone on the Committee.

Senator Martin said he was from District 15 and that he and his wife just had their 16th grandchild. He indicated he wanted to be on the Commerce Committee and was happy to be here.

Senator Lakey said he was from District 12 and that he was an attorney in private practice relating to business and real estate. He indicated this Committee was one of his first choices.

Senator Tippetts said he was in the House in 1988. He served on the Business Committee, but has served on this Committee for the last two years. He said he looked forward to working with everyone.

**PASSING OF
GAVEL:**

Chairman Tippetts passed the gavel to **Vice Chairman Patrick** to introduce **Brooke Murdoch** to explain the administrative rules.

PRESENTATION:

Vice Chairman Patrick introduced **Brooke Murdoch** from the Legislative Services Office, who explained the administrative rules and told everyone where to look on the web site to print a copy of the analysis of the rules. She said that **Ed Hawley** from the Administrative Rules Office was here with her to answer any questions the Senators may have. She suggested that the Senators, in conjunction with reading the rules, also read the memos that her office puts together that are on-line at the Legislative web site. The memos are helpful and provide an analysis of the rules. Rules are color coordinated to distinguish the type of rule the Committee will be reviewing. There are three different types of rules:

1. Pending rule - This rule is not in effect, but pending review by the Committee. If the Committee thinks that a pending rule they are reviewing violates the legislative intent of the statute, the Committee can request that the rule not be approved by using a concurrent resolution. The rule can be rejected in its entirety or a sub-section or section of the rule can be rejected. If the Committee is satisfied with the rule and it does not violate legislative intent, and the Committee does nothing with the rule, then it will go into effect at the end of the session. No motion would be needed.

2. Pending fee rule - This rule is not in effect, but pending review by the Committee. This is a rule that proposes changes in a fee or a charge. These rules are acted upon differently and don't become final unless they are acted upon by concurrent resolution.

3. Temporary rule - These rules are in effect when the Committee is looking at them, but they do not remain in effect beyond the legislative session and they will lapse unless extended by a concurrent resolution.

She asked if there were any questions. **Vice Chairman Patrick** asked for a clarification on temporary rules. **Brooke Murdoch** explained that temporary rules do not remain in effect beyond the legislative session unless they are extended during the legislative session by concurrent resolution.

Chairman Tippetts indicated there was a packet in the folder that each Senator had and there was a brief summary on page 12 of **Brooke Murdoch's** presentation.

Brooke Murdoch said that after a rules review, **Chairman Tippetts** sends a written report of the review to the Pro-Tem with a list of the rules the Committee does not want to approve. Based on that letter, for each pending rule that the Committee decides not to approve, a concurrent resolution will be prepared disapproving the rules. A concurrent resolution has to have approval from both the House and the Senate to pass. For pending fee rules, she waits for all letters from all of the Committees and then she prepares one omnibus concurrent resolution approving all of the fee rules, except those that have been specifically rejected. The same thing happens with the temporary rules.

Vice Chairman Patrick said that **Ms. Murdoch's** presentation was very helpful and **Chairman Tippetts** thanked **Brooke Murdoch** as well. **Vice Chairman Patrick** indicated there was a list of rules prepared for review and two people were chosen for each set of rules to read and make the motions. He said he thought it was important for individuals to understand very well the rules which are assigned. He further indicated that if they wanted to switch with someone, he did not have a problem with that. Prior to Tuesday, they will have a schedule as to who will be presenting.

Chairman Tippetts said that for the benefit of those who were new on the Committee, he wanted to mention that the day we consider specific rules, we will have someone from the agency to present. We will have the opportunity after that to discuss the rules and he assumed that the intent was to take a vote on the rules at that time. **Vice Chairman Patrick** said that was correct.

Chairman Tippetts wanted to remind everyone there was an invitation at 2:30 p.m. to 4:30 p.m. from Paul Jackson from Farmer's Insurance Group regarding Insurance 101 Training Session in the East Wing, Room 05. He listed the topics and said the topics would only be of interest to those in the insurance business or a legislator dealing with those kinds of issues.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 1:58 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, January 15, 2013

SUBJECT	DESCRIPTION	PRESENTER
Docket No	Pending Rules	
<u>01-0101-1201</u>	Rules Review - IADAPA 01 - BOARD OF ACCOUNTANCY 01.01.01 - Idaho Accountancy Rules	Kent Absec, Complaints, Legislation & Administrative Rules
<u>09-0104-1201</u>	Rules review - DEPARTMENT OF LABOR 09.01.04 - Unemployment Insurance Benefit Fraud and Overpayment Rules	Communications & Legislative Affairs Manager, Bob Fick
<u>09-0130-1201</u>	09.01.30 Unemployment Insurance Benefits Administration Rules	
<u>09-0135-1201</u>	09.01.35 - Unemployment Insurance Tax Administration Rules	
<u>12-0110-1201</u>	Rules Review - DEPARTMENT OF FINANCE 12.01.10 - Rules Pursuant to the Idaho Residential Mortgage Practices Act	Gavin Lee, Director or Mike Larson, Bureau Chief
<u>24-0101-1201</u>	Rules Review - BUREAU OF OCCUPATIONAL LICENSES 24.01.01 - Rules of the Board of Architectural Examiners	Roger Hales, Administrative Attorney
<u>24-1801-1201</u>	24.18.01 - Rules of the Real Estate Appraiser Board	
<u>24-2501-1201</u>	24.25.01 - Rules of the Idaho Driving Businesses Licensure Board	
<u>59-0103-1201</u>	Rules Review - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO 59.01.03 - Contribution Rules of PERSI	Don Drum, Executive Director or Joanna Guilfoy, Deputy Attorney General Assigned to PERSI

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

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MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst

ABSENT/ EXCUSED:

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CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m. and welcomed the Committee Members to the experience of reviewing the rules.

MOTION: **Senator Patrick** moved, seconded by **Senator Cameron**, to approve the minutes of January 10, 2013. The motion carried by **Voice Vote**.

PASSING OF GAVEL: **Chairman Tippetts** passed the gavel to **Vice Chairman Patrick** to introduce the presenters for the review of the rules being heard.

Rules Review - IADAPA 01 - BOARD OF ACCOUNTANCY - 01.01.01 - Idaho Accountancy Rules.

DOCKET NO. 01-0101-1201 **Kent Absec, Executive Director for the Idaho Board of Accountancy**, said this was a new position for him that he took over in March of 2012. He said he was a native Idahoan from northern Idaho and Boise and that he spent 22 years in the banking industry prior to taking this job. He stated he has been on the other side of the regulatory issues. He described the agency as a seven-member board appointed by the Governor with one office in Boise. He said that since 1917, the Board has licensed and regulated Certified Public Accountants (CPAs) in Idaho. A director and three staff members assist the Board in carrying out its responsibilities. **Mr. Absec** said the Board strives to act swiftly in protecting the public whenever an issue arises with a possible impact upon the citizens of Idaho. Currently, there are approximately 2,700 CPAs and Licensed Public Accountants (LPAs) licensed in the state.

Mr. Absec summarized the rule docket his agency issued and began with Docket No. 01-0101-1201 Idaho Accountancy Rules on pages 3-5. The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Amend Rule 004.02 to update the incorporation by reference from 2002 to 2012 for the "Statements on Standards for Continuing Professional Education." The "Statements on Standards for Continuing Professional Education" was jointly approved by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA) in 2012.

Mr. Absec said continuing education is required for CPAs to maintain their professional competence and provide quality professional services. CPAs are responsible for complying with all applicable Continuing Professional Education Programs (CPE) requirements, rules and regulations of state boards of accountancy, as well as those of membership associations and other professional organizations. The Preamble of the "New Statement on Standards", says the standards are broadly stated in recognition of the diversity of practice and experience among CPAs. They establish a framework for development, presentation, measurement, and reporting of CPE programs to help ensure that CPAs receive the quality learning experience necessary to satisfy their obligations to serve the public interest.

Mr. Absec stated the newly revised standards will provide flexibility for new methods and ideas in learning techniques, and the changing delivery method technologies allow for future considerations around outcome-based learning. Significant revisions are in the areas of group internet-based learning with the addition of standards which were not included in the 2002 standards and self-study programs. There are changes in the issuance requirements for half credits under self-study programs; and alternate methods for calculating CPE credits for self-study programs which are widely used today.

These standards have endured the vetting process of stakeholders from all facets of the CPE community, including but not limited to CPE program sponsors, state boards of accountancy members, state society members, educators, and ultimately being approved by the AICPA and NASBA Board of Directors. CPE program developers and program sponsors are aware of the standards they will be held to in the area of CPE. **Mr. Absec** said our licensees and the general public will benefit from knowing that guidelines have been established around a CPA's continuing professional education which helps promote a quality and effective learning experience. He said this rule has been published through the Office of Administrative Rules. Legislative Services has reviewed the proposed rule and has no objections to the change. We have received no negative feedback from our stakeholders or the general public. He thanked the Committee for the opportunity to address them.

MOTION: **Senator Cameron** moved, seconded by **Senator Goedde**, to adopt Docket No. 01-0101-1201. The motion carried by **voice vote** .

Idaho Department of Finance Rules Review

DOCKET NO. 12-0110-1201 **12.01.10 - Rules Pursuant to the Idaho Residential Mortgage Practices Act, Michael Larsen, Consumer Finance Bureau Chief, Idaho Department of Finance**, explained the reason for adopting the pending rule was to update references to federal laws and regulations from "January 1, 2011" to "January 1, 2013," to correct references to federal regulations. Even though there were no changes to the pending rule as published, the Department inadvertently included the date of "January 1, 2012" instead of "January 1, 2013" in the descriptive summary portion of the Notice of Rulemaking. The proposed rule also included a definition of the Nationwide Mortgage Licensing System and Registry Policy Guidebook. He stated there were no changes to the pending rule and it was being adopted as originally proposed. He indicated the complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, Volume 12-10, pages 211-213. **Mr. Larsen** said they meet regularly with stakeholders and they have thoroughly reviewed the rules with the Mortgage Advisory Board. He said they received no comments or opposition to the rules.

Chairman Tippetts referred **Mr. Larsen** to the language on page 84, to the descriptive summary and the paragraph that starts with "[t]he purpose of" on the second line, "to correct references to federal regulations, and to include a definition of the Nationwide Licensing System and Registry Policy Guidebook". He said, as he actually looks at the rule, it does more than simply provide a definition as mentioned in the summary. **Chairman Tippetts** said it looked to him like, in addition to providing a definition, they are actually incorporating, by reference, this particular document. He said the descriptive summary was deficient in his mind because it did not completely describe the effect of the rules. He stated that **Mr. Larsen** mentioned there was not any opposition. **Chairman Tippetts** asked if those receiving this notice had been aware that it was not actually providing a definition, but actually incorporating this document by reference, and in **Mr. Larsen's** opinion, was there any chance that would generate a controversy. **Mr. Larsen** said the quick answer was "no". He said **Chairman Tippetts** had an excellent point and it took him back to when these were drafted and this was in the definition section. Upon the advice of the rules folks, we transferred that into this section. The Idaho Residential Mortgage Practices Act requires licensees to adhere to the policies of the Nationwide Mortgage Licensing System. He did not think there would be any controversy or objection to this because the licensees adhere to these guidelines and procedures. The descriptive summary should have been adjusted to reflect that. **Chairman Tippetts** clarified with **Mr. Larsen** by asking if the interested parties were well aware that this was more than just including the definition they wrote, but that there was an incorporation of this policy. **Mr. Larsen** answered "yes", this policy guide is adhered to in every jurisdiction and they are familiar with it. He did not think there would be any objection.

Senator Durst thanked **Mr. Larsen** for being there. He said his question was in the same sub-section as **Chairman Tippetts'** question. He asked whether any mortgage entity or mortgage broker may not subscribe to the same set of rules or is this industry standard. **Mr. Larsen** said that every mortgage company licensee has to obtain and maintain a license through the Nationwide Mortgage License System. This was required of states by the Federal SAFE Act, so that policy guidebook grew out of an effort to have uniformity. He stated that this is something the industry is very familiar with.

MOTION: **Senator Durst** moved, seconded by **Senator Goedde**, to adopt Docket No. 12-0110-1201. The motion carried by **voice vote**.

Idaho Bureau of Occupational Licenses Rules Review

DOCKET NO. 24-0101-1201 **24.01.01 - Rules of the Board of Architectural Examiners, Roger Hales, Administrative Attorney.** **Vice Chairman Patrick** indicated this item was pulled from the agenda until further notice at the request of the Bureau of Occupational Licenses. Hopefully, he said, we will get this item resolved by the next meeting.

DOCKET NO. 24-1801-1201 **24.18.01 - Rules of the Real Estate Appraiser Board, Roger Hales, Administrative Attorney** referred to page 132 of the Pending Rule Book and he said, based on the recommendation last year by **Senator Goedde**, they added classroom hours. Last year the Board adopted a temporary rule to make this effective immediately. They are now bringing this pending rule forward to make it permanent. He indicated there was another change on page 136 which included a classroom, conference/seminar, on-line or a virtual classroom. Finally, the only additional change was in Subsection C which clarifies how the course provider can request courses. Essentially, they will have to submit an approval application, along with the fee that was previously established. They have received no comments or opposition.

MOTION: **Senator Goedde** moved, seconded by **Chairman Tippets**, to adopt Docket No. 24-1801-1201. The motion carried by **voice vote**.

DOCKET NO. 24-2501-1201 **24.25.01 - Rules of the Idaho Driving Businesses Licensure Board, Roger Hales, Administrative Attorney** referred the Committee to pages 138 and 139, Rule 225. The board is clarifying the classroom scenario which says a driving business license enables a licensee to operate a driver education business at one principal classroom location as designated in the application. The licensee may also utilize secondary locations for classroom instruction, so long as the business does not conduct driver education at any given secondary location for more than 60 consecutive calendar days in a one-year period. **Mr. Hales** indicated that on page 141 there was a clarification as to how many hours one can teach in a single day. This rule was addressed and published with no comments or opposition.

Senator Goedde asked **Mr. Hales** if he had driving schools that were abusing the six hour rule. **Mr. Hales** said it was his understanding there were a couple of parents who expressed a concern about how long a driver class was on a given day. The Board had a concern that it was inappropriate to teach a course more than six hours a day.

Senator Cameron said he had a question with the wording on page 141 and asked if it would prohibit a class from being given in the evening on one day and the morning of the following day where it says within a 24-hour period of time. **Mr. Hales** said he believed it would, but it was his understanding the courses were typically given at a set time. **Senator Cameron** asked if it would prohibit someone who is offering a class to one group of students at one time, and then not being able to offer it to another set of students or a different set of students the next morning. In other words, if there was a four-hour course, but he was offering it to two separate sets of students, would he be prohibited with that language? **Mr. Hales** said it certainly was not the intent. He said he thought a student could take a class three hours one day and then take another class in the morning on the next day. **Mr. Hales** said the rule is meant to deal with per student. He said he would follow up with the Board to make sure that was their intent.

Chairman Tippets said he could not read that language the same way as **Mr. Hales** because the rule says, "no more than six hours per day in a 24-hour period". He said he didn't know if it said "no more than six hours per day", if you have six hours one day and six hours the next day in the same 24-hour period. **Chairman Tippets** asked, what does that mean when it says no more than a 24-hour period? He said he didn't think they were trying to say "no more than six hours of class in any 24-hour period" because that would prohibit you from teaching six hours a day, starting at 9 o'clock and going until 3, and that would mean you would have the same starting time the next day. He said he thought the wording was very ambiguous and because it says "no more than six hours a day", he did not see the limitation saying that if the class is offered on separate days, one could not teach two six-hour classes on consecutive days within 24 hours. He also had a concern with page 139, number 225 regarding the business license rule, starting with the second sentence, stating "the licensee may utilize secondary locations for classroom instruction, so long as the business does not conduct driver education at any given secondary location for more than 60 consecutive calendar days in a one-year period". What is the reason for limiting the number of days for which they can use a secondary location?

Mr. Hales said there was existing language which provided one could not utilize that secondary location more than 60 days. If one got a license, they could operate in a single business location. The Board recognized one may have an issue with the one business location and one may have to open a branch office for various reasons. The Board's intent was that the secondary business could be operated for a maximum of 60 consecutive days. **Chairman Tippetts** said the way he read this language was that if they are not conducting driver's education on Sunday, for example, one could keep that secondary location in operation throughout the year because of the "consecutive days". He said he assumed that was not the intent, so he asked if the intention was whether or not it really needs to continue like this. **Mr. Hales** said he agreed with the interpretation. He believed the Board's intent was that one cannot operate a full-time secondary business. He said many of the schools operate seven days a week. This was the language the board agreed upon.

Senator Lakey said he wanted to follow up on **Chairman Tippetts** comments. He asked why limit an individual to one location? Why can't they have more than one location? **Mr. Hales** said that typically there are inspections and certain facility requirements that go along with this process, one of which is the requirement of one license per classroom location. If they wanted more than one classroom location, then they were obligated to get more than one license and pay the associated fees. **Senator Lakey** said **Mr. Hales** answered the last part of his question, which was to get another license for another location. **Mr. Hales** said he believed this was correct. He also stated he knew there were some concerns, but they were reviewed by the board and there were no objections or comments. He said the language could be improved and he would take that back to the Board.

Senator Cameron commented that these are somewhat simple rules, but he wished he would have counted the number of times **Mr. Hales** said the intent was different from the actual wording of the rule. **Senator Cameron** encouraged him to make sure the intent was clear. The rules could have been interpreted in different ways, which does not help with the rules. He also commented that he noticed many of the rules were not going through negotiated rule-making and it seemed to him this was a simple adjustment. With regards to the real estate appraiser, just because a rule was discussed in a board meeting, which would qualify as an open meeting, it does not grant it immunity from going through a negotiated rule-making process. If it is a simple rule and everyone agrees, then there is nothing to negotiate. **Senator Cameron** encouraged caution on the part of **Mr. Hales**. **Vice Chairman Patrick** said he would agree, but he assumed these rules are published and open for public comment.

Chairman Tippetts said he felt we had an obligation to make sure that not only statutes, but rules and regulations were clear and they said what they were intended to say. He said he understood the intent, but he was not sure about some of the language on page 139 and was concerned whether this was the intention of the Board.

MOTION:

Chairman Tippetts moved, seconded by **Senator Cameron** that the Committee disapprove Docket No. 24-2501-1201. **Senator Goedde** said there was another way to approach this and he agreed the single location was designed to extract additional fees. He thought a better way to look at the rule may be for an entrepreneur to pay a fee for every location, with the option of rejecting this part of the rule. They could have them start all over again with promulgating the temporary rule and not make that motion, but that would certainly be on the table.

The motion passed by **voice vote**. **Vice Chairman Patrick** stated this rule failed.

**Public Employee Retirement System of Idaho (PERSI)
Rules Review**

**DOCKET NO.
59-0103-1201**

59.01.03 - Contribution Rules of PERSI, Don Drum, Executive Director, referred the Committee to pages 155-159 in the rules. The purpose of this rule was to delay scheduled contribution rate increases for employers and employees. The change presented by these rules is to delay the effective date of the rate increase from July 1, 2012 to July 1, 2013. The contribution rate increase was initially passed by the Board in December of 2009 and that increase was scheduled to begin July 1, 2011. However, based on improvement in the Fund's status, the Board has been able to delay the start of the increase, first to July 1, 2012 and now to July 1, 2013.

Senator Schmidt asked about the empty parentheses. **Joanna Guilfooy, Deputy Attorney General Assigned to PERSI**, explained the empty parentheses were for sine die and they will be filled in at that time.

MOTION:

Senator Goedde moved, seconded by **Senator Schmidt**, to adopt Docket No. 59-103-1201. The motion carried by **voice vote**.

Rules Review - DEPARTMENT OF LABOR 09.01.04 - Unemployment Insurance Benefit Fraud and Overpayment Rules.

**DOCKET NO.
09-0104-1201**

Bob Fick, Communications & Legislative Affairs Manager, said the rule on page 61 clarifies that any information received from a claimant, whether verbally or written, in connection with the claim for benefits is material to those benefits and is used to determine a claimant's eligibility for benefits. He stated a new rule Idaho Administrative Procedures Act, IDAPA 09.01.04.013, is being added to clarify that claimants must repay all benefits received as a result of a willful false statement or willful failure to report a material fact. He stated that primarily people repeatedly failed to report earnings during their unemployment claim, which are earnings that are typically less than half of the benefit they receive.

Senator Lakey asked for a clarification on what the Department receives as opposed to what the Department asks for. **Mr. Fick** said in the case of an appellate review, the claimant may say something gratuitously that would be on the record and that would be part of any material information.

MOTION:

Senator Goedde moved, seconded by **Senator Lakey**, to adopt Docket No. 09-0104-1201. The motion carried by **voice vote**.

Unemployment Insurance Benefits Administration Rules

**DOCKET NO.
09-0130-1201**

Rules Review 09.01.30 - Bob Fick, Communications & Legislative Affairs Manager, said on page 65, third paragraph, brings forth the definition of a corporate officer that is in the tax provisions of the Employment Security Act. This change was necessary because the change that was made two years ago denied benefits to corporate officers. They were given the option of opting out of unemployment insurance coverage. A corporate officer is any individual empowered in good faith by stockholders or directors, in accordance with the corporation's articles of incorporation or by-laws, to discharge the duties of a corporate officer. This provision ensures that people are treated equally for the purpose of benefits and taxes.

MOTION:

Senator Schmidt moved, seconded by **Senator Lakey** to adopt Docket 09-0130-1201. The motion carried by **voice vote**.

09.01.35 - Unemployment Insurance Tax Administration Rules, Bob Fick, Communications & Legislative Affairs Manager, said the rule was located on page 71 and this rule makes clear that members of a limited liability company are treated consistently under both federal income tax law and Idaho's Employment Security Law. Any member of a limited liability company (LLC) that has elected to be treated as a corporation for federal tax purposes, shall be treated as a corporate officer for state Employment Security Law purposes. He pointed out the second part was on page 73, Idaho Administrative Procedures Act (IDAPA) 09.01.35, Subsection 112.04 and was being changed to clarify that one of the factors used in the independently established prong of the independent contractor test only applies to workers with an outside business providing the same type of services the worker provides for the business engaging his services. **Mr. Fick** said it must be proven that the worker is engaged in an independently established trade, occupation, profession or business. In order to be considered an independent contractor, one has to be free of supervision in performance of whatever job one is hired to do. One also has to be the principal of that business and the business has to be relevant to the job one is hired to do. He said there was no controversy and this rule was an attempt to clarify the misclassification of employees.

Senator Durst said he was wondering about the statement that is going to be used, such as a general laborer, and asked what kind of limitations were there on those willing to sell their labor on the free market. **Mr. Fick** said that if someone wanted to create a sole proprietorship, he didn't think there would be any limitations.

Senator Durst asked if he was told to get an ABN (Assumed Business Name) for general labor and an independent contractor or an LLC tried to go out and get a contract with the ABN, one couldn't go out and do drywall. If someone said they were willing to do anything and their ABN was to do general labor, then how would that impact that person's ability to sell their labor? **Mr. Fick** said he had **Michael Johnson, University of Idaho Compliance Chief, Department of Labor**, with him to answer these questions. **Mr. Johnson** said the tests that are given were very specific to determine whether or not one is in business for themselves and that these tests would be applied. If it was a general handyman, then if that is the nature of their business, that's what they would be hired to do. He said what **Mr. Fick** was addressing is the situation where they are being hired to do a specific task, i.e., drywall, but they don't have a drywall business, they have something completely unrelated to it. What happened, he explained, was the Department had people who were trying to qualify their employees and didn't get contractors because they had an Amway or Scentsy business on the side, so they said they were in business for themselves. **Senator Durst** asked if someone is hired as an independent contractor, would they not be able to do the work? **Mr. Johnson** said that is only one test and that would be applied to this individual. They would also have to be completely free from direction and control and meet all of the other criteria of an independent contractor. If the business they have established would allow them to do that in the provisions of their business, he did not see a problem.

Senator Cameron said he wanted to approach the question from the opposite side from that of **Senator Durst**. What he heard **Mr. Fick** say, is that if someone came by and offered to wash his windows for \$50 and he hired them and they were not an independent, they have not filed a corporation and they don't do this customarily, then somehow, he is going to be required to include them as employees. He also gave an example of a Boy Scout troop offering to paint a wall. He queried, is that the intention that we are trying to pinpoint now on who employers are hiring and include them on their unemployment insurance?

Mr. Johnson said that was not the intent of this rule clarification and it comes down to materiality. If one is not in the window cleaning business, this is ancillary and it makes sense that one would hire someone to wash their windows. **Senator Cameron** said, "just to clarify" that if he is the employer and it is not the general duty of his occupation, if we were to hire someone else, regardless of whether they are incorporated or not, regardless of their standing, he would not be required as an employer to list them as an employee. **Mr. Johnson** said that unless the person you hired to replace your carpet is currently one of your employees, then that would be different. So, if you had someone who is already on your payroll and you wanted to hire them under the circumstances described, that person would be picked up as an employee. The purpose of the rule is to clarify the fact that if one is to hire someone as an independent contractor, their business has to be related to what it is you are hiring them to do.

Vice Chairman Patrick said he could relate to this in the agricultural field and that contractors taking laborers around to hoe beans have to be licensed and almost none are. He said he has to do paperwork and pay the taxes on each individual employee. **Mr. Johnson** said they do have statutes in place that require people to follow the existing labor laws, but in cases where people are simply not doing that, all they can do is fight the good fight in regards to enforcement.

Senator Lakey said he had one more question as a follow-up on **Senator Cameron's** comments. With regards to the proposed language on page 73, the focus is not on the employer, the focus is looking at what this individual is doing. **Senator Cameron's** example of the Boy Scouts coming along to do window washing, they are not typically in the business of washing windows. **Senator Lakey** asked if it brought that rule into play. Am I reading it wrong? **Mr. Johnson** said it does not bring the rule into play because they are not holding themselves out to be an independent trade or business. It is a task that is ancillary to your business, so if you hired a Boy Scout troop or the kid down the street to wash your windows, that is an ancillary task that is not part of your general employment. **Mr. Johnson** stated that is not what this rule is going to ask. It is clarifying that an independently established trade or business has to be related to the task being performed. The Boy Scout troop was not holding themselves out to be window washers. They would be a Boy Scout troop that happens to wash the windows that day to raise some money. **Senator Lakey** said he understood the Boy Scout example. The focus, according to the rule, is on the worker versus the employer, he said. The individual that is hired has to be in the business of doing something specific. One could not hire a drywaller who has computer expertise. **Mr. Johnson** explained they were trying to prevent a misunderstanding when people who have legitimate businesses are misclassified or they are not in business for themselves. Employers are trying to classify them as an independent contractor for the sole purpose of tax avoidance.

Senator Durst said he hires people to do data processing for his business since they don't have the internal capacity. It is his understanding that they are independent contractors. Would subcontracting this out be a violation? **Mr. Johnson** said that in the scenario **Senator Durst** just described, you are actually hiring a research firm to do exactly what they are holding themselves out to do and that is to do the research for you. There is no way this can be misconstrued as an employee of yours because I am assuming they would be free from any direction or control as to how they perform their tasks.

MOTION:

Senator Schmidt moved, seconded by **Senator Guthrie** to adopt Docket No. 09-0135-1201. **Senator Schmidt** said by looking at the change as it applies to the whole rule, this makes sense to him and it clarifies one of many considerations, but it is not the sole consideration. The motion carried by **voice vote**.

PASSING OF GAVEL: Vice Chairman Patrick passed the gavel back to Chairman Tippetts. Chairman Tippetts stated the next Committee meeting will be Thursday, January 17, 2013 at 1:30 p.m.

ADJOURNED: There being no further business, Chairman Tippetts adjourned the meeting at 2:42 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, January 17, 2013

SUBJECT	DESCRIPTION	PRESENTER
Docket No.	Pending Rules	
<u>17-0203-1201</u>	Rules Review -IDAPA 07 - DIVISION OF BUILDING SAFETY 07.02.03 - Rules Governing Permit Fee Schedule	Steve Keys, Deputy Administrator of Operations
<u>07-0204-1201</u>	07.02.04 - Rules Governing Plumbing Safety Inspections	
<u>07-0206-1201</u>	07.02.06 - Rules Concerning Uniform Plumbing Code	
<u>07-0301-1201</u> & <u>07-0301-1202</u>	07.03.01 - Rules of Building Safety	
<u>07-0501-1202</u>	07.05.01 - Rules of the Public Works Contractors License Board	
<u>07-0701-1201</u> & <u>07-0701-1202</u>	07.07.01 Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems	

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Thursday, January 17, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst
- ABSENT/ EXCUSED:**
- 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 Tippetts** called the meeting to order at 1:30 p.m.
- Chairman Tippetts** announced that the first item on the agenda had a typographical error in the first Docket Number, which should have read 07-0203-1201 and not 17-0203-1201. He said one Docket number, 07-0301-1202, was left off of the agenda and added to a revised agenda. He said this Docket number would be held over to the next meeting on Tuesday, January 22, 2013.
- PASSING OF GAVEL:** **Chairman Tippetts** passed the gavel to **Vice Chairman Patrick** to introduce the presenters for the review of the rules being heard.
- Rules Review - IDAPA 07 - DIVISION OF BUILDING SAFETY 07.02.03 - Rules Governing Permit Fee Schedule**
- DOCKET NO. 07-0203-1201** **Steve Keys**, Deputy Administrator of Operations, Division of Building Safety, summarized the rule docket his agency issued and began with Docket No. 07-0203-1201 Rules Governing the Permit Fee Schedule beginning on page 6. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, Vol. 12-10, pages 77 through 80. There will be a minimal negative fiscal impact on the Division of Building Safety and a minimal positive effect on contractors and homeowners, as the Division will no longer be automatically required to charge a re-inspection fee to remove a "red tag" from a job site.
- Mr. Keys** said the current rule requires the Department of Building Safety (DBS) to assess a re-inspection fee for any trips to a job site necessary to remove a "red tag" from a plumbing installation. However, some trips to reinspect an initially unacceptable plumbing installation should be included in the price of the original permit. A re-inspection fee should only be assessed by the DBS for the other instances enumerated in this subsection of the rule, which already includes the ability to impose a re-inspection fee for repeat trips necessary as a result of the submitter improperly responding to a correction notice. The amendments to this rule would eliminate the mandatory requirement that the Division impose a re-inspection fee for each trip to remove a correction notice ("red tag") from a plumbing installation.
- MOTION:** **Senator Durst** moved, seconded by **Senator Schmidt**, to adopt Docket No. 07-0203-1201. The motion carried by **voice vote**.

**DOCKET NO.
07-0204-1201**

07.02.04 - Rules Governing Plumbing Safety Inspections. Steve Keys presented this rule, beginning on page 12. The pending rule is being adopted as proposed, he said. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, Vol. 12-10, pages 81 and 82. The fiscal impact to the Division will be positive because of the reduction in the number of differently colored tags purchased and the ability to use the same tags across multiple trades. There will be a small negative fiscal impact on the DBS as it will not be able to nor required to charge a re-inspection fee merely to remove a red tag (correction notice). However, that is mitigated by the fact that the DBS frequently does not charge. It will have a positive fiscal impact on contractors and homeowners performing their own installations as they will no longer be required to pay a re-inspection fee merely for the DBS to remove a "red tag". Such re-inspection fees are specifically addressed in another chapter of the Idaho Administrative Procedures Act (IDAPA) rules.

Senator Goedde referred to the language of the rules governing the permit fee schedule and asked if there were any changes. **Mr. Keys** said there were no changes and this language related to the re-inspection fee. **Senator Lakey** asked if we were getting rid of blue tags. **Mr. Keys** stated they were getting rid of all colored tags.

MOTION: **Senator Lakey** moved, seconded by **Senator Durst** to adopt Docket No. 07-0204-1201. The motion carried by **voice vote**.

**DOCKET NO.
07-0206-1201**

07.02.06 - Rules Concerning Uniform Plumbing Code. Steve Keys, said this rule began on page 15 and he indicated the pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, Vol. 12-10, pages 83 through 95. Previously, he said, the Idaho Plumbing Board, in collaboration with plumbing industry stakeholders, adopted the Idaho State Plumbing Code (ISPC) in lieu of the Uniform Plumbing Code (UPC) as the legal standard by which all plumbing installations performed in the state must be installed. The current rules provide specific amendments to various provisions of the 2003 UPC that the Plumbing Board has adopted over the years. The amendments in this rulemaking update several of those code amendments. Furthermore, the ISPC is modeled after the 2009 UPC and additional amendment to it is desired by the Board and stakeholders. **Mr. Keys** said the Board is statutorily required to make amendments to the ISPC utilizing the negotiated rulemaking process. Since the ISPC is modeled after the UPC, many of the existing amendments in the rule will remain in effect; however, additional amendments by the Board are desired and included, as well as amendments generated through the negotiated rulemaking process.

Senator Goedde asked **Mr. Keys** if there were any objections during the negotiated rule making process. **Mr. Keys** said there were none. **Senator Durst** asked why, on page 17, was the word "Uniform" being removed from the title of the Code. **Mr. Keys** said there was a technical error in omitting the wording from the rule and that would be corrected.

MOTION: **Senator Schmidt** moved, seconded by **Senator Goedde** to adopt Docket No. 07-0206-1201. The motion carried by **voice vote**.

07.03.01 - Rules of Building Safety. **Steve Keys** presented this rule and he said it began on page 32. He indicated the pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, Vol. 12-10, pages 96 through 99. The Building Code Board, through an exhaustive negotiated rulemaking process, reviewed proposals to amend current editions and/or adopt new versions of the International Building Code (IBC), International Residential Code (IRC), International Existing Building Code (IEBC), and International Energy Conservation Code (IECC). Through the formation of a consensus committee, the Board was able to endorse the adoption of the 2012 editions of the IBC and IEBC, including amendments to the IBC.

Mr. Keys said adoption of the 2012 editions of the International Building Code and International Existing Building Code was the result of negotiated rulemaking involving the building industry, local building officials and other interested stakeholders. Amendment proposals submitted by local building officials through this process resulted in the Board's recognition that amending several provisions could save property owners significant expense without an adverse effect on health and safety. Specifically, that drinking fountains and service sinks should only be required in certain business occupancies with an occupancy load of 30 persons or more, as opposed to the existing provision of 15 persons. Additionally, adoption of the 2012 building code captures the most up-to-date building code provisions consistent with recent amendments to accessibility standards in commercial facilities and places of public accommodation in accordance with the Americans With Disabilities Act (ADA). This rulemaking would result in the adoption of the 2012 IBC and 2012 IEBC as the law of Idaho. Further amendments to the 2012 IBC would require drinking fountains and service sinks only in business occupancies with an occupancy load of more than 30 persons, except for restaurants and mercantile establishments. **Mr. Keys** said he was not aware of any opposition to these changes.

Vice Chairman Patrick said he was nervous about changing the International Building Code because there were some issues in the past. **Mr. Keys** said the Building Code, the Residential Code and the Energy Code usually generate the most controversy. The additions to those codes have not been adopted as the Collaborating Committee is still working on those. On the Docket that was omitted today, there have been some amendments to the existing 2009 edition of those codes, but the codes as a whole have not been adopted.

Senator Durst said he did not know who the collaborative team included. **Mr. Keys** said it included representatives from the Board, the Idaho Home Builder's Association, Associated General Contractors, architects, engineers, real estate agents and basically those parties that are engaged in building in the state of Idaho, which is a pretty broad representation. **Chairman Tippetts** commented on the summary that referred to the IBC and the 2012 IEBC and he said he assumed one relates to new construction and the other relates to modification of an existing building and he asked if that was correct. **Mr. Keys** replied that was correct. **Chairman Tippetts** said we were at the mercy of **Mr. Keys** since we do not have the opportunity to compare the new building code. We are incorporating by reference all of those new requirements and asked for him to tell us whether there had been controversy or not. **Chairman Tippetts** said **Mr. Keys** was talking about having no controversy at all in universally adopting these codes, was that correct? **Mr. Keys** said this has been a requirement in statute for the adoption or the amendment of the building codes. There were at least 30 different entities in the state of Idaho that received notice of the rule making and basically everyone involved was notified. There was broad participation and a collaborative committee and that is why he is able to sit there and say there really is no opposition. All of

the issues have been brought forward and the changes have been discussed and there are really not that many changes.

TESTIMONY: **Andrew Bick**, Chairman of the Idaho State Building Code Board, said there was a large collaboration on these codes and this was the best coordinated effort they have had in bringing forward the code. They did have opposition, but in the process of collaboration everyone felt comfortable with what is being brought forward to this Committee. This was the best scenario as far as cleaning up what they currently have in the 2009 codes and proposing what to put in the 2012 codes. The reason we kept the 2009 residential and energy codes in place is because they are so overlapping and it made sense to keep those where they were. This was a great collaboration.

Senator Schmidt said he said there were regulations that effect log homes and he asked if the log home contractors were helped. **Mr. Bick** said that most of the log home contractors were helped during the process of updating the 2009 codes. There were a couple of codes in 2009 that were revised so that it brought the log home standards back into good standing with the log home industry.

TESTIMONY: **Ben Otto**, Idaho Conservation League, said he was part of the collaborative process and their interest is not in building homes, but in the way homes use energy. They did not get everything they wanted out of the code, but he credited the Building Department and the Board for their collaboration. He said the changes benefit the homeowner and he endorses the rule.

MOTION: **Senator Lakey** moved, seconded by **Senator Durst** to adopt Docket No. 07-0301-1201. **Chairman Tippets** congratulated the Department for using the negotiated rulemaking process. He said during the discussions of some of the other committees about agencies, some of them had chosen not to use that process when it was appropriate. He said he thought this was a good use of that process and it sounded like those that were involved felt like it was very helpful. He said he felt a little nervous adopting new codes when he really did not know much about the changes. He relies on the Department and feels the changes are appropriate. The fact that the interested parties and those who make their income building homes or those who are involved in the regulatory process agree, doesn't always mean that as public policy makers we should accept that blindly. We also, obviously, have responsibility for the public interest. The motion carried by **voice vote**.

DOCKET NO. **07.05.01 - Rules of the Public Works Contractors License Board.** **Steve Keys** said this rule began on page 44. He indicated this pending rule is being adopted as proposed. The complete text of the proposed rule was published in the September 5, 2012 Idaho Administrative Bulletin, Vol. 12-9, pages 27 through 29.

As part of the application for a Public Works Contractor's license, an applicant must submit an annual financial statement, along with other items. The current rule requires the applicant to submit a financial statement that details the financial condition of the applicant. However, the language contained in the rule requires only that the statement was issued within the 12 months prior to submission of the application. Recently, the Division has received statements issued within the past year that reflect financial data significantly more than a year out-of-date. This change requires that the period of time covered by the financial statement ended within the last 12 months prior to the submission of the application. The Department of Building Safety (DBS) and the Board feel timely financial data plays a prominent role in determining the qualifications of a Public Works Contractor and that they meet minimum qualifications at the time of their application. The rulemaking would clarify that the annual financial statement required with the application for a Public Works Contractor's license covers a period of time ending no more than 12 months prior to the date of submission of the application. This rule change was not conducted using formal negotiated rulemaking because the rule is simple in nature.

However, the change was brought forward and discussed in open sessions of the Board and is widely supported by the industry and governmental entities.

MOTION: **Senator Goedde** moved, seconded by **Senator Schmidt** to adopt Docket No. 07-0501-1202. The motion passed by **voice vote**.

DOCKET NO. 07-0701-1201 & 07-0701-1202 **07.07.01 - Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems.** **Steve Keys** said this rule began on pages 49 and 54 respectively. He said the pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, Vol. 12-10, pages 108 through 110.

Both the Department of Building Safety (DBS) and local jurisdictions have encountered installations where the plastic pipe used to vent gas appliances was improperly connected, potentially allowing the release of carbon monoxide into a building. This change requires the contractor to test the piping, assuring that joints and connections are properly made. This rulemaking requires all plastic pipe within a dwelling used for venting flue gases to be tested at five psi for 15 minutes. **Vice Chairman Patrick** asked what the process was for correcting problems. **Mr. Keys** responded that once installations are made, the vent is not accessible. **Senator Lakey** asked if this change came as a response to the concerns from local jurisdictions and what kind of response did he get from the contractors? **Mr. Keys** replied the contractors who have been involved in the process have endorsed the changes.

MOTION: **Senator Schmidt** moved, seconded by **Senator Goedde** to adopt Docket No. 07-0701-1201. The motion passed by **voice vote**.

Mr. Keys said that regarding Docket 07-0701-1202 found on page 54, the pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, Vol. 12-10, pages 111 through 114.

Mr. Keys said currently, the provisions of the International Residential Code adopted by the Heating, Ventilation & Air Conditioning (HVAC) Board require appliances to be listed. This change provides a procedure for approval of unlisted appliances and is especially useful when dealing with restored antique stoves. The change requiring carbon monoxide detectors will assure that detectors are installed in areas where there is no local building code enforcement program. This rulemaking incorporates important sections of the International Residential Code (IRC) into the authority of the Department of Building Safety (DBS) and HVAC Board. It allows the DBS to accept the use of alternative materials, designs, or methods of construction if it complies with the intent of the code and is at least equivalent to the requirements prescribed by the code. It also allows the DBS to require tests of installation to ensure compliance with the code whenever there is insufficient evidence of such or to substantiate requests for alternative methods or materials. Finally, it requires the installation of carbon monoxide alarms in dwelling units.

Chairman Tippetts asked if someone currently wanted to install an unlisted appliance, how was the request handled? **Mr. Keys** said that as it currently stands, the Department is unable to approve an unlisted appliance. He said there have been situations where they have been unable to give a final approval of the installation until that device had been removed. **Chairman Tippetts** asked if this was a situation where a carbon monoxide detector needed to be installed. **Mr. Keys** said carbon monoxide detectors are required by the residential code, but the loophole has been in those situations in areas where there is no building jurisdiction. He said there are certain counties in the state that do not have a building inspection code. **Senator Martin** asked if in those counties a homeowner could build whatever they wanted to with no inspection. **Mr. Keys** said that in Idaho the Building Code is adopted by the state as a universal requirement, but the discretion is given to local jurisdictions as to whether they want to adopt the Building Code Program. There is no statewide application of the Building Code. There is a uniform requirement for plumbing, electrical and HVAC systems, but there is no such requirement for the Building Code.

MOTION: **Senator Durst** moved, seconded by **Senator Cameron** to adopt Docket No. 07-0701-1202. The motion passed by **voice vote**.

PASSING OF GAVEL: **Vice Chairman Patrick** passed the gavel back to **Chairman Tippetts**.

Chairman Tippetts reminded those who came to the meeting late that there was one docket on the revised agenda that will not be heard (07-0301-1202) until the next meeting.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:05 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, January 22, 2013

SUBJECT	DESCRIPTION	PRESENTER
Docket No.	Pending Rules	
<u>07-0301-1202</u>	Rules Review - DIVISION OF BUILDING SAFETY-07.03.01 - Rules of Building Safety	Steve Keys, Deputy Administrator of Operations
<u>17-0204-1201</u>	Rules Review - INDUSTRIAL COMMISSION - 17.02.04 - Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Benefits	Jane McClaran, Fiscal Officer (Peace Officer Fund)
<u>17-0209-1201</u>	17.02.09 - Medical Fees	Patti Vaughn, Medical Fee Analyst

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, January 22, 2013

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst

ABSENT/ EXCUSED:

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 Tippetts** called the meeting to order at 1:31 p.m.

MOTION: **Senator Goedde** moved, seconded by **Vice Chairman Patrick** to approve the minutes of January 17, 2013. The motion carried by **voice vote**.

PASSING OF GAVEL: **Chairman Tippetts** passed the gavel to **Vice Chairman Patrick** to introduce the presenters for the review of the rules being heard.

DOCKET NO. 07-0301-1202 **Rules Review - DIVISION OF BUILDING SAFETY - 07.03.01 - Rules of Building Safety.**

Steve Keys, Deputy Administrator of Operations, said the Building Code Board through the Collaborative Committee, continues to work on reaching agreement on the adoption of the remaining codes, but this rulemaking does contain amendments to the 2009 International Residential Code brought forward through the Collaborative Committee. The changes consist of provisions clarifying flue damper requirements for wood-burning fireplaces and limits requirements for the installation of carbon monoxide detectors.

Mr. Keys referred to subsection 1, starting on page 41, which outlines the exceptions to the installation requirements for the installation of carbon monoxide detectors in existing dwellings; essentially, work done on the exterior of the dwelling or to the non-combustion plumbing or mechanical systems does not trigger the mandatory installation of a carbon monoxide detector.

He stated that subsection L on page 42 and subsection B up to section 4 on the same page, replaces the current language in the International Residential Code and the energy code with language contained in the 2012 editions of both codes that require tight-fitting flue dampers in lieu of the previously-required gasketed doors. The gasketed door requirement has been problematic.

Chairman Tippetts said he saw language in two locations on page 42, numbers 2L and 3B, and he wanted to know why there was a requirement for wood-burning fireplaces to use outdoor combustion air. **Mr. Keys** said the change was already reflected in the 2009 International Code. **Chairman Tippetts** said he needed more details regarding the flue damper and why there were problems caused by the door gaskets. **Mr. Keys** said that door gaskets deteriorate over time and the flue damper is a generally accepted practice. **Chairman Tippetts** and **Mr. Keys** had a discussion regarding wood burning stoves versus fireplace inserts and dampers being installed in a fireplace insert that slides into a brick fireplace. **Mr. Keys** said that under the UL (Underwriters Laboratories) listing, a fireplace insert of the type **Chairman Tippetts** described is classified as a stove.

MOTION: **Senator Durst** moved, seconded by **Senator Lakey** to adopt Docket No. 07-0301-1202. The motion carried by **voice vote**.

DOCKET NO. 17-0204-1201 **Rules Review - INDUSTRIAL Commission - 17.02.04 - Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Benefits**

Jane McClaran, Financial Officer, made a presentation regarding the Workers' Compensation Law - Docket No. 17-02-04-1201 Benefits Pages 89 - 90 Senate Commerce & Human Resources 2013 Pending Rule Book. This pending rule change is a housekeeping measure resulting from the passage of H570 from the last session. That legislation, proposed by a representative of the Idaho Fraternal Order of Police, amended *Idaho Code* §72-1104 on compensation and costs associated with the Peace and Detention Officer Temporary Disability Reimbursement Fund. The Industrial Commission administers that fund and the language added under this rule mirrors that used in the amended statute, including the July 1, 2015 sunset clause.

Senator Lakey asked why there was a sunset clause. **Ms. McClaran** said that when the legislation was proposed by the representative industry and not by the Commission, the fiscal impact was unknown so this expanded the eligibility criteria. They wanted to give it a couple of years to find out what the impact would be on the fiscal part. **Senator Lakey** referred to the new language "that the injury was caused by the actions of another person", and asked how that wording was interpreted or applied. **Ms. McClaran** said that expansion was the result of an actual incident where an officer was injured (hit by a vehicle), but did not meet either of the two existing criteria: (1) responding to an emergency or (2) pursuit of an actual or suspected violator of the law. They wanted to have the ability to bring those types of claims forward. **Senator Lakey** said his question was about the word "cause". If there was fault on both sides, is the evaluation in determining whether that was caused by the actions of another person used? **Ms. McClaran** said the language does not relate to what degree of cause would be applied to either party. **Senator Lakey** said we would see how it works during the trial period.

MOTION: **Senator Schmidt** moved, seconded by **Senator Durst**, to adopt Docket No. 17-0204-1201. **Senator Guthrie** said it would be interesting upon the sunset date to see if there were times when, in an accident situation, the fault was totally that of the officer. **Senator Guthrie** said the officer would still be eligible for workers' compensation and he was wondering if there would be a breakdown as to who was at fault. **Senator Goedde** said he would advise the Commission to take another look at the language and if there is a problem they should bring back a change to the committee for review next year. The motion carried by **voice vote**.

DOCKET NO. 17-0209-1201 **17.02.09 - Medical Fees.**

Patti Vaughn, Medical Fee Analyst, said this rule, located on page 91, reduces the number of conversion factors and provides the annual adjustment of the medical fee schedule for physician reimbursement in accordance with *Section 72-803, Idaho Code*; which creates a pharmaceutical fee schedule for pharmacies and dispensing physicians; and standardizes the required coding sets used by providers for billing medical services. She said that *Idaho Code* §72-803 requires physician payments for workers' compensation medical services to be based on the Resource Based Relative Value Scale (RBRVS) reimbursement method used by the Centers for Medicare and Medicaid Services (CMS). There are two components under this scale: (1) a numerical relative value unit assigned by CMS to each coded procedure weighted according to the work, practice, and malpractice expenses associated with providing that service; and (2) a monetary conversion factor. The allowable amount for a particular medical service under the fee schedule is its assigned relative value unit multiplied by its monetary conversion factor.

Adjustments were made to the proposed physician conversion factors to minimize the negative financial impact to some providers. The definition for pharmacy was changed to coincide with the definition found in *Section 54-1705, Idaho Code*. A requirement for identification of the individual components with the original manufacturer's National Drug Code (NDC) for compound medications was added.

The RBRVS scale was designed to account for the complexity of the procedure in the relative value unit, which is converted into a monetary value by a single conversion factor. In order to preserve access for care to certain specialists who refused to treat injured workers, the Commission's early fee schedules adopted the multiple conversion factor. Although multiple conversion factors pacified those specialists, other physicians noted the distortion of the relative value scale when using multiple conversion factors. The complexity need not be accounted for in the conversion factor, as it is already reflected in the relative value unit. The Commission recognized the need to reduce both the disparity among the conversion factors as well as the number. **Ms. Vaughn** said that in 2007 the fee schedule included 35 conversion factors; the fee schedule now has seven.

She referred to the conversion tables on pages 96 and 97 of the Pending Rule Book (17.02.09.031 - Physicians) assigned to each medical service category. These changes to the physician fee schedule were determined in collaboration with representatives from the medical and insurance communities participating on the Healthcare Subcommittee of the Commission Citizens' Advisory Committee. The subcommittee endorsed a proposal to eliminate two conversion factors, but subsequent written testimony received from some affected specialists reported the reduction was too severe and would again jeopardize access to care. She indicated this table reflects the elimination of one conversion factor and the Commission's ongoing efforts to reduce both the number of conversion factors, as well as the disparity between the specialties, without jeopardizing access to care for Idaho's injured workers. **Ms. Vaughn** said the changes include an overall inflationary increase of 2.3 percent.

Senator Goedde asked which area dealt with general practitioners. **Ms. Vaughn** answered that general practitioners were most often found in Medicine Group 2. **Senator Goedde** said it appeared the Commission was trying to level the playing field and that practitioners would be returning injured workers back to the job. **Ms. Vaughn** said due to the new Affordable Care Act, there was a concern about getting access to family practice physicians. The Commission wanted to make sure physicians are reimbursed fairly.

Chairman Tippetts asked **Ms. Vaughn** to explain how the conversion factor works. She said the conversion factor adjusts the standard rate. For each billable procedure that is done, CMS assigns the relative value unit and takes into account the work, practice expenses, and fees. Also taken into consideration is the time it takes a physician to perform, training that is involved, the physical and mental effort, as well as the overhead and malpractice expenses. Then this procedure is considered relative to other procedures. A less complex procedure will have a lower value. The relative value unit scale takes into consideration the complexity. When the conversion factor is added in, a monetary conversion factor turns it into a payment that is a fixed dollar amount. There are some procedures that are assigned a higher conversion factor and it may be reimbursed at a higher rate. **Chairman Tippetts** asked **Ms. Vaughn** to tell him what is done with this \$135 figure shown for Surgery Group 1 and how does that impact the rate. **Ms. Vaughn** said rather than adding the figure, we multiply.

Senator Guthrie queried that prior to Groups 3 and 4 being merged, what were the respective rates in those Groups. **Ms. Vaughn** explained that Group 3 is currently \$113.52 and Group 4 is \$87.72; those were merged together and they are currently in Group 4 and are actually seeing an increase. **Senator Martin** asked why pathology and laboratory expenses were "to be determined". **Ms. Vaughn** responded that Medicare and CMS has not assigned relative value units to the majority of those codes, so currently under the rule, those services would be allowed as "usual and customary" charges. This is something the Commission will look at in the future.

Ms. Vaughn said the Commission proposes a new pharmaceutical fee schedule using the benchmark of the Average Wholesale Price (AWP). The AWP is the price reported by the pharmaceutical manufacturers to industry publications as a benchmark for cost to the dispensing provider for each drug, as identified by its National Drug Code (NDC) number. Although the AWP is the price reported as paid by pharmacies, it is not an exact benchmark as pharmacies may have negotiated volume discounts or received rebates from the manufacturer that are not reflected in the AWP. It is not a perfect benchmark for establishing a cost basis, but it is currently the best existing alternative. Approximately 32 states are using the AWP as the benchmark for their workers' compensation pharmaceutical fee schedules. Under the proposed pharmacy fee schedule beginning on page 98 (17.02.09.033 - Pharmacies), the standard for the acceptable charge is the AWP plus a \$2 dispensing fee for brand drugs and a \$5 dispensing fee for generic drugs. Compound drugs will be allowed the sum of the AWP for each drug included in the compound medicine, plus a \$5 dispensing fee and a \$2 compounding fee. Over-the-counter drugs will be allowed a reasonable charge without dispensing fees.

Ms. Vaughn said the pharmaceutical fee schedule (noted on page 98 - 17.02.09.031.08 - Dispensing Physicians) will also be applicable to physicians dispensing medications following the warnings of industry organizations, including the National Council for Compensation Insurers (NCCI), the Workers' Compensation Research Institute (WCRI) and the International Association of Industrial Accidents Board (IAIABC). Their research has revealed physician-dispensing of pharmaceuticals to be a significant cost-driver to the workers' compensation systems in multiple other states resulting in increased cost to employers. Dispensing physicians are often paid a much higher amount than a pharmacy for the same medication. Pharmaceutical repackaging companies who are not the original manufacturers, are assisting physicians with repackaging drugs from their original form, assigning a new NDC code and then repricing the drug, often at markedly elevated prices. WCRI reports indicate some drugs may be marked up as much as 500 percent.

However, the Commission has received no specific information to indicate similar behavior by Idaho physicians, but available data does indicate an additional cost to employers of at least 30 percent for repackaged drugs. As other states adopt stricter regulations on physician dispensing, it may cause Idaho to be considered a friendly market to the re-packagers who market to physicians. The Commission believes it is prudent to adopt preventative measures to avoid increases in premiums for Idaho employers. Further, the Commission received testimony from some Idaho physicians' offices who report they have resorted to using repackaging services as a necessary means to get paid an amount at or above their cost. The Commission believes this fee schedule will benefit both providers and payers by establishing a standard for reimbursement that eliminates such uncertainty about what is owed.

Therefore, reimbursement to physicians who dispense pharmaceuticals will be the amount equivalent to what would be allowed under the pharmacy fee schedule, without the dispensing fees. Drugs that have been repackaged from the original manufacturer's form will be allowed the AWP for the medicine prior to repackaging as identified by the original manufacturer's NDC number.

It is important to note that the rule does not prohibit physicians from dispensing medications; it merely equalizes the reimbursement between pharmacies and dispensing physicians. The Commission has no reason to believe that injured workers will be denied appropriate care as a result. Research conducted in a state where similar reforms were passed showed no significant reduction in physician dispensing patterns. Medication compliance is also not expected to be affected since injured workers are most often prescribed medications for the relief of pain. There is no available evidence suggesting a higher compliance rate with physician versus pharmacy dispensed medications.

TESTIMONY: **Tom Limbaugh**, Commissioner of the Idaho Industrial Commission, said when they testified in front of the House when adopting the proposed and pending rule, they found out they had a miscommunication with the Idaho Pharmacy Association on dispensing fees. They discussed asking for a temporary rule from the Governor's office. Since then, they have come up with fees that are fair for everyone. **Mr. Limbaugh** has asked that the committee adopt the rule as written and the Commission has agreed to sit down with the Association and go forward following this session with a temporary rule. This rule goes into effect July 1 and the temporary rule goes into effect the same day. They want to come up with a fair solution regarding the pharmaceutical fees.

TESTIMONY: **Senator Goedde** asked **Dennis Stevenson**, Rules Coordinator for the State, to outline how to adopt a temporary rule during the session. **Mr. Stevenson** said there were certain circumstances when rules can be adopted during the session. The temporary rule adopted prior to the session must be submitted for extension and it expires at the end of the session. Those adopted after the end of the session, do not have to be extended and can be adopted. **Senator Goedde** asked if there were certain circumstances that will allow a temporary rule to be adopted. **Mr. Stevenson** said as long as the temporary rule meets the criteria allowed in statute, they can be allowed. **Senator Goedde** commented he thought there was a way, under some circumstances, to adopt a temporary rule and it sounded like there is time after session before it goes into effect.

A discussion ensued between **Senator Cameron** and **Mr. Limbaugh** regarding the fact the Commission did not participate in negotiated rulemaking with the pharmacy organizations and if this would have been done, would that have prevented this dilemma. **Mr. Limbaugh** said the Commission was working primarily on the fee schedule for providers and they did attempt to contact the stakeholders; for some reason, there was a miscommunication with the pharmaceutical organizations. **Senator Cameron** asked if the committee were to accept the rules, what would be the harm since the Commission does not want to lose the rest of the rules because of this one little problem. **Mr. Limbaugh** said they did not want to lose the rule, but especially the repackaging component. They do not foresee any problem if the Governor will approve a temporary rule with an effective date of July 1.

Senator Cameron said he had two concerns, but they are minimized by his confidence in **Mr. Limbaugh**. The first concern was that he hopes he won't leave this session and hear from pharmacists in his district that are upset because this committee allowed this rule to be approved. He hopes this message gets portrayed loud and clear. Secondly, from a negotiated standpoint, if we pass this rule, it puts the Commission in a better situation than the pharmacists and they are not negotiating from an equal playing field. He believes **Mr. Limbaugh** will be fair that the rule is negotiated properly. **Mr. Limbaugh** stated that since they are the regulators and not the payers, he does not think this would put them in any kind of situation or problem in adjusting the set fees. He indicated they were looking at other states when they set the fees and looking for a common fee amount, they received no input and they thought they were fair. If this would have been taken care of beforehand this issue would have never come up.

Senator Guthrie asked a question about the dispensing fee on pages 98-99. He wanted to know if the \$5 generic fee was offset at a greater margin than existed in the brand arena or was it to help direct traffic to the generic. **Mr. Limbaugh** referred to **Ms. Vaughn**. **Ms. Vaughn** said the intent of the differential between the brand and the generics was to encourage the use of generics.

Chairman Tippetts said he wanted to understand the repackaging concept when the doctor prescribed a prescription and was he going to sell it through his office, apparently through a repackaging company. **Ms. Vaughn** said recently, the advent of software has made it easier for repackaging companies to set up physician practices with software. Physicians know how to report and obtain a new NDC number and reprice it. The same drug may be used with different quantities, broken up into new packaging and assigned a new number and price. They are not the manufacturers and they are able to charge whatever price they want. With respect to physicians, the Commission received testimony that repackaging was a benefit to some of the Idaho physicians. Without the use of repackaging, physicians were being reimbursed less than the cost of the drug. **Chairman Tippetts** asked if a licensed physician can prescribe drugs, are they allowed legally to dispense drugs. **Ms. Vaughn** said that the physician who is dispensing to the patient must be licensed by the Idaho State Board of Pharmacists.

Ms. Vaughn said that on page 100 (17.02.09.035 - Billing and Payment Procedures) changes are proposed to the required coding sets for medical billing. The Centers for Medicare and Medicaid Services (CMS) will require providers to migrate from the ICD-9 to the ICD-10 (International Classification of Diseases, 9th edition) diagnostic coding set in October 2014. The changes in this rule will help providers and payers in using a common coding language. Approval of this rule is requested to help ensure adequate access to medical services for Idaho's injured workers as well as containment of medical costs that may result in additional costs to Idaho employers.

MOTION:

Senator Goedde moved, seconded by **Senator Tippetts**, to adopt Docket No. 17-0209-1201. **Senator Goedde** said that physicians try to make money when they have the opportunity. There were some physicians in Idaho who were getting paid five times as much as physicians from the state of Washington, while performing the same procedure prior to adoption of RBRVS payments. This was not typical of the whole medical community, but he said this works well and helps stabilize workers' compensation rates. He said he appreciates the Commission trying to move towards the single payer factor because that is how it was originally intended. The piece about physicians dispensing is another opportunity for us to stop a problem before it starts in Idaho. The motion carried by **voice vote**.

PASSING OF GAVEL:

Vice Chairman Patrick passed the gavel back to **Chairman Tippetts**.

MOTION: **Senator Cameron** moved, seconded by **Vice Chairman Patrick**, to approve the minutes of January 15, 2013. The motion carried by **voice vote**.

Chairman Tippetts reminded everyone about the committee photo that will be taken Thursday at 1:00 p.m. He encourage all to sign up.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:24 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, January 24, 2013

SUBJECT	DESCRIPTION	PRESENTER
<u>RS21589</u>	Relating to Commercial Transactions - Electronic Transfers of Funds	Mike Brassey, Uniform Law Commissioner
Docket No.	Pending Rules	
<u>24-0101-1201</u>	Rules Review - BUREAU OF OCCUPATIONAL LICENSES 24.01.01 - Rules of the Board of Architectural Examiners	Roger Hales, Administrative Attorney
<u>18-0109-1201</u> (Chapter Repeal)	Rules Review - DEPARTMENT OF INSURANCE 18.01.09 - Consumer Protection in Annuity Transactions	Tom Donovan, Deputy Director
<u>18-0109-1202</u> (Chapter Rewrite)	18.01.09 - Suitability in Annuity Transactions	Tom Donovan
<u>18-0119-1201</u>	18.01.19 - Insurance Rates and Credit Rating	Tom Donovan
<u>18-0156-1201</u>	18.01.56 - Rebates and Illegal Inducements to Obtaining Title Insurance Business	Tom Donovan

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Thursday, January 24, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst
- ABSENT/ EXCUSED:**
- 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 Tippetts** called the meeting to order at 1:31 p.m.
- RS 21589** **Relating to Commercial Transactions - Electronic Transfers of Funds** was presented by **Mike Brassey**, Uniform Law Commissioner, who explained the history of the Law Commission in the state of Idaho. He stated **RS 21589** related to the electronic transfers of funds and there are laws, both at the state and federal level, that govern the process for electronic transfers. The Idaho law is contained in Article 4A of the Uniform Commercial Code and by its terms the state law does not apply to transfers governed by the federal Electronic Funds Transfer Act. Recently Congress, as a part of Dodd-Frank Wall Street Reform and the Consumer Protection Act, amended the federal law to expand its coverage and to create a new type of wire transfer known as a "remittance transfer". The problem created by this amendment is that a remittance transfer does not always meet the definition of an electronic funds transfer and it is unclear what law applies to the transaction. This change in the federal law created uncertainty and makes it unclear whether transactions that are currently governed by state law will remain subject to state law unless this section of state law is amended. The relevant federal agencies have agreed to postpone implementation of their regulations until the end of February of this year in order to allow the states to have time to make this proposed amendment.
- This legislation amends the Idaho law to maintain the existing state exemption for Electronic Fund Transfers (EFT) transactions and to provide that a remittance transfer is subject to Idaho law unless it is also an EFT. In Subsection 1, the existing law is retained except in the case of remittance transfers. New Subsection 2 deals with remittance transfers and provides that such transfers are subject to state law unless the transfer is also an EFT transfer. New Subsection 3 restates the existing law and says that in the event of an inconsistency between the state and federal law, the federal law governs. In addition to the Uniform Law Commission (ULC), this amendment has been approved by the membership of The American Law Institute, the American Bar Association and the American Bankers' Association.
- In order to assure that the relationship between federal and state law remains as it was before the federal expansion, this legislation is proposed to preserve the scope of the state law. There is no fiscal impact to the state or to local government.
- MOTION:** **Vice Chairman Patrick** moved to print **RS 21589**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.
- Chairman Tippetts** announced that a few committee members would be leaving the meeting to have their pictures taken.
- PASSED THE GAVEL:** Chairman Tippetts passed the gavel to Vice Chairman Patrick to introduce the presenters for the review of the rules being heard.

Vice Chairman Patrick said that due to the fact some Senators would be leaving momentarily, he wanted to move **Docket No. 24-0101-1201** to the end of the agenda.

**DOCKET NO.
18-0109-1201
(CHAPTER
REPEAL)**

Tom Donovan, Deputy Director of the Department of Insurance, said the Idaho Administrative Procedures Act (IADAPA) Rule 18.01.09 located on pages 102-104, concerns suitability standards applicable to insurers and insurance producers in recommending annuities to consumers. The Department of Insurance (DOI) proposes to repeal the existing rule in this docket and replace it with the proposed **Docket rule 18-0109-1202**, "Suitability in Annuity Transactions". A public meeting was held on July 19, 2012 where both this docket and the chapter rewrite docket were heard.

A draft of the rule was made available to those expressing interest and it was published on the DOI website. There was a consensus among those attending that the rule was acceptable and necessary. Those attending and supporting rulemaking included the American Council of Life Insurers and the National Association of Fixed Annuities. **Mr. Donovan** said he received positive feedback and an endorsement from local agent, Hyatt Erstad, on behalf of the National Association of Insurance and Financial Advisors (NAIFA) and also a representative of Idaho's own United Heritage Life Insurance Company based in Meridian, who agreed that it was appropriate that Idaho adopt the revised model as set forth in the pending rule.

Two of the people attending the hearing submitted written feedback and comments (a representative of the American Council of Life Insurers and a representative of the National Association of Fixed Annuities), which were supportive of the DOI's efforts and intent. Specifically, comments focused on acceptance and agreement to the current recordkeeping requirement not set forth in the model, but in the current version of Idaho's rule, which addressed Section 021. **Mr. Donovan** said he received no objections to this rulemaking from the public. Similarly, he said, they were advised in September 2012, that the Legislative Services Office, the House and Senate subcommittees and all of the DOIs had reviewed this and no objections were noted.

**DOCKET NO.
18-0109-1202
(CHAPTER
REWRITE)**

Department of Insurance Rules Review 18.01.09 - Rules Governing Consumer Protection in Annuity Transactions

Mr. Donovan said the rule sets forth requirements for both insurance producers (agents/brokers) and insurers or insurance companies (when no producer is involved), to have a reasonable basis to believe that any recommendation they make to purchase or exchange an annuity is suitable for the consumer, based on the particular facts and circumstances of that consumer and as disclosed by the consumer. This includes the consumer's "suitability information" as defined in Section 010.09 of the pending rule. The seller must also believe the consumer has been reasonably informed of various features of the annuity, which is a new requirement in the rule. Section 010, regarding suitability information, is newly expanded information and is defined in Section 010.09 on pages 109-110. **Mr. Donovan** said the specificity of the "suitability information" is a significant change from the current rule. While the current rule has the same general standard that a producer or insurer have reasonable grounds to believe that an annuity recommendation is suitable, that belief was to be based on the consumer's investments and other insurance products and after the producer or company had made reasonable efforts to obtain information. Information considered to be reasonable by the producer or insurer were the consumer's financial status, tax status and investment objectives.

Mr. Donovan said Transaction Exemptions, as set forth in Section 011, is the same as the current rule on page 110 and does not apply to transactions involving responses to direct solicitation where no recommendation is made based on information collected from the consumer or other specifically enumerated plans, such as employer-sponsored 401 (k) plans.

Duties of Insurers and Producers, located in Section 015.01 of the rule on page 111, sets forth requirements for both insurance producers (agents/brokers) and insurers or insurance companies, to have a reasonable basis to believe that any recommendation they make to purchase or exchange an annuity is suitable for the consumer.

A discussion ensued between **Senator Goedde** and **Mr. Donovan** as to whether a seller meant the same as producer or company and **Mr. Donovan** replied, "yes".

Chairman Tippetts said there seems to be a contradiction in the language on page 113, Section 06, part v, that an insurer may not issue an annuity unless it is on a reasonable basis and is "suitable" based on the consumer's information, and the rule which says, "nothing in this subparagraph prevents an insurer from complying with this rule by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity". According to the rule, the suitability information can be confirmed after issuance, yet there is the provision previously referred to that says an annuity may not be issued unless there is a reasonable basis to believe the annuity is suitable based on the consumer's information. **Mr. Donovan** said the language was a requirement imposed on the insurer to supervise its agents. The producers involved should make the effort to obtain the suitability information in advance and determine if it is suitable before the sale. **Chairman Tippetts** asked if this issue was going to be looked at by the Department of Insurance to make sure there was no contradiction or problem and **Mr. Donovan** said, "absolutely."

Mr. Donovan said that in Section 015.03, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information. No recommendation would be made if it was later found to have been prepared based on materially inaccurate information provided by the consumer, the consumer refuses to provide suitability information, or a consumer decides not to enter into an annuity transaction that is not based on a recommendation of the insurer or the producer.

Mr. Donovan said that in Section 015.05 relating to record keeping, "the producer or insurer, shall make a record of recommendation, obtain a signed statement documenting the consumer's refusal to provide suitability information, and obtain a customer signed statement that acknowledges that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's or insurer's recommendation".

Regarding Section 015.06 relating to Supervision of Compliance, the insurer must establish a supervision system (which was generally provided for in a prior or current rule).

Section 015.08 Compliance with Financial Industry Regulatory Authority (FINRA) sales, in compliance with FINRA Rule 2111, satisfies this rule. The former current rule referred to the National Association of Securities Dealers (NASD) Rule 2310. That older rule was replaced this past year on July 9, 2012, by the new FINRA 2111 Rule. This rule was very similar to the updated North American Industry Classification System (NAIC) model where in order to believe the annuity is

suitable, it must be based on "reasonable diligence" by the member to ascertain the customer's "investment profile".

Similar information is enumerated in the pending rule with a definition of suitability information, Producer Training, Section 016, page 114. This is a new requirement where the producer shall not recommend sale of an annuity product without adequate knowledge of the product and compliance with the insurer's training standards. Section .02 provides for a four credit continuing education one time requirement. Section 016.02.b phases in producers who hold a life insurance license on an effective date of the rule and have six months to complete this requirement. Recordkeeping Section .021 on page 116, provides that the insurers and producers maintain and be able to provide to the Director of Insurance (Director) records of all information collected from the consumer and other information used in making a recommendation on the basis for insurance transactions as long as they remain in force. The insurer can maintain information for the producer (provided for "x" number of years after the transaction was entered into) and if the producer's client terminates the agreement, the producer must remit copies of all records to the insurer.

Chairman Tippetts said he had a question about page 116 where the provision requires maintenance of records by insurers and producers and to "be able to provide to the Director, records of all information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for as long as the insurance transaction remains in force". If he were to buy an annuity, the insurer and producer would maintain all of the information that he had given them for as long as that annuity was in force. **Chairman Tippetts** said that made him uncomfortable that the insurer or producer who sold him the annuity would maintain his personal information with the list of items on page 110, including financial information. He wanted to know the reason for that and he asked if that was a provision in the rules that has been eliminated or if this was a new rule. **Mr. Donovan** said that it is a provision in their current rule and that was the subject of the two written comments they received. We require that it be maintained for as long as the contract is in force to protect the agent and the consumer and to maintain clarity that the information was appropriately obtained and the recommendation was documented. It is conceivable, **Mr. Donovan** said, that three to seven years after the transaction was first initiated that an issue upon surrender might arise later and there might be a disagreement between the consumer and the producer.

**PASSED THE
GAVEL:**

Vice Chairman Patrick passed the gavel to Senator Goedde in order for some of the senators to leave for pictures.

Senator Cameron said he had a conflict of interest under Senate Rule 39. He has had to comply with this rule and the new one. He said the information that was being retained was not that sensitive. Information that is going to be retained starts at the bottom of page 109 which includes age, annual income, financial situation, financial experience, objectives, intended use of annuity, etcetera, which are all tax statuses. This information is a "guesstimate" of the client's tax bracket. What was going on in the industry was agents were selling annuities to senior citizens that had a 15 or 20 year surrender period. There was no way they were going to be able to collect on the annuities, probably in their lifetime. Sometimes, in five years, the client decided they needed the money for their retirement or to augment a purchase. Documentation of bank accounts or sensitive information is not required.

Senator Goedde said they would hold back on voting until all of the senators came back.

18.01.19 - Insurance Rates and Credit Rating. Mr. Donovan indicated that on page 118 this proposed amendment to IDAPA 18.01.19.100 clarifies when and how an insurer's use of consumer credit information will be deemed to be improper and in violation of Idaho Law Section 41-1843. This permits insurers to use a neutral credit factor or score against which to measure compliance with Section 41-1843, both at the initial rating and upon renewal. Negotiated rulemaking was published in the July 4, 2012 Idaho Administrative Bulletin, Volume 12-7, page 101. A public meeting was held on July 20, 2012 as provided for in the notice.

Idaho Code 41-1843 applies only to property or casualty insurance that is used primarily for personal, family, or household purposes, and provides that no insurer shall charge a higher premium than would otherwise be charged, cancel, non-renew or decline to issue coverage based primarily on an individual's credit rating or credit history. "Based primarily" means the weight given by the insurer to an individual's credit rating history and exceeds the weight given by the insurer to all other criteria considered. Negotiated rulemaking was held and a notice was published on July 4, 2012. A draft of the rule was circulated to those who inquired or were interested.

There was a public meeting held on July 20, 2012 and attended by six people, a representative of the Independent Insurance Agents of Idaho and company representatives. There was one suggestion to add language in the rule on page 3, Subsection 2, "Idaho Business" to make clear that a carrier's calculation of an average credit factor would be based on the Idaho business experience. The DOI agreed with this addition. There were no objections or concerns about the rule in general.

Mr. Donovan said the issue has been one of discussion and negotiation with insurers for at least three years. This rule was a codification of a revised bulletin the DOI issued last April as a result of difficulties in carriers to be able to follow the traditional application. It was a result of lengthy discussions with the carriers and use by the DOI of a consulting actuary. It is believed that the revised alternative method to show compliance will permit greater flexibility for insurers and allow them to modify rating methods, yet still provide consumers the protections of the statute.

Section 100 of the rule is being amended, which provides an express tie to the statute, Idaho Law Section 41-1843. This rule also clarifies that nothing is intended to modify or alter the provisions of Chapter 25 that set forth limited reasons where an insurer may cancel or non-renew personal auto insurance. The subsections set forth the current and historical interpretation of the DOI where compliance with the statute is measured by comparing the premium rate of a person with the highest credit factor and an otherwise similarly situated person with the worst credit factor. So long as the rate of the person with the highest credit factor (worst rate) is not more than twice the rate of the lowest credit factor (best rate), then compliance was satisfied. As an alternative method of showing compliance, the DOI is recommending in the pending rule that an insurance carrier may measure compliance against a "neutral credit score" comprised of the actual Idaho business. So long as an insurer's highest rate based on credit was not double the amount of the neutral rate, then the insurer would be in compliance with the statute. Additional language was stricken that would have prohibited an insurer from increasing a rate based solely on a change in credit factor, but the carrier would still need to maintain and be able to demonstrate that it was within the permissible range regardless of the method permitted.

Senator Goedde disclosed he was a licensed insurance agent and declared a conflict of interest under Senate Rule 39. He said the changes were a consumer protection issue and the changes made were a better explanation of what they had before. He stated they did not vote on the two previous dockets until everyone was there.

PASSED THE GAVEL:

Senator Goedde passed the gavel back to Vice Chairman Patrick.

Senator Durst asked why the language in Subsection 02.e was removed entirely. **Mr. Donovan** said a carrier should not be allowed to increase a rate due to credit scores. He said if a carrier wanted to modify the weight assigned, some consumers might be impacted favorably and some negatively. If this language is retained and a consumer with a negative impact complained to the Department of Insurance, the carrier would be told they could not do that. In this way, the consumer is protected by the rule.

Senator Durst commented that people his age have had to deal with low credit scores due to the economy. People under 35 years of age have a lower credit score than older people. **Mr. Donovan** said that in a general sense, carriers explained they needed a certain amount of premium to cover their risk and it was a matter of proportion. Carriers are rating consumers with the realization of the impact of the recent economic times. The consumer can always shop to find better rates. **Senator Patrick** suggested the credit scoring method was fair.

MOTION:

Senator Goedde moved to approve **Docket No. 18-0119-1201**. **Senator Tippetts** seconded the motion. The motion carried by **voice vote**. **Senator Durst** voted no and asked that his vote be recorded.

Senator Durst said he has serious concerns about younger people who are starting families. He said he didn't think it was fair and he opposed the motion

Chairman Tippetts asked **Mr. Donovan** to respond and said he assumed it was typical of states to rate partially on credit scores. **Mr. Donovan** said it was his understanding that an insurer cannot rate someone solely based on credit scores. **Chairman Tippetts** said it was his understanding that Idaho was more protective of the consumer by requiring that the change in premium be based on other factors and not just the credit factor. **Mr. Donovan** said the language of the statute stated that no insurer shall charge a higher premium than what otherwise would be charged, based primarily on credit rating. **Senator Tippetts** said he thought by using the component of the credit rating, it struck an appropriate balance and he supported the rules.

MOTION:

Senator Cameron moved to adopt **Docket No. 18-0109-1201**. **Senator Goedde** seconded the motion. **Mr. Donovan** responded to a question from Senator Durst, saying the current rule does require that when a broker is recommending an annuity, they have to have a reasonable basis that the annuity sold or exchanged is suitable for the consumer. The motion carried by **voice vote**.

MOTION:

Senator Schmidt moved to adopt **Docket No. 18-0109-1202**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 18-0156-1201

18.01.56 - Rebates and Illegal Inducements to Obtaining Title Insurance Business.

Mr. Donovan said this docket proposes an amendment to Rule 56. The background on Rule 56 is that it is designed to limit title agents or insurers from providing various things of value to producers of title insurance businesses that are not set forth in the written contract. It arises from statutes that prohibit illegal rebates and inducements.

There are some exceptions provided within Rule 56 for title companies applicable to producers which provides for "listing packages" or enumerated documents, including a cover letter to be provided without charge to a licensed agent or broker or the owner. The amendment would provide in a new Subsection 012.03 that a plat map and Covenants, Conditions and Restrictions (CCRs), along with a cover letter, could be provided to licensed attorneys and appraisers. This rulemaking arises from complaints received from attorneys and appraisers that this information, such as a plat map or CCRs, should be available to them if the title companies are willing to provide it without cost. One or more title insurance agents were providing this information without charge, which is not required, but the DOI had informed the title company to stop doing so because it was not expressly permitted.

Pursuant to a negotiated rulemaking notice, there was a public meeting held on July 18, 2012 and attended by two people. A representative of the Idaho Land Title Association expressed concerns that the provision that title insurance companies must provide pertinent information free to anyone interested in a property might result in severe financial strain on the industry. DOI officials noted that there is no requirement in the amendment that title companies provide this information at no cost; it is simply a benefit that a company could choose to provide that would not be prohibited. A letter was also submitted indicating that if the rulemaking went forward, the Idaho Land Title Association would not oppose the amendment, but stressed that the information has value.

Senator Lakey said he supported the change, and that the listing package was part of what a title company could provide. He asked why there was a limitation on these things to help support doing business with them. **Mr. Donovan** said this goes back to the 1980s but most rules show a date of 1993. His understanding was that title insurance companies were offering to send company "x" to Hawaii if that company gave them all of their business. Company "x" asked what are you going to do for me? Title agents were being played against one another. These are limits one would normally see in the marketplace. He noted there were specific limits on entertaining and food. Monitoring is done within the industry and the Department of Insurance (DOI) receives complaints about violations from competitors. **Senator Lakey** suggested this was something that should be investigated. He indicated he supported the list and could think of other things that should be on the list, such as easements, and he said the list could be broader. **Mr. Donovan** said this rule came to the attention of the DOI via complaints, and they have an employee who deals with the title insurance industry. This could be an issue for a future discussion. **Vice Chairman Patrick** said it seemed all information in these rules was a matter of public record and a service was being provided, and he wondered how much should be added as part of the discussion. **Mr. Donovan** said this was a concern of the Land Title Association, and they felt they should not be forced to provide the information and that was why they had some hesitancy.

Senator Guthrie asked if there was anything to prevent someone from offering something for pennies on the dollar. **Mr. Donovan** said the DOI wanted to see a fair charge if it was something that was not permitted to be given away. The DOI would not take an active role in questioning and not believing the title insurance company.

MOTION:

Senator Lakey moved to adopt **Docket No. 18-0156-1201**. **Senator Goedde** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-0101-1201**

Bureau of Occupational Licenses Rules Review 24.01.01, page 126 - Rules of the Board of Architectural Examiners was presented by **Roger Hales**, Administrative Attorney. He indicated this item had been pulled from a prior agenda. **Mr. Hales** stated this rule has been revised, and the Board of Architectural Examiners added definitions to clarify direct supervision of non-licensed employees and responsible control of architectural drawings to be sealed. The examination section, he said, was being updated to address changes to the nationally administered examination. Since registration of interns with the Board was no longer necessary, this requirement was being deleted. The use of an unlicensed individual's name in an architectural firm name and the use of an architect's seal were being clarified. Finally, the Board's rule regarding certain interpretations was being updated to eliminate language no longer applicable. **Mr. Hales** indicated that on page 129 there were some changes to the exam, called the "rolling clock". There are eight or nine modules and a candidate has ten years to complete the modules. The National Council of Architectural Registration Boards (NCARB) said all of the modules had to be passed within five years. This rule was adopted in 2006. The NCARB had not dealt with the scenario of someone taking an exam prior to 2006, initially receiving approval, but never starting the process.

Mr. Hales said that on page 130, the registration requirement was deleted through an internship. The Board felt it was not necessary for the intern to re-register. They were also trying to clarify when the firm name could be used when an individual was no longer licensed, which dealt primarily with architects who were retired or who died. The Board said the name could be used as long as the public knew they were no longer licensed. Additionally, on page 134, the Board was trying to clarify the use of the architect's seal, so that if the architect prepared the document, they could use the seal. If the architect did not prepare the documentation, then they would have to take responsible control. On page 131, Section 02, was deleted as it was confusing and no longer applicable or appropriate. The law clarifies the practice of architecture. The Engineering Association expressed some concerns about this section, but they have agreed to request that the committee, pursuant to the motion, reject not only the new language, but the old language.

Mr. Hales asked the committee to approve **Docket Number 24-0101-1201**, but to reject pending rule Subsection 550.03 and to also reject the codified final rule numbered 550.04, thereby eliminating that subsection in its entirety from the rules of the Board of Architectural Examiners.

Senator Schmidt asked how many architects would be affected by the change in the description of the module testing allowance. **Mr. Hales** said he did not have a number. **Senator Schmidt** said it sounded like we were changing the rules and if someone was in the middle of the process, it seemed unfair. **Mr. Hales** said they were giving them an additional one-and-a half years to get the tests done. He said very few fell through the loophole. **Senator Schmidt** said he would like assurance there had been appropriate outreach to the architectural community so no one was taken by surprise. **Mr. Hales** said the policy had to be made in an open meeting and the rules were discussed at a number of meetings. There were no comments or opposition to this rule.

TESTIMONY:

Tony Smith, Idaho Chapter of the American Institute of Architects, said he has been involved in the process, and they were happy with the rules and they support the rules.

MOTION:

Senator Lakey moved, to adopt **Docket No. 24-0101-1201**, with the exception of pending rule Subsection 550.03 which is rejected. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Lakey** moved to reject the codified final rule numbered 550.04, thereby eliminating that subsection in its entirety from the rules of the Board of Architectural Examiners. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Patrick passed the gavel back to Chairman Tippetts.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:45 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AMENDED AGENDA #2
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, January 29, 2013

SUBJECT	DESCRIPTION	PRESENTER
<u>RS21708</u>	Relating to Changing State Hiring Practices for Qualified Disabled Veterans	Senator Branden J. Durst
<u>RS21709</u>	Relating to Expedited Occupational Licensure for Active-Duty Service Members and their Spouses	Senator Branden J. Durst
<u>RS21834</u>	Relating to the Health Insurance Exchange	David Hensley, Chief of Staff - Governor's Office
Docket No.	Pending Rules	
<u>10-0101-1201</u>	Review of Rules - BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS - 10.01.01 - Rules of Procedure	Dave Curtis, Executive Director
<u>10-0104-1201</u>	10.01.04 - Rules of Continuing Professional Development	
<u>28-0205-1201</u>	Review of Rules - IDAHO DEPARTMENT OF COMMERCE - 28.02.05 - Rural Community Block Grant Program (RCBG)	Jeff Sayer, Director
<u>28-0206-1201</u> (New Chapter)	28.02.06 - Idaho Small Business Federal Funding Assistance Act Rules	

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Tuesday, January 29, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst
- ABSENT/ EXCUSED:**
- 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 Tippetts** called the meeting to order at 1:30 p.m.
- Chairman Tippetts** explained the process of how a Routing Slip (RS) becomes a bill. He said public testimony was not taken when an RS was introduced by the sponsor but the committee could ask questions. The committee could then decide whether it would be worthwhile to introduce the RS as a bill. **Chairman Tippetts** said **RS 21709 Relating to Expedited Occupational Licensure for Active-Duty Service Members and their Spouses** would not be considered at this meeting at the request of Senator Durst who was the sponsor, but would possibly be heard at a later date.
- RS 21708** **Relating to Changing State Hiring Practices for Qualified Disabled Veterans**, was presented by **Senator Durst**. He said he appreciated the opportunity to testify regarding this legislation which would change state hiring practices. The option of noncompetitive appointment to state agencies would be established when considering applicants who were qualified disabled veterans. He said this would give state agencies the ability to hire qualified disabled vets, and he asked the committee to send this RS to print.
- MOTION:** **Senator Lakey** moved to print **RS 21708**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.
- RS 21834** **Relating to the Health Insurance Exchange** was presented by **David Hensley**, Chief of Staff, Governor's Office. He gave an overview of the history of the task force process started by Governor Otter in the wake of the United States Supreme Court decision that upheld Obamacare. Governor Otter asked a group of people to form a task force to take a look at the law, the state's options and to make recommendations on a path forward. The Task Force overwhelmingly recommended the state proceed in developing a state-based health insurance exchange. He said after the November election, the State of Idaho and the Governor had a choice, which was to establish a state-created, market-driven health insurance exchange that met the needs of the people of Idaho or surrender authority to the federal government. Through the creation of a state-based exchange, the Governor believes the sovereignty of the state will be asserted and decision-making authority over personal health care issues would be maintained for the individual who lives in this state.

Mr. Hensley said it was the public policy of the State of Idaho to actively resist federal actions that would limit or override state sovereignty under the Tenth amendment of the United States Constitution. Through this legislation, the State of Idaho can assert its sovereignty by refusing to surrender decision-making authority over health care issues, which are matters appropriately left to states and individual citizens. He said there was a section in the RS that explained participation in the exchange was voluntary and that no Idaho citizen or employer would be required to purchase a health benefit plan through the exchange. Creation of the exchange and its operation was intended to enhance Idaho residents' choices regarding options and access to health insurance. **Mr. Hensley** said the RS specifically stated this was not a state agency, but a board would be created to govern and oversee the exchange. Of the sixteen members appointed to the board, two would be ex-officio members who could not vote. The voting members would be appointed by the Governor and subject to senate confirmation. Three members would be appointed who represent three different health carriers, two members would represent producers, three members would represent individual consumer interests and four members would represent employer business interests. One of each of those four positions would represent certain types of businesses and two members would represent health care providers. None of the board members or any person working or performing services for the exchange would be state employees. They would not be entitled to or be eligible for any benefits under the state plan or policies.

The RS establishes the mandatory and discretionary duties of the board and some of the limitations of the board. **Mr. Hensley** stated all of the meetings of the board would be subject to the open meetings law of the state of Idaho and an annual independent audit would be required. The board would develop, adopt and implement procurement policies and guidelines. Reporting requirements would be to the Governor, the director and the legislature, beginning in January 2014 and every year thereafter.

Mr. Hensley said some of the discretionary duties of the board would be to perform all duties that would be necessary and appropriate to implement a health insurance exchange, to adopt bylaws and to assess and collect fees from participating health carriers, exchange users or participants. The exchange would be required to be self-sustaining and state funds could not be requested. He noted the exchange did not have the ability to alter its own legal structure nor did it have the power to tax or encumber state assets. The exchange has to be a voluntary marketplace. Providers cannot be precluded from selling insurance within that marketplace as long as they meet the standards of the State of Idaho. He said it was important that neither the exchange nor any agency of the State of Idaho could require any person to use or participate in the exchange. The exchange did not have the authority to impose upon or collect from a person any penalty for failure or refusal to participate in the exchange or to purchase a health benefit plan or stand-alone dental plan. He said the RS allowed the board to rely upon the work done by the Department of Insurance and the Department of Health and Welfare.

Senator Durst said he wanted to see some comparative analysis between this proposal and the federal requirement, on a section-by-section basis, to make sure this exchange met federal requirements. He stated federal overreach was not wanted. He said he wanted a comparison of this governing board and the governing board of other states that have opted for a state exchange, so the committee could get a feel as to what those looked like in comparison to the governing board in this state.

Mr. Hensley explained the state has made their decision based on past practices of the legislature when other similar entities were created for a similar venue.

Senator Durst clarified he was talking about the composition of the board and what the providers and other states were doing currently. **Mr. Hensley** said he would provide the information.

Senator Cameron said he had a conflict of interest under Senate rule 39 as he made his living from health insurance. He said the package of any exchange, in his opinion, would result in less revenue to his business and he wanted to disclose this information and make it a part of the record.

MOTION: **Senator Cameron** moved to print **RS 21834**. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

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

DOCKET NO. 10-0101-1201 **Review of Rules - Board OF LICENSURE OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS - 10.01.01 - Rules of Procedure.**

Dave Curtis, Executive Director, said these rules began on page 75 of the pending rule book. He indicated the rules have the support of professional engineering and surveying societies and associations in Idaho. The need for the rule came about because House Bill 374 of the 2012 session of the Idaho Legislature restricted the assignment to the examination for initial licensing or certification to Idaho residents. Residency was not defined in the statute. This rule defined the residency status and the exceptions, which include military personnel stationed in Idaho and persons employed full-time in Idaho. Members of our armed forces and persons who live in border communities are protected. Students at Idaho universities would be exempted. As proof of residency, a driver's license, a utility bill with an Idaho address, a statement from a financial institution, voter registration in Idaho or vehicle registration in Idaho would be accepted. Proof of full-time employment with a statement from the Idaho employer or a student ID card as proof of enrollment in an Idaho university, would also be accepted. He said this had the support of professional engineering societies.

Chairman Tippetts said he noticed negotiated rulemaking was not conducted because of the need to have the rule in effect with House Bill 374. He asked Mr. Curtis to explain the timeline and how negotiated rulemaking would make it difficult to make the timelines. **Mr. Curtis** explained there was a moratorium on rulemaking when the legislature was in session, and it would have been impossible to begin negotiated rulemaking. He said negotiated rulemaking takes a minimum of a month and in many cases, three months. He said it was the first time he could remember they did not go through this process. He stated this rule was not controversial.

Vice Chairman Patrick asked Mr. Curtis if they had any negative feedback. **Mr. Curtis** said they had none.

MOTION: **Senator Durst** moved to approve **Docket No. 10-0101-1201**. **Senator Schmidt** seconded the motion.

Senator Lakey asked if this covered people who were on military orders while in the State of Idaho or if an Idaho resident went into the military service, could they still maintain their residency for these purposes. **Mr. Curtis** said he believed this was correct.

The motion carried by **voice vote**.

Mr. Curtis said the second docket began on page 79 of the Pending Rule book. This rule has been adopted by the Board of Licensure (Board) and is a pending rule. It has the support of professional engineering and surveying societies and associations in Idaho. The need for the rule came about because Administrative Rule Docket No. 10-0104-1101 last year inadvertently exempted permanent non-residents of the United States from compliance with the Rules of Continuing Professional Development. This rule amendment eliminates that inadvertent exemption by stating that particular section of the rule does not apply to permanent non-residents of the United States. The intent of the original rule was to protect individual civilians deployed with the military to such places as Kabul, Afghanistan, where there was not easy access to the internet, which prevented them from keeping up with professional development requirements. He said military personnel were exempt, but upon return to the United States, they had six months in which to make up the continuing professional development requirement. For an individual who was a resident of Canada, for example, they could be legitimately licensed in Idaho and could practice engineering on projects physically located in Idaho. The last phrase, "when they return to the United States" exempted residents of Canada (or any other country) because they probably had no intention of returning to the United States.

Senator Lakey asked how the "two biennia calendar years" was applied. **Mr. Curtis** explained that ongoing continuing professional development requires thirty professional development hours every two years. If one earned more than that, one could carry some hours forward. **Senator Patrick** asked Mr. Curtis to explain the term "permanent non-resident". **Mr. Curtis** said it was someone who was not a resident of the United States and had no intention of becoming one.

MOTION:

Senator Schmidt moved to adopt **Docket No. 10-0104-1201**. **Senator Goedde** seconded the motion. The motion carried by **voice vote**.

Review of Rules - IDAHO DEPARTMENT OF COMMERCE 28.02.05 - Rural Community Block Grant Program (RCBG)

Jeff Sayer, Director of the Idaho Department of Commerce, said there were no changes to the pending rule on page 44 and it was being adopted as originally proposed. This changes eligibility requirements for the population of cities from 10,000 to 25,000. Rural cities with a population between 10,000 to 25,000 were experiencing private sector job growth opportunities, but lacked the financial ability or economies of scale to help fund public infrastructure needed for private business expansion. The current rules are ten years old, so increasing the limit was essentially keeping up with population growth or "right sizing" for the Rural Community Block Grant (RCBG) program. A change would not necessarily add new cities from the original creation of the program. He said he was asking for support to change the number from the 10,000 population requirement to a population of 25,000 or less. He said the automatic question was how many cities came back into the approved population. He stated there were seven cities which were Burley, Blackfoot, Hayden, Jerome, Kuna, Moscow and Mountain Home. Five of those, namely, Burley, Blackfoot, Hayden, Jerome and Kuna, were actually included in the rules when they were first established. He said they were making sure these communities actually qualified for the grants.

A conversation ensued between Senator Durst and Mr. Sayer regarding the requirements for a rural economic zone based on population. They discussed qualifications of adjacent communities relative to rural zones and the scoring process for determining who received grants. **Mr. Sayer** said the Economic Advisory Council oversaw the scoring process and makes a final determination when the grants are conferred, which helps mitigate issues.

MOTION:

Senator Cameron moved to adopt **Docket No. 28-0205-1201**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
28-0206-1201
(NEW
CHAPTER)**

28.02.06 - Idaho Small Business Federal Funding Assistance Act Rules.

Mr. Sayer presented this rule, starting on page 145, stating these rules were functioning as temporary rules. Grant funds of \$50,000 are specifically targeted to support small businesses in acquiring Small Business Research grants (SBR). This is a federal program where a business can be awarded \$250,000 with the second and third grants going beyond that amount. A small business stands to greatly benefit from grant funds. Eleven federal agencies issue SBR Grants. This is an outreach to the public industry.

The state intends to provide incentive funding for Idaho companies that commit private resources toward the process of attracting federal grants. The Department of Commerce administers this program of state grants to assist and incentivize new, emerging, and expanding Idaho small, for-profit businesses in the development of federal funding proposals that lead to the development of commercial products or services. The Department of Commerce will administer this program in such a way as to avoid favoritism of any particular enterprise and to maximize the public purposes of increasing the number of submitted proposals from Idaho small businesses and increasing the number of grant awards to these businesses. Particular attention shall be paid to the encouragement of companies that have not competed for federal funding awards in the past.

Eligibility for the grant and incentive funds is determined through an extensive review and evaluation of proposals by the state coordinator and other professionals, who form an evaluation team.

Mr. Sayer said the application process for these grants can be arduous. The purpose of the grant is to assist those companies in the up-front costs. The grants are \$4,000 each, which allows applicants to hire professional advisors and others to help them in the application process. This grant is referred to as "Phase Zero" because this phase allows the company to get their application together and, hopefully, to receive the grant. Getting the grant for the first time is a significant step. **Mr. Sayer** said they had nine businesses that were asking for these funds.

Chairman Tippetts referred to page 150, Section 02b. He asked what determined the reimbursement rate from a company to the fund. **Mr. Sayer** said that built into these funds was a reimbursement model. The incentive was to create a self-perpetuating block of money that could be deployed to other companies. If the company was successful in securing a grant for less than \$250,000, they are requested to reimburse the grant application costs. If the grant received was \$250,000 or more, the business would be asked to reimburse the grant five times the original investment. **Chairman Tippetts** asked if there was a schedule for determining the amount "up to five times" the amount of the grant award. **Mr. Sayer** said the language they proposed would be up to that amount. Chairman Tippetts and Mr. Sayer discussed how eligibility was determined for Idaho-owned, for-profit and independently operated businesses with 500 employees or less and how a true small company qualified. The company could not be part of a large subsidiary.

Senator Martin referred to page 147 and asked about the \$50,000 from the general fund and the allocation of that money. **Mr. Sayer** said the money was already allotted in the last fiscal cycle.

Vice Chairman Patrick asked if there was any input from the public and **Mr. Sayer** said they had no input, but he said the industry was very aware and very excited.

MOTION: **Senator Martin** moved to adopt **Docket No. 28-0206-1201 (New Chapter)**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Patrick passed the gavel to the Chairman.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:17 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, January 31, 2013

SUBJECT	DESCRIPTION	PRESENTER
PRESENTATION:	Update on Taiwan & China Economic, Investment and Trade Activities	Damien Bard, Administrator of International Business Division - Department of Commerce; Eddie Yen, Official Representative, State of Idaho - Asia Office; Xu Fang, Official Representative, State of Idaho - China Office
PRESENTATION:	State Employee Compensation	Vicki Tokita, Administrator, Division of Human Resources
PRESENTATION:	Analysis of Total Compensation for the State	Malinda Riley, Consultant & Cheryl Mikuls, Vice President, The Hay Group

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Thursday, January 31, 2013
- TIME:** 1:31 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey and Schmidt
- ABSENT/ EXCUSED:** Senator Durst
- 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 Tippetts** called the meeting to order at 1:31 p.m. He said there was a change to the agenda regarding the presentation of the International Business Division of the Department of Commerce. They would be presenting last, since they were currently making their presentation to the House of Representatives.
- PRESENTATION:** **Vicki Tokita**, Administrator from the Division of Human Resources, introduced her staff and made a presentation on State Employee Compensation. She indicated that Idaho Code §67-5309C, requires the Division of Human Resources (DHR) to provide a report of the results of the annual salary and benefit surveys and recommendations for changes to meet the requirement of Section 67-5309A, Idaho Code, together with their estimated costs of implementation, to be submitted to the governor and the legislature.
- Ms. Tokita** said the DHR's analysis of salary survey results indicated classified employees' salaries for 212 jobs combined were, on average, 18.9 percent below the market. **Senator Goedde** asked if salaries included benefits. **Ms. Tokita** said the report included salaries only. When compared to eight surrounding state governments, 127 of the 212 jobs were matched. Idaho classified employees' salaries were, on average, 10.7 percent below these eight states. **Chairman Tippetts** asked Ms. Tokita if she knew how the benefit package in Idaho would compare to those eight states. **Ms. Tokita** said the Hay Group would be presenting that information.
- Ms. Tokita** reported classified employee turnover, including all separations whether voluntary, involuntary, layoff, retirement, or transfer, were 12.1 percent in 2011 and 12.9 percent in 2012. The length of service in 2011 for employees was 9.8 years and in 2012 was 9.5 years. Voluntary separations included personal reasons, transfers to another agency, such as city, county, federal government, private sector, school district, or another state, excluding Idaho, in 2011 was 4.7 percent and in 2012 was 5.8 percent. The length of service for employees in 2011 was 5 years and 6.2 years in 2012. There were 745 separations and 251 exit interviews from January to June 2012. The top four reasons for leaving were 80 retirements, 66 better pay, 43 transferred to another job and 58 "other". Chairman Tippetts and Ms. Tokita had a discussion regarding the focus of the Office of Performance Evaluation (OPE) report regarding employees finding new employment, as opposed to why they were leaving. **Ms. Tokita** said that prior to 2012 there were more options to indicate why people were leaving. The category "other" was not helping, so they had a conversation with the employee to find out why they were leaving.
- She defined the policy rate as salary relative to the external labor market (public and private sector), as determined by salary surveys of similar jobs. **Ms. Tokita**

explained why it was an issue when a state employee moved from one agency to another. When she had spoken with other agencies, they said they trained someone, and because another agency had dedicated funding and were able to pay more, they lost their employees. The policy rates, on average, were 7.4 percent below the market, but on average, two percent ahead of the eight surrounding state governments. **Chairman Tippetts** asked for clarification on the policy rate and why were most of our employees significantly below that rate. **Ms. Tokita** said that was correct. **Vice Chairman Patrick** asked how often the policy rate was adjusted. **Chairman Tippetts** indicated the last time was in 2010. **Ms. Tokita** said that in addition, the challenges and considerations were low entry salaries, salary compression, salary inequity and the ability to retain employees. She recommended a two-year plan to allow agency directors to continue to address compensation issues and prepare for a proposed salary structure adjustment in fiscal year 2015.

Ms. Tokita said that DHR offered two options to address compensations in fiscal year 2014.

- Option 1: If funding is available, it is proposed that a percentage be appropriated to agencies' personnel budgets and allow directors to use salary savings to address their various compensation challenges.
- Option 2: If merit increases are not appropriated, allow agencies to use existing salary savings to address their specific compensation challenges.

With legislative approval, agencies with salary savings may transfer funds from operating expenses to personnel costs on an on-going basis. **Ms. Tokita** defined salary savings by saying if someone left a job and the position was not filled for a period of time, the money would be there to use. **Vice Chairman Patrick** asked if salary savings were the same as lump sum savings. **Ms. Tokita** indicated they were not the same. She said a lump sum could be spent without any limitations. **Senator Martin** said he wanted to clarify the question of using salary savings and asked what happened to the money. **Ms. Tokita** responded that salary savings could be used to address salary compression issues or low entry salaries. She explained salary compression by using the example of someone who was hired in 2007 at the rate of \$22 an hour and did not receive an increase because of the recession. Last year that person received a two percent merit increase. Another person is hired at \$22 an hour, but the first person hired had five more years of experience, but was paid two percent more. There is a two percent difference between the two salaries.

Senator Cameron commented on Option 2 and said it was confusing because of the way it was worded. He talked about salary savings not being expended because a vacant position was still open. He said moving operating expenses to personnel costs had created issues because the agencies were now asking for funding to fill their positions.

He further commented that moving operating money for personnel costs was a different situation. Sometimes money had been allowed to be moved to a higher class. We have been cautious about doing that because most of the agencies have requirements they are trying to administer or services they are trying to provide to the public. A blanket authorization to move operating costs up to personnel costs could result in services being curtailed. Money that would be used to provide that service was being used to give pay raises or adjustments. He said lump sum had more to do with the second option than the first option. Lump sum allows shifting between classifications and between programs within an agency. **Ms. Tokita** said she agreed, but she also thought it would be by agency request through the legislature. The recommendations were done in November even though they had no idea what revenues would be or the demands on the budget. She said she tried to keep the budget neutral so there would be no cost or increases.

Ms. Tokita noted that in fiscal year 2015 the salary structure could be adjusted towards the market. If funding was available, there could be appropriate increases to agencies' personnel budgets and directors would be allowed to use salary savings to address continued compensation challenges. If agency directors are able to address compensation issues in fiscal year 2014, the cost to adjust the salary structure may be minimal. As of September 26, 2012, an adjustment to the salary structure resulted in moving employees to new minimum pay rates. She said they were asked why the three percent was so much more. The reason was there were so many more employees that were paid less than if the rate was moved up to three percent. **Ms. Tokita** said she recommended a plan so there was no compression and salary inequity within agencies.

Regarding group insurance, the Department of Administration, Office of Group Insurance, for the fiscal year 2014 will continue to offer a competitive medical and dental benefit package to employees at affordable premium rates. There is a proposed Public Employee Retirement System of Idaho (PERSI) contribution rate increase of .92 percent for the employer and .52 percent for the employee.

Senator Goedde asked Ms. Tokita if someone at the high end of their pay range retired or if there was someone at the entry level range, would that difference also be considered salary savings. She replied that was true.

Senator Cameron said he served on a committee that reviewed, revised and evaluated the functionality and dilemmas of the Hay System. They were having significant compression problems and other challenges with the pay system. He said he was struggling with not rewarding employees with some modest increase because many employees have taken on extra responsibilities and have had to take furlough days. He asked Ms. Tokita if she had considered having a full evaluation, rewrite and study of the complete system, as was done almost 22 years ago. He said moving money from operating costs to personnel costs was a bandaid. **Ms. Tokita** said she shared the same concerns. In 2007 Hay looked at all of the jobs and confirmed the methodology, but it was a money issue. By working together, she said, we could come up with a plan where there may be some things we could do differently. The Office of Performance Evaluation (OPE) just released a report on employee compensation yesterday. The governor was going to put together a task force to review compensation. She said the Hay report was after the Division of Human Resources (DHR) and was an executive summary of the full report. The full report would be on the DHR website tomorrow.

PRESENTATION: **Malinda Riley**, Consultant introduced Cheryl Mikuls, Vice President of the Hay Group, and made a presentation on the Analysis of Total Compensation for the State. **Vice Chairman Patrick** asked Ms. Mikuls to explain what the Hay Group did. She said they were a global human resources consulting firm and they have offices throughout the United States. The focus of the Hay System was to do job evaluations and they were the foundation of all of their consulting services for both the public and private sector. They also have a full-service benefits consulting practice with methodologies for evaluating benefits. **Chairman Tippets** said it was his perception the state had been using the Hay methodology for a significant period of time. **Ms. Riley** indicated the study was done because the State of Idaho requested a comprehensive benefits market analysis and a review of the State's total compensation market position. The findings of the analysis provided the basis for the state to determine the best combination of a salary/benefit mix. Some of the questions they asked were: How should the state balance being fiscally responsible with maintaining competitiveness in order to attract and retain a quality workforce? Where is the state not competitive with the market and what immediate and long-term options should it consider in reorganizing its total compensation mix so as to position itself as competitive, but also fiscally responsible.

She said the state's total compensation program was below market average when compared to both the private and public sector markets. Key findings regarding the specific aspects of the state's compensation program involved the cash compensation for state employees, which lagged behind the private sector by an average of 29 percent. **Chairman Tippetts** asked if other states used the Hay methodology. **Ms. Riley** said they work with several other states including some of the eight states that were compared, namely, Wyoming, Utah and Oregon (Oregon was not on the salary side, but was included in the benefits portion). Benefits were at or above the market average of both markets for all employees, driven by strong retirement and health care programs. **Ms. Riley** presented various charts on market competitiveness with comparisons of the State of Idaho versus the general/public sector market. She explained that all of the charts were laid out in the same way, showing a mix of salary versus benefits. The benefits value for the State of Idaho, she said, was better than the private sector, but in total it did not make up the difference.

Chairman Tippetts said he wanted the committee to know, as salary increases, salary becomes a larger portion of total compensation and the benefits become a relatively smaller portion, which is primarily related to the cost of health insurance. Health insurance is not adjusted according to salary. **Ms. Riley** said health care was the driver, for example, if someone was earning \$25,000, health care costs from \$12,000 to \$15,000, whether one earns \$25,000 or \$55,000.

Ms. Riley said in their analysis, they were able to capture nearly 90 percent of the employees within the salary ranges, and the comparison was based on classified jobs.

Ms. Riley explained the benefits evaluation and said the State of Idaho was a large purchaser of health care. Their methodology was to capture the value of the provisions of a plan for the same group of employees. She referred to two charts comparing the State of Idaho versus the general market, and one comparing the State of Idaho versus the public sector. The State of Idaho generally fell in the 75th percentile when compared to the general market. The big driver of this was health care programs, which seem to be better in public entities. Local entities still continue to sponsor Defined Benefit Plans (DBP) which continue to have more value than a 401(k) program. She said health care and retirement were both at the 75th percentile and were the key drivers of the overall value. Salary compression was seen because there was not a lot of variety in what public entities offer. Two primary drivers were health care and retirement, which captured a few of the highlights and differences between the two programs.

Ms. Riley said the key findings showed strategic salary increases. A total of three percent would be applied, especially where the turnover was high with the challenge of attracting talent. **Chairman Tippetts** asked why the recommendation was three percent. **Ms. Riley** said they try to recommend something feasible. If money was not an issue, they would recommend something significantly higher and this would be an "over time" approach. There would not be two, three or four years in between appropriations of funds.

Senator Cameron and Ms. Riley had a conversation about a three percent versus five percent turnover. Chairman Tippetts and Ms. Riley discussed the fact that the turnover rate was higher at just under six percent when the retirement factor was removed. Senator Cameron and Ms. Riley discussed the low job turnover rate that has occurred in the past five years. They talked about the causes of many people being less mobile and unwilling to take risks. The allowance of salary savings was another factor discussed, allowing some creativity in addressing hard-to-fill positions. Senator Cameron and Ms. Riley discussed last year's two percent across-the-board permanent raise.

Senator Schmidt and Ms. Riley discussed other states offering better benefits and less salary. **Ms. Riley** cited the State of Utah where the employers went to a hybrid retirement approach. Flexibility was taken more seriously, so they could offer a higher starting salary rather than a higher retirement benefit.

Senator Guthrie said that assuming the state did exit interviews, was there a common theme that was targeted. **Ms. Riley** said there were charts and information in the booklet he had before him.

PRESENTATION: **Damien Bard**, Administrator of the International Business Division of the Department of Commerce, introduced Eddie Yen, Official Representative, State of Idaho, Asia Office, and Xu Fang, Official Representative, State of Idaho, China Office, who gave an update on Taiwan and China Economic, Investment and Trade Activities.

Mr. Yen gave an overview of Taiwan's population, Gross Domestic Product (GDP), GDP growth, foreign reserves and bilateral trade with the United States. He said the population of Taiwan was 23.2 million, GDP growth was 1.13 percent in 2012 and 3.15 percent in 2013. United States exports in 2011 were \$760 million with 15 percent being Idaho exports.

Mr. Yen said there was participation in investment seminars to promote Idaho to interested overseas investors in support of Project 60. There were eight events in 2012 to promote tourism and education. Three delegations came to visit 35 Idaho companies in 2012. There was a select investment seminar in the United States in November of 2012. Eleven states joined the seminar with 150 companies and 210 people attending. He stated there was a strong interest in the United States investment environment. Many more companies now know about Idaho. On November 1, 2012, visa passport authorization time was reduced. The visa fee was reduced from \$140 to \$14, which should attract more individual travelers and group tours to Idaho, with an anticipated growth rate of 25 percent.

He said there were several tourism promotions in 2012. One of the promotions involved the "My Dream Vacation USA Program". There were four press conferences on different travel themes, which were national parks, parks, sports and shopping. Six companies joined the Idaho booth at the Taipei Building Materials Show in December of 2012, which attracted more than 750 visitors.

Idaho's interest was \$3.5 to \$5 million in increased sales potential for beef in Asia. Thirty-five chefs from different hotels and restaurants attended the seminar for "Plank" cooking sponsored by the Outdoor Gourmet Company. **Mr. Yen** defined ractopamine as a chemical a rancher used to reduce fat in cattle.

An industry-specific marketing brochure which promoted personal care products for Chinese and non-Chinese speaking markets in Asia was developed. New export opportunities for Idaho companies were new technology for biomass, technology and equipment for semi-conductor megafab, green building materials and pre-fabricated products, such as structural panel systems, products and services for the aging senior population, pet related products, and products for health and beauty.

Promotional programs for 2013 include the Governor's Trade Mission to Korea, Taiwan and Vietnam April 19-27, 2013, investment seminars in the spring and fall, six education and travel fairs in 2013, and a food show in late June. Bio-tech and SenCare shows are scheduled for July, which include a furniture materials show in Saigon, one in Vietnam in October, and a building materials show in December in Taipei. There is a buying mission scheduled to Idaho in the fall.

Mr. Fang gave an overview of China, indicating there was an increase in the GDP in 2012 of 7.8 percent. He indicated the United States was their second largest trade partner. Exports were the fastest growing market for the United States over the past decade. He went on to say in 2000 to 2011, there was a growth in Idaho exports to China of 596 percent. China was Idaho's second largest export market in 2011. He talked about the Idaho Trade Mission held April 14-21, 2012 that involved 17 Idaho companies with Governor Otter attending. State Trade and Export Promotion (STEP) activities included gold key missions, trade shows and company visits. There will be upcoming trade shows and missions in 2013, including in March 2013 the China Housing Show in Beijing and the Interzum in Guangzhou; April 2013 the United States and China Build Mission; September 2013 the China Foreign Direct Investment Fair and the United States and China Build Seminar Series.

Mr. Fang talked about custom water bottles that were designed in Idaho and he said there were 35,000 bottles of water on their way to China.

He said the State of Idaho, China Office had three full-time staff and one part-time person, with 18 collective years of working with United States companies and industry groups who were experienced in marketing and international market access.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:58 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Auditorium WW02
Tuesday, February 05, 2013

SUBJECT	DESCRIPTION	PRESENTER
	Minutes to Approve - January 22, 2013	Senator Guthrie
	Minutes to Approve - January 24, 2013	Senator Martin
<u>S1042:</u>	Relating to the Health Insurance Exchange	David Hensley, Chief of Staff, Governor's Office

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 05, 2013

TIME: 1:30 P.M.

PLACE: Auditorium Room WW02

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst

**ABSENT/
EXCUSED:**

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: The meeting was called to order by **Chairman Tippetts** at 1:30 p.m.

MOTION: **Senator Guthrie** moved to approve the minutes of January 22, 2013. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Martin** moved to approve the minutes of January 24, 2013. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

Senator Lakey said he would make a motion to approve the minutes of January 29, 2013 at the next meeting.

Chairman Tippetts went over the rules for testifying and asked those who appeared to state and spell their names, to say who they represented, testify and stand for questions. Testimony would be limited to three minutes. He cautioned the audience about maintaining a sense of decorum and there should be no applause or booing. He indicated there would be a new sign-up sheet available on Thursday and that the committee would meet in the auditorium from 1:30 to 3:00 p.m.

S 1042: Relating to the Health Insurance Exchange, was presented by **David Hensley**, Chief of Staff, Governor's Office. He said he wanted to open his testimony with an explanation of the bill and costs associated with the exchange. He said there were an estimated 278,800 Idahoans who didn't have health insurance. He said more than 1.3 million people in Idaho would continue coverage outside of the exchange and said it was going to be a marketplace where people could voluntarily shop to compare and purchase health insurance. The obvious question facing the governor was why not let small businesses go through a federal exchange to purchase health insurance. The answer was twofold. The first was we didn't want to leave those individuals and small businesses at the mercy of the federal government. Second, even with the restrictions of Obamacare, we know we can do a better job than the feds.

Of the sixteen members appointed to the board, two would be ex-officio members who could not vote, namely, the Director of the Department of Insurance and the Director of the Department of Health and Welfare. There would be 14 voting members who would be appointed by the governor and be subject to Senate confirmation.

Three members would be appointed who represent three different health carriers, two members would represent producers, three members would represent individual consumer interests and four members would represent employer business interests. One of each of those four positions would represent certain types of businesses and two members would represent health care providers.

None of the board members or any person working or performing services for the exchange would be state employees. They would not be entitled to or be eligible for any benefits under the state plan or policies.

Mr. Hensley said the mandatory provisions included that all of the meetings of the board would be subject to the open meetings law of the state of Idaho and an annual independent audit would be required. The board would develop, adopt and implement procurement policies and guidelines. Reporting would be to the governor, the Department of Insurance and the legislature, beginning in January 2014 and every year thereafter.

Mr. Hensley said some of the discretionary duties of the board would be to perform all duties that would be necessary and appropriate to implement a health insurance exchange and to adopt bylaws, which would be subject to the approval of the Director of the Department of Insurance. The board would be allowed to assess and collect fees from participating health carriers, exchange users or participants. The exchange would not be subject to income taxation. They could appoint advisory committees, take legal action, enter into contracts, and adopt and implement a plan of operation for the governing of the exchange.

He noted the board had no power to change its legal structure. It had to be self-supporting, and could not request financial support from the state, nor did it have the power to tax or encumber state assets. The exchange had to serve as a voluntary marketplace. Neither the board nor the exchange could require any person to use or participate in the exchange. The exchange did not have the authority to impose upon or collect from a person any penalty for failure or refusal to participate in the exchange or failure to purchase health benefits outside of the exchange. The exchange would not be allowed to attempt, prohibit or preclude a health carrier from offering insurance of a stand-alone dental plan outside of the exchange.

The State of Idaho would not be liable for any of the obligations of the exchange. There was an emergency clause in the bill that would be in force immediately upon the signature of the governor.

Mr. Hensley stated it was estimated the cost of building and implementing the exchange could be around \$20 million or more. Today, there is \$20 million of federal funding available for this board, if it is created to use, develop and implement the exchange. There would also be an opportunity for the board to apply for further federal grants up to January 1, 2015 for the completion of the exchange. He stated one of the benefits now was the development of technology that may prove to reduce the cost of implementing or developing the exchange. The board would be able to take advantage of some of the cost savings. He indicated they had been told they could estimate \$10 million of ongoing operating costs for the exchange. That could be achieved through a per member, per month fee or a premium charge of (177,000 people multiplied by \$4.80) \$4.80 to cover the cost of operating the exchange on an annual basis. That worked out to approximately \$58 a year per member. He contrasted the Idaho operating costs with the federal government costs of running a federal exchange. The federal government estimated generating \$28 million a year from a 3.5 percent premium tax on the same 177,000 people who participate in the exchange, with an average premium on an annual basis of \$4,650. That works out to a per member, per month fee of approximately \$13.55. He said if we can save Idahoans money, we should.

Senator Durst and **Mr. Hensley** had a conversation regarding defining the words "person" and "producer". They discussed the fact there were multiple definitions for different terms. **Mr. Hensley** said they tried to make the definitions simple that could be incorporated by reference, and easy to understand. They discussed the importance of trying to provide clarity of terms within this bill, including the terms "one at-large member" and "a small employer business interest". **Senator Durst** asked if, hypothetically speaking, a large corporation could fill the at-large position because there was not a definitional requirement for the size of the at-large position. **Senator Durst** expressed a concern about the lack of oversight of the legislature over the creation of the board. He was also concerned about the governor being the only one to appoint members and to control this huge piece of our state economy. **Mr. Hensley** said the governor did not have the final say, and they were very specific that the governor make the appointments subject to confirmation by the Senate. He said they believe that level of oversight, which is very consistent across many other gubernatorial processes and appointments, works. Having individuals come before a body, having discussions about their approach, would be key to insuring they have the right people at the table.

Senator Schmidt had a discussion with **Mr. Hensley** about the risk of having this entity handling money and the non-liability of the state, exchange or the board. They talked about how the entity could sue and be sued.

Senator Lakey and **Mr. Hensley** discussed the possibility of waiting to see what happened with regulations, deadlines, and the risk for the State of Idaho in not making intentions clear, in fear of the federal government imposing regulations. They talked about control and oversight the federal government could have over this legislation and the fact the State of Idaho had already received conditional approval by the federal government for the plan.

Senator Goedde asked **Mr. Hensley** what would happen if the State of Idaho did not have this plan in place to meet the deadline. **Mr. Hensley** indicated that if the State of Idaho did not have an exchange, the feds would impose a federal exchange. He indicated that if the feds didn't allow Idaho to have any latitude, the states had another option of partnering on specific provisions of the act. If approved, every effort would be made to be successful to create the exchange and meet deadlines. He stated if the State of Idaho was making progress, the federal government would make every effort to talk with the state.

Senator Durst and **Mr. Hensley** had a conversation about the ability to contract for the implementation of a health insurance exchange and specific contractual relationships with providers. They talked about the ability of the exchange to make sure they had a marketplace that was voluntary for people to shop, compare and buy insurance. **Mr. Hensley** said the exchange had to be self-sufficient. He said the board had the flexibility to address that issue and one possible way was the per member, per month fee figure. He said they could also look at the costs borne by insurance providers in the exchange. The goal was to have the most cost-effective marketplace possible for the consumer.

Wayne Hoffman, Executive Director of the Idaho Freedom Foundation, a non-profit, non-partisan public policy research organization, testified in opposition to the state insurance exchange. He said he was appointed to the Governor's Task Force on the Health Insurance Exchange. As a matter of full disclosure, he said he bought an insurance policy from Senator Cameron in the mid 1990s. He presented the committee with a petition signed by over 1,100 people and a policy analysis on why other states had rejected a state insurance exchange.

Mr. Hoffman discussed the idea that Idaho would be able to control its destiny, when in fact, the state would have to conform to very specific regulations from the federal government. He called this phony federalism. He said just because a state agency was running the exchange, the state could not assume it was in control and this would result in little accountability. He compared the exchange to the federal food stamp program, where the federal government set the parameters, and the state administered the program to help Idahoans who live in poverty. Idaho innovations were not allowed by the feds and there was little if any flexibility. He said he felt because the federal government sets the rules, the states get penalized if they don't comply. He indicated that if the federal government really wanted to collaborate with the states, they would have invited them to sit down to write the rules for a state exchange. Idaho could back out of the exchange later, but that is also true of Medicaid, food stamps, or any other entitlement program we administer for the federal government. The states are not required to administer these programs, but we have not been able to back out whenever we wanted. Choosing to do an exchange later would be a much better decision. He pointed out that if Idaho did an exchange, Idaho insurance agents would lose their jobs and we would be facilitating the dismantling and destruction of the insurance industry as we know it.

There is an assumption that under a federal exchange, insurance premiums would go up because we would be part of a national rate pool. The truth is, we would not be part of a national rate pool. The law specifically allows states to set rate areas within state borders. Rates would be going up regardless of what kind of exchange we have, and in some cases, rates would double.

Mr. Hoffman cited there were certain laws of the land that were never overturned. He gave the example of Fred Korematsu, who refused to go to an internment camp during World War II and became a fugitive. The Supreme Court upheld the Executive Order of Franklin D. Roosevelt requiring all Japanese-Americans be removed from designated "military areas" and be placed in internment camps. He talked about the Fugitive Slave Act, which required everyone in northern states to assist with the capture and return of escaped southern slaves. He stated that people who disobeyed the laws were right.

He said the states were no better off creating a health exchange act, as they would be under the thumb of the federal government, which would hurt constituents. He cited the letter from the Secretary of Health and Human Services, dated January 3, 2013, informing Governor Otter that Idaho had received conditional approval to establish a state-based exchange. He spoke about the letter outlining the contingencies of the conditional approval.

He referred to the first page of the bill and to the public policy of the state to actively resist federal actions that would limit or override state sovereignty under the Tenth amendment of the United States Constitution. There is nothing in this bill that protects the sovereignty of the state. He talked about his concerns on page three of the bill relating to the powers and authority of the exchange, and the adoption of bylaws for the regulation of the affairs of the exchange, subject to review and approval by the director. He thought it was interesting that a non-agency "agency" had been created by the wording of the definition of the exchange. The oversight by the legislature was restricted because they could only confirm the appointments to the board and nothing else. He said he would prefer the state own the agency.

Mr. Hoffman said there were two issues with part of the bill where it referred to assessing and collecting fees from participating health carriers, exchange users or participants. He said he had never seen anything in the statutes where assessing and collecting fees were not defined as to what kind of fee, how it was assessed or how much. "Participants" was also not defined in the legislation, and it seemed to be different than an exchange user.

He cited page 5 of the bill in relation to other laws and the fact the board and the exchange were entitled to rely upon the work performed by the directors of the Department of Insurance and Health and Welfare, and this may have some sort of impact on the work of the other agencies.

He summarized the fact that we are already at the mercy of the feds. There is no shield or sword or any protection from them. We can do a better job than the federal government, but we don't know enough about the Affordable Care Act to know what it looks like. He asked if we would really do a better job than the federal government. He said costs were unknown and there were no clear guidelines about the costs, and the rules keep changing. He said he felt this was a bad piece of legislation and so was Obamacare. He said this bill was hurtful to Idaho both in the short term and the long term. He was in opposition to the bill.

A conversation ensued between **Senator Cameron** and **Mr. Hoffman** regarding the Joint Finance Appropriations Committee (JFAC) bill that was passed two years ago. At that time JFAC thought the state would be forced to have a federal exchange. **Senator Cameron** declared he may have a potential conflict of interest, which he wanted to disclose for the record. **Senator Cameron** said that when this happened, Mr. Hoffman indicated he would support a state-based, state-run exchange, and he was opposed to a federal exchange. **Senator Cameron** indicated that Mr. Hoffman said he would not stand in the way of a state-based exchange. He asked Mr. Hoffman what had changed in the past two years. **Mr. Hoffman** said he did not recall that conversation, and he had very consistently opposed a state-run exchange. He reminded the senator that this whole thing was a moving target, and they have always objected to a state insurance exchange. He felt the legislature could wait another year.

Senator Cameron said he did not like the provisions of the Affordable Care Act (Obamacare), but he wanted to find a better strategy for the state. He said it was unclear to him, from Mr. Hoffman's perspective, why he thought the state should not be proactive and why we should not be acting like sovereign states. **Mr. Hoffman** replied there was no sovereignty in the bill. He said what he thought Senator Cameron was talking about was creating an entity and hoping and praying that luck would turn their way. He said we should look at what the other 26 states were doing because they recognize there are too many unknowns.

Senator Cameron followed up by saying that some of the general provisions were outlined by rule and law and many of the current policies would be met, whether in or out of the exchange. If we have established a state-based exchange and the federal government says we didn't complete something correctly, we can say we will fix that, if it is good public policy. One of his concerns was if we don't act, do we have legal standing to sue the government should they try to impose something further on us through the exchange. Was there some way we could say we have been harmed if we refused to act? He gave an example of whether termination of pregnancy would be excluded. Under a state exchange, the law typically says a state can exclude such provisions, but under the federal exchange, that would potentially be forced upon our citizens. How do we legitimately argue that non-action would be an appropriate course? **Mr. Hoffman** said it was his understanding of all of the rules and regulations and with the guidance of Health and Human Services (HHS), by having a federal exchange, the state was not surrendering control to regulate the insurance market in Idaho. He said the State of Oklahoma was pursuing a lawsuit against HHS with regards to tax credits.

Senator Guthrie asked Mr. Hoffman to clarify if he favored a federal exchange or was his message that we should do nothing. **Mr. Hoffman** said his argument about the law of the land was coming from some of the supporters of implementing a state insurance exchange. He said that in history, patriots said the law of the land was wrong. His advice to the committee was to do what Idahoans were asking them to do, which was to continue fighting. Other states, he said, were concerned about Idaho adopting their own insurance exchange.

Senator Lakey had a conversation with **Mr. Hoffman** regarding Idaho not having an insurance exchange, the federal government would not be able to implement the plan. Fees and money appropriated by Congress were discussed. They talked about agreeing or disagreeing on the general conservative concepts of "better the state than the feds". **Mr. Hoffman** said he did not necessarily agree with Senator Lakey. They discussed whether it was better to have state control or federal control. **Mr. Hoffman** referred to his previous example of the food stamp program and how the state really had no control. **Senator Lakey** asked the question, "why not move forward, as it would be easier for the state to let go?" They discussed the procedure that was in place to take a federal exchange and move it to a state exchange.

Senator Goedde told Mr. Hoffman that it would be helpful if he could put dates to quotes and indicate the dates when states have made a decision on what to do with the state exchanges. **Mr. Hoffman** said he could do that and that he knew some of the dates were fairly recent.

Senator Cameron had a discussion with **Mr. Hoffman** about pooling insurance and how prices in Idaho were lower for consumers. They talked about a federal exchange program and how Idahoans were not much better off than other states, based on per capita income. **Senator Cameron** said that it was his understanding that a federal exchange would be limited to one nationwide carrier, a for-profit carrier and one not-for-profit carrier. A nationwide carrier would not provide a specific policy for Idaho. If it was a federal exchange, they would provide a policy that had most of the mandates that all the 26 other states had. The policy would include all of those mandates, which would lump Idaho in with the poor decisions of other states. He asked Mr. Hoffman if his organization had looked at the mandates of other states and how those mandates would be enforced upon Idaho citizens. **Mr. Hoffman** said they had not done that kind of research. His understanding was a little different than that of Senator Cameron in that the insurance carriers said they had competitive prices versus the other carriers.

Chairman Tippetts invited all who had traveled a great distance and felt a need to testify, to come forward and sit in the reserved seats to testify. He apologized, saying there would not be enough time for everyone, but there would be another hearing on February 7 at 1:30 p.m.

TESTIMONY:

The following people testified in support of the bill: **Fernando Veloz**, representing the Employers' Health Coalition of Idaho, said he believed in a market-driven system and that one size did not fit all. He indicated the federal exchange would put local jobs at risk and the state exchange would cost less. He said we want local control of the marketplace and should not allow the federal government to take over such an important aspect of businesses and employees' lives. A state exchange would be accountable to Idaho businesses, local healthcare providers, local insurance plans, individual consumers and other stakeholders. Employers were concerned about anything that would increase the cost of health insurance.

The following people testified in opposition to the bill: Joe Kawalec, Eric Peterson, Dominick Gelsomino, Jon Menough and Gary Smith.

The following people submitted written testimony and testified: **Dominick Gelsomino**, a college student, compared the Affordable Care Act Bill to the United States Constitution, indicating the Constitution was much smaller. He said the more corrupt the state, the more it legislated. He said the Supreme Court interpreted Obamacare as a tax. He said the state exchange would be an extension of Obamacare and a breach of the Tenth Amendment. He said employers and the people of Idaho did not want an exchange.

Senator Durst and **Mr. Gelsomino** had a conversation regarding what to say to those people who either supported or opposed Obamacare and the fact that many disagreed about the Affordable Care Act and the state run exchange.

Jon Menough stated that, in his opinion, we were on the edge of a cliff. He said the states were being asked to serve the federal government. He said the states had the ultimate authority. He wanted to know how the approximately 177,000 low income people in Idaho were going to be able to pay for insurance. Some states said they were not going to use Obamacare, and this was another case where we should not do it either.

Gary Smith, said every American today has health care and they have been able to get it before Obamacare. Cost was the problem and he said the state could not afford it. If the state had those funds, he believed we would be much better off using the money to promote job growth and industry within the state. He urged the committee to say "no" to the implementation of the Affordable Care Act because it was not consistent with the needs and desires of the residents of Idaho.

The following people submitted written testimony, but did not testify, in support of the bill: Frankie D. Hickman, Executive Vice President of the Idaho Building Contractors Association; and Mark Estess, State Director, AARP Idaho.

The following people submitted written testimony, but did not testify, in opposition to the bill: Steve Ackerman, Craig D. Campbell, Valerie Candelaria, Marge Arnzen, Chairman of the Idaho County Republicans; Jim Auld, Ada County Property Owners' Association; and Paul W. Pyle.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 3:04 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AMENDED AGENDA #2
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Auditorium Room WW02
Thursday, February 07, 2013

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of Thomas E. Limbaugh of Fruitland, Idaho, to the Idaho Industrial Commission to serve a term commencing January 14, 2013 and expiring January 14, 2019.	Thomas E. Limbaugh
GUBERNATORIAL APPOINTMENT & VOTE:	The appointment of Diana M. Bishop of Orofino, Idaho, to the Idaho Personnel Commission to serve a term commencing December 6, 2012 and expiring July 1, 2018.	Diana M. Bishop
<u>RS21879:</u>	Relating to the Authorization of Professional and Occupational Licensing Boards Expediting Occupational Licensure for Active-duty Service Members and Spouses	Senator Branden J. Durst
<u>S 1042:</u>	Continuation of Hearing of the Health Insurance Exchange	David Hensley, Chief of Staff, Governor's Office

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Thursday, February 07, 2013
- TIME:** 1:30 P.M.
- PLACE:** Auditorium Room WW02
- MEMBERS PRESENT:** Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst
- ABSENT/ EXCUSED:**
- 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:** The meeting was called to order at 1:30 p.m. by **Chairman Tippetts**.
- MOTION:** **Senator Lakey** moved to approve the minutes of January 29, 2013. **Senator Martin** seconded the motion. The motion carried by **voice vote**.
- GUBERNATORIAL APPOINTMENT:** The appointment of Thomas E. Limbaugh of Fruitland, Idaho, to the Idaho Industrial Commission, to serve a term commencing January 14, 2013 and expiring January 14, 2019.
- Thomas Limbaugh** said he was an Idaho Industrial Commissioner from 2001 to present. He was an Idaho Bureau of Occupational Licenses Bureau Chief from 1999 to 2001 and a farm co-owner and manager. In addition, he was mayor of the city of Fruitland from 1994 to 2010 and a 4-H leader from 1990 to 1999. He briefly served in the legislature and was a member of the Joint Finance Appropriations Committee (JFAC). **Senator Tippetts** said he had the privilege of serving in the House with Mr. Limbaugh and commended him for his service. **Senator Schmidt** said he appreciated Mr. Limbaugh's service to the state.
- MOTION:** **Senator Schmidt** moved to send the gubernatorial appointment of Thomas E. Limbaugh to the Idaho Industrial Commission, to the floor with the recommendation that it be confirmed by the Senate. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Pearce will carry the appointment on the floor of the Senate.
- GUBERNATORIAL APPOINTMENT:** The appointment of Diana M. Bishop of Orofino, Idaho, to the Idaho Personnel Commission to serve a term commencing December 6, 2012 and expiring July 1, 2018.
- Diana Bishop** said she had a background in personnel management for 33 years with the United States Forest Service and would like to use her experience to assist the State of Idaho in making the best decisions involving employees who have had allegations made regarding their behavior and/or their performance and wanted to insure that no one was wrongfully fired. **Senator Schmidt** asked her if she was comfortable with declaring her political party affiliation and she said, "yes".
- MOTION:** **Senator Schmidt** moved to send the gubernatorial appointment of Diana M. Bishop to the Idaho Personnel Commission, to the floor with the recommendation that it be confirmed by the Senate. **Senator Durst** seconded the motion. The motion carried by **voice vote**. Senator Nuxoll will carry the appointment on the floor of the Senate.

RS 21879 Relating to the Authorization of Professional and Occupational Licensing Boards Expediting Occupational Licensure for Active-duty Service Members and Spouses. **Senator Branden Durst** presented this RS. He said it replaced **RS 21709**. He indicated this legislation authorized professional and occupational licensure for active-duty service members and their spouses, with the requirement that the license seeker had an equivalent license in another state, commonwealth, possession or territory of the United States or the District of Columbia. He said this legislation would put qualified veterans and their spouses to work quickly.

MOTION: **Senator Lakey** moved to print **RS 21879**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

Chairman Tippetts explained the Routing Slip (RS) process and how the RS could become a bill. He mentioned there were people in the audience who wore a pink swatch on their clothing, which demonstrated opposition to the proposed health insurance exchange. He thanked those wearing the swatch for their respect. He said testimony would be limited to three minutes per person. He said that multiple people could not yield their time to another person so that person could have more time. After testimony was heard he said, the committee would discuss the bill. He reviewed the basic protocol for testifying and asked that those testifying say and spell their names and state who they represented. Written testimony could be placed in the basket near the podium. He cautioned the audience about maintaining a sense of decorum with no applause, cheering or boing.

S 1042 Continuation of Hearing of the Health Insurance Exchange. **Vice Chairman Patrick** called people to testify, alternating between those who were in support of and those who were in opposition to the bill.

TESTIMONY: **Peggy Munson**, AARP State Volunteer President and retired geriatric nurse, submitted written testimony and testified in support of the bill. She urged the committee to support the bill, so Idaho could have the opportunity to take responsibility for and control of its insurance marketplace (see attachment 1). **Tom Munds** of Caldwell, Idaho, spoke in opposition to the bill and said he was concerned about the encroachment on people's lives. He questioned the integrity and backbone of our state government. He said the system of health care should be done by the constitutional process. **Jeanne Brandone**, who represented eHealthApp, a company which supplies software for small businesses, said there were over 40,000 Idahoans who utilized eHealthApp to help them find low cost insurance. She said a state-based exchange would help Idaho businesses manage enrollment. She said if Idaho did nothing and defaulted to the feds, Idaho individuals and small businesses would have two disjointed programs. **Terry Yohn**, represented himself, and asked if there had been contact with other states. He said he had many questions and wanted more information. He opposed the state-run exchange. **Scott Leavitt**, Idaho Association of Health Underwriters, said he supported the state-based exchange because he felt there was no other option. He said an exchange would happen and Idaho would have more options and be able to control costs more effectively. He pointed out that if we were under the federal government, we would lose control. He said brokers and agents would lose their jobs and money would be diverted to the feds to run their exchange. He said he wanted support for a state-based exchange. **Joe Rohner**, represented himself, submitted written testimony and said he was deeply disappointed with Obamacare and with Governor Otter. He stated Obamacare would ruin the economy. There were twenty hidden tax hikes in Obamacare and the plan would cost approximately \$20,000 per family (see attachment 2). **Rod Beck**, a former State Senator, said he was opposed to **S 1042** because it created an independent body with no oversight. He said the costs were unknown and the state exchange

would not regulate how much a person could be charged. He said the state exchange would have unlimited taxing and regulatory powers.

Senator Goedde asked Mr. Beck if the governing body was set up with more legislative oversight, would he favor the state-run health insurance exchange. **Mr. Beck** said he had no problem with setting up a marketplace like the State of Utah. The application could be expanded universally. The State of Utah was not going to do a state exchange, but would continue the universal application process. They would not do the other portions, as dictated by the federal government. **Mr. Beck** said he would support a universal application. He would support a decision by the governor to not move forward with the approval to require the state to comply with the laws of the federal exchange.

Senator Durst said he had serious problems with the legislation. He asked Mr. Beck what we should be doing differently relating to oversight. **Mr. Beck** said he did not believe that this legislature should ever give up its oversight and responsibility under any circumstance. He said he would want strict and strenuous oversight. He wouldn't want the state exchange unless he knew exactly what the state was getting into and what our responsibilities were going to be.

Steve Thomas, from the Idaho Association of Health Plans, testified in favor of **S 1042**. He said Idaho could run the health exchange more efficiently and better than the feds. An exchange would keep millions of dollars in Idaho and would maximize local control. He said the opposition answered the wrong questions. He said the bill did not mandate Idahoans use the exchange and the bill was about a market-based concept.

Tony Snesko, represented himself and his wife, submitted written testimony and said he spoke on behalf of fellow veterans, saying our rights were in jeopardy today. Obamacare and Ottercare could go bankrupt if they did not have the power to raise fees and tax Idaho citizens and businesses. He challenged the committee to think about the voters they represented and not burden them unfairly (see attachment 3).

Tom Shores, represented himself, submitted written testimony, and stated he was President of the State Health Underwriters and Independent Insurance Agents and Brokers of Idaho. He urged the committee to look at the facts and support Governor Otter and pass the Idaho Exchange Bill (see attachment 4).

Senator Goedde asked Mr. Shores if a private exchange were established, and we did not establish a state-based exchange, would we then be subject to a federal exchange. **Mr. Shores** answered that on January 1, 2014 we will have a federal or state-based exchange, regardless of what anyone else does. If a private exchange were to be set up, it would still be subject to the laws of the federal exchange. He said if he had a business and he had more than fifty employees, he would be responsible for paying a penalty of \$2,000 per employee per year, plus expenses and other things. He said that was not a solution. **Senator Goedde** asked if the premium subsidies available for a federal exchange would be available for a state exchange. **Mr. Shores** replied, "no".

Stephen Ackerman, represented himself, submitted written testimony, and recommended the committee not support the bill. He said the state exchange was not good because the rules were based on the federal rules. He indicated at least 25 other states said "no" to a state exchange. Why would these states say "no" to a state exchange if they thought it would decimate their insurance companies? He said the scope of the benefits were not clearly defined in the state-run exchange (see attachment 5).

David Watton, a resident of Boise and an insurance small business owner, said he supported the state-based exchange. **Sheila Ford**, represented herself, submitted written testimony, and asked where the money would come from to support a state exchange. She questioned how the federal government had the money to give to states for the Affordable Care Act. She said all the states that have refused to participate were doing their best to ensure they didn't cause more enormous debt payments to be confiscated out of our children's and grandchildren's paychecks (see attachment 6).

Corey Surber, who represented Saint Alphonsus Health System as Director of Community Health Initiatives, submitted written testimony, and said Saint Alphonsus Hospital administration believed that local control and accountability, through a state-run exchange, would result in a less expensive, more flexible mechanism to get uninsured citizens and small businesses into affordable coverage, and stay nimble and responsive to the ever-changing needs in the State of Idaho (see attachment 7).

Former Representative Janice McGeachin, a small business owner, said she was opposed to the state and federal exchanges. She expressed concerns about the effect the exchanges would have on her business. She said we do not have full knowledge of the contents of the exchange and the exchange must not establish rules that conflict with or prevent the rules promulgated by the Health Freedom Act. She was also concerned about the lack of legislative oversight.

Vice Chairman Patrick asked former Representative Janice McGeachin, to clarify the option of saying "no" to the federal mandate. She said the law said the state could establish their own exchange, but they must follow the rules and regulations of the federal government.

Attachments A-N were transmitted as written testimony by individuals that did not testify during the meeting (see attachments A-N).

David Hensley, Chief of Staff from the governor's office, said there would be an exchange in the state. He reiterated there was \$20 million of federal grant money to build the exchange and other money would be available from grants with a deadline of December 2014. He said the federal government had proposed a 3.5 percent premium tax. He stated there would still be a market outside of the exchange for people to shop, compare and purchase insurance. He said we always have the ability to legislate and address any issue of the exchange on policies for the State of Idaho. He indicated that Governor Otter spoke with the governor of Utah recently about their exchange. Utah had selected to continue its Avenue H exchange and would not do an individual exchange. Further, he stated, **S 1042** did not violate the Idaho Health Freedom Act, according to the opinion of the Attorney General. He urged the committee to look beyond the important work of changing a misguided federal law to the essential task at hand, preserving for Idaho citizens the option of having a voice in one element of the law.

Senator Durst had a conversation with **Mr. Hensley** about the oversight by the board, the role of the legislature, and the duties of the Director of the Department of Insurance related to changing the bylaws. They talked about flexibility for this entity and other independent agencies. **Mr. Hensley** talked about the oversight provided in the bill to make sure the agency had flexibility. Other oversight was provided, he said, with respect to confirmation by the Senate. The legislature did not specifically get to approve the bylaws, however, **Senator Durst** said the legislation had an emergency enactment clause. Was it the intent of the governor to appoint members prior to the end of this session or would he appoint the members during the next session. **Mr. Hensley** said it was his hope the governor would make the appointments while the legislature was still in session.

Senator Lakey had a conversation with **Mr. Hensley** about the costs ranging from \$4 to \$7 per member, per month for 177,000 individuals based on small businesses insured in 2011. They discussed the process of determining the federal costs in which the federal government proposed to apply 3.5 percent premium tax on policies purchased within the federal exchange. They talked about the average cost of a policy for individuals in small businesses of \$4,650 a year and how those figures were used to estimate the \$28 million. The estimate for the ongoing costs to run a state-based exchange was \$10 million. **Mr. Hensley** said they used the figure of 177,000 individual participants per year at a cost of \$10 million a year to arrive at the \$4.80 premium tax. They discussed how costs may vary, depending upon the number of people participating in the exchange.

MOTION: **Senator Cameron** moved that **S 1042** be send to the floor with a **do pass** recommendation. **Senator Guthrie** seconded the motion.

Senator Durst said he was struggling with the motion, but he supported a vast majority of the federal health care law and he was worried about the vehicle in **S 1042**. He said he thought the senators were abdicating their responsibility, oversight and appropriation power, and he said he felt this issue was one the full senate needed to address. He said he would prefer this have no recommendation.

Senator Cameron stated he had a potential conflict of interest pursuant to Senate Rule 39 because he sells health insurance and other products. He said he opposed Obamacare and had strong, passionate feelings about the constitutionality of the act. He was hopeful the Supreme Court would overturn the Affordable Care Act, but, he said, the option had long passed. He said he saw significant differences between federal and state exchanges. He said if we had the federal exchange, we would end up with a nationwide carrier and a few others the feds would allow. All other carriers would have to apply to participate, and if requirements were not met, they would not be allowed to participate. He felt mandates by the federal government would cause rates to increase. He addressed Senator Durst's concern about oversight and said the exchange would operate like other similar entities, such as the State Insurance Fund and the Idaho Housing Authority. He said he wished we had another choice. He commended Governor Otter for doing what he thought was right and, he said, we had an obligation to move forward.

Senators Goedde, Lakey, Schmidt and **Patrick** talked about being supportive of the bill, saying they had all received input from both sides and did not like Obamacare. They discussed their dislike of a federal mandate, the fact they were frustrated, the thought the law was unconstitutional and the federal government exchange was the worst option. They agreed the state exchange had some potential and that open discussion was necessary in moving forward.

**ROLL CALL
VOTE:**

Chairman Tippetts called for a **roll call vote** for Senator Cameron's motion. **Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt** and **Chairman Tippetts** voted **aye**. **Senator Durst** voted **nay**. The motion carried.

Chairman Tippetts will carry the bill on the floor of the Senate.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 3:10 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 12, 2013

SUBJECT	DESCRIPTION	PRESENTER
PRESENTATION:	Department of Commerce Update	Jeff Sayer, Director
GUBERNATORIAL APPOINTMENT:	Committee Consideration and Confirmation Hearing of the appointment of Steve Landon of Chubbuck, Idaho, to the State Insurance Fund Board to serve a term commencing April 30, 2012 and expiring April 30, 2016.	Steve Landon
GUBERNATORIAL APPOINTMENT:	Committee Consideration and Confirmation Hearing of the appointment of Jody Olson of Boise, Idaho, to the Public Employee Retirement System Idaho Board to serve a term commencing July 1, 2012 and expiring July 1, 2017.	Jody Olson
<u>S 1031:</u>	Relating to Commercial Transactions - Electronic Transfers of Funds (EFT)	Mike Brassey, Uniform Law Commission

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Tuesday, February 12, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst
- ABSENT/ EXCUSED:**
- 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 Tippetts** called the meeting to order at 1:30 p.m.
- MOTION:** **Senator Schmidt** moved to approve the minutes of January 31, 2013. **Senator Goedde** seconded the motion. The motion carried by **voice vote**.
- GUBERNATORIAL APPOINTMENT:** The appointment of Steve Landon of Chubbuck, Idaho, to the State Insurance Fund Board to serve a term commencing April 30, 2012 and expiring April 30, 2016.
- Steve Landon** said he was employed by the J.R. Simplot Company in Pocatello, Idaho. He stated he was a lifelong Idahoan and Pocatello resident. He has served as an elected or appointed official in Local 632 at the plant for forty-three years. He has had extensive experience handling various forms of workman's compensation issues because he has served as the president of the organizations regional council that encompasses nine western states, as well as Hawaii and Alaska. He introduced his wife, Pam, and daughter, Tracy. **Chairman Tippetts** welcomed them.
- Senator Schmidt** said he looked at the statutory requirements of the board and he assumed Mr. Landon fit into the labor category. He thanked Mr. Landon for his service.
- MOTION:** **Senator Goedde** moved to send the gubernatorial appointment of Steve Landon to the State Insurance Fund Board, to the floor with the recommendation that he be confirmed by the Senate. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry the appointment on the floor of the Senate.
- PRESENTATION:** **Jeff Sayer**, Director of the Department of Commerce, gave a PowerPoint® update to the committee. He thanked Jim Hawkins for being his mentor and a dear friend. **Chairman Tippetts** welcomed Mr. Hawkins. **Mr. Sayer** summarized activities with the Idaho Global Entrepreneurial Mission (IGEM) Council, the Leadership in Nuclear Energy (LINE) Commission, the Main Street Program, tourism, international trade and economic development.
- Mr. Sayer** reported the Department of Commerce worked with industry clusters which were nationally and globally competitive. He said there were three pillars of focus by the department for companies: 1) protect and retain; 2) grow existing; and 3) attract new. He said growth was occurring across the state, with momentum in the industry sectors. The emerging clusters were software, "rec tech", aerospace, bio tech, wine production and light manufacturing. He defined

"rec tech" as recreational technology or anything under Cabela's Sporting Good's roof. He stated that we have the largest wilderness area in the lower 48 states.

He talked about the economic development philosophy of the department, indicating they had strong partnerships with state and local agencies. The priority focus was on existing Idaho businesses with direct outreach to business, including tourism, international, LINE and IGEM. He said the two percent hotel tax was a dedicated fund to promote tourism. **Mr. Sayer** outlined the total number of state grants that have been issued and dispersed state-wide. He challenged his team to think about canvassing the state to find out what kinds of projects needed investigating by the department. Instead of the handful of projects that came through the grant application process in the past, his team came back with over 90 projects. Last year they found 15 of the very best projects and funded those. He said the grants helped some of their smallest communities extend sewer lines and expand water and electrical capacities by redeploying \$449,000 in small rural grants, with matching funds of \$2.8 million.

Chairman Tippetts and **Mr. Sayer** had a conversation regarding the Rural Community Block Grant (RCBG) and the dedication of funding for Gem Grants. **Mr. Sayer** said funding levels for some of the state grant programs had notable increases, which have been included in the annual baseline budgets. He announced that export numbers for 2012 moved to \$6.1 billion for an increase of 3.5 percent, 10 percent of which were international exports. He indicated this was a 35 percent increase from the fourth quarter of the prior year. The aerospace industry in Idaho was partially responsible for the increase, he said, which included maintenance, composite parts and aircraft.

Senator Durst had a discussion with **Mr. Sayer** regarding separating figures by market segment. **Senator Durst** said it would be interesting to have the information.

Mr. Sayer explained the pie chart from his PowerPoint® slide for 2011 and gave a general breakdown of annual revenues. The data indicated Micron and On Semiconductor, were very large companies which were critical to our state's economy. He said, however, when those two companies were taken out of the picture, the mining, food and agriculture industries were the next largest exports. Wood and paper followed. He praised the timber companies for doing an excellent job in adapting to the Asian markets and saving jobs when the construction markets dropped. Because of our proximity, half of the United States' exports are sent to Asia.

He said the tourism group has been winning awards for their advertising campaign called Vitamin ID (Idaho) . The increase in the dedicated lodging tax fund receipts was a leading indicator of a positive trend in our economy.

Mr. Sayer said IGEMs was driving industry through innovation and an opportunity to elevate the capabilities of Idaho's research. He reported they were fortunate to model their plan after other states. There was \$5 million in the fund. Two million dollars was dedicated as permanent funding to the Center for Advanced Energy Studies (CAES). Another \$2 million was slated to go to the State Board of Education, which was allocated to different universities. That money was intended to augment their research capabilities. The last \$1 million came to the Department of Commerce. The ultimate intent of that money was to fund startups that were coming out of research institutions that needed initial funding to get started.

Mr. Sayer said if the last \$1 million was spent correctly, that would keep the whole program together. They have been very careful and to date have spent none of the money. They needed to take their time and think through how the money would be spent. He publicly thanked Utah for their approach and support towards forming an intermountain alliance. They learned Utah had a base of industry partnerships that already funded research at the universities. Idaho does not have those kinds of partnerships. In order for a robust program to be successful in a state, the base has to be there, he said. The department has to go back to the beginning and help the universities build industry relationships. Commerce will very carefully invest some matching monies with the universities to help them create businesses. They will be working through the details of how they can support industry coming to Idaho and working with the Idaho universities. When Utah State started listing their clients, 80 percent of them were Idaho companies. The Idaho companies were spending a tremendous amount of money with Utah State to do research. One of the team's objectives was to bring the research money back to Idaho.

Mr. Sayer said the best way to move our economy forward and to have the greatest impact, would be through the work force. Idaho should be able to do great things if we can get our higher education community connected to industry and have that be a dynamic, supportive, respectful conversation. We need to be investing in our infrastructure. If we are not careful, our economic growth will catch up with our capacity.

Senator Lakey and **Mr. Sayer** had a conversation about the IGEM program and the placement of business offices at the universities. They discussed bringing industry and universities together to build upon specialties. **Senator Schmidt** and **Mr. Sayer** discussed donations from industry and other places to receive money as outlined in the statute. **Senator Durst** and **Mr. Sayer** talked about data on interstate trade compared with market share outside of the state.

Chairman Tippets thanked Mr. Sayer for presenting. **Mr. Sayer** thanked the committee for their support and said he looked forward to working with everyone.

GUBERNATORIAL APPOINTMENT: The appointment of Jody Olson of Boise, Idaho, to the Public Employee Retirement System of Idaho Board, to serve a term commencing July 1, 2012 and expiring July 1, 2017.

Jody Olson said he was counsel at Hawley, Troxell, Ennis & Hawley (HTEH), which is the oldest and largest law firm in Idaho. He served for many years as Chairman of the Board of the Public Employee Retirement System of Idaho (PERSI), a \$12 billion pension fund. He is Chairman of the Finance and Investment Committee of St. Alphonsus Hospital Foundation and a member of the Board, and a member of the investment committee of the University of Idaho Foundation. In addition, he is a member of the Board of Directors of Medical Discoveries, Inc., a National Association of Securities Dealers Automated Quotations (NASDAQ) traded company. He is also a board member of the Council of Institutional Investors (CII), Washington, D.C.

He talked about keeping PERSI well-funded. He said he was honored to have been nominated again and would be proud to serve. **Senator Schmidt** thanked him and said his application was impressive. He expressed a concern and wanted to be reassured there were others being trained to take over when Mr. Olson and others eventually stepped down. Mr. Olson assured him there were others who were being trained and mentored for that eventual transition.

Senator Durst asked him what his position was on defined benefit plans versus defined contribution plans. **Mr. Olson** said he was aware of and was studying various plans that had been adopted from around the country. He said defined contribution plans worked well in private sector companies because they had other options and benefits as opposed to the public sector. **Senator Cameron** thanked Mr. Olson for his hard work, dedication and willingness to give of his own time to make the PERSI plan successful. **Senator Lakey** also thanked Mr. Olson for his service.

TESTIMONY: **Mr. Tom Miller**, representing himself, spoke on behalf of Mr. Olson. He said he has known Mr. Olson for 40 years and it was his conviction that state retirees had been very well-served by Mr. Olson.

MOTION: **Senator Cameron** moved to send the gubernatorial appointment of Jody Olson to the Board of the Public Employee Retirement System of Idaho, to serve a term commencing July 1, 2012 and expiring July 1, 2017 to the floor with the recommendation that he be confirmed by the Senate. **Senator Durst** seconded the motion. The motion carried by **voice vote**. Senator Buckner-Webb will carry the appointment on the floor of the Senate.

S 1031 Relating to Commercial Transactions - Electronic Funds Transfers (EFT) was presented by **Mike Brassey**, Uniform Law Commissioner, who explained the history of the Law Commission in the State of Idaho. He said recently Congress, as part of the Dodd-Frank Wall Street Reform and the Consumer Protection Act, amended the federal law to expand its coverage and to create a new type of wire transfer known as a "remittance transfer". This change in the federal law created uncertainty and made it unclear whether transactions that were currently governed by state law would remain subject to state law unless this section of state law was amended.

This legislation amends Idaho law to maintain the existing state exemption for EFT transactions and provides that a remittance transfer is subject to Idaho law unless it is also an EFT. In order to assure that the relationship between federal and state law remains as it was before the federal expansion, this legislation is proposed to preserve the scope of the state law. There is no fiscal impact to the state or to local government.

Senator Goedde asked if any states have declined to adopt this rule and **Mr. Brassey** said, "no". **Senator Durst** and **Mr. Brassey** had a conversation regarding the first five chapters of Part 4, Chapter 28 regarding the process by which banks deal with deposits and collections. They discussed how the law did not adversely affect any other article and did not deal with the same subject matter as the previous five chapters.

MOTION: **Senator Goedde** moved that **S 1031** be sent to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Davis will carry the bill on the floor of the Senate.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:20 p.m.

Senator Tippetts

Chairman

Linda Kambeitz

Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 14, 2013

SUBJECT	DESCRIPTION	PRESENTER
Docket No.	Pending Fee Rules	
<u>07-0312-1201</u>	Fee Rules Review - DIVISION OF BUILDING SAFETY Rules Governing Manufactured or Mobile Home Installations	Steve Keys, Deputy Administrator of Operations
<u>07-0501-1201</u>	Fee Rules Review of the Public Works Contractors License Board	Steve Keys
<u>18-0144-1201</u>	Fee Rules Review - DEPARTMENT OF INSURANCE- Schedule of Fees, Licenses and Miscellaneous Charges	Tom Donovan, Deputy Director
<u>24-0401-1201</u>	Fee Rules Review - BUREAU OF OCCUPATIONAL LICENSES - Rules of the Idaho Board of Cosmetology	Roger Hales, Administrative Attorney

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts
Vice Chairman Patrick
Sen Cameron
Sen Goedde
Sen Guthrie

Sen Martin
Sen Lakey
Sen Schmidt
Sen Durst

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Thursday, February 14, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Kenyon (Martin), Lakey, Schmidt and Durst
- ABSENT/ EXCUSED:**
- 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 Tippetts** called the meeting to order at 1:30 p.m.
- INTRODUCTION OF PAGES:** **Chairman Tippetts** introduced the new Senate Page, Megan Johnson. He asked her to tell the committee a little about herself. **Miss Johnson** said she was from Parma and was excited to be at the Senate. **Chairman Tippetts** said a few words about Chace Tolman, outgoing Page. He thanked Chace for his service to the Senate and called him to the podium to explain to the committee what he had learned. **Mr. Tolman** said he had learned so much and he was grateful for the opportunity to learn. **Chairman Tippetts** presented Chace with a letter of recommendation from the committee, a card and a Senate watch.
- PASSED GAVEL:** Chairman Tippetts passed the gavel to Vice Chairman Patrick to introduce the presenters for the review of the fee rules being heard.
- DOCKET NO. 07-0312-1201** **Fee Rules Review - DIVISION OF BUILDING SAFETY - 07.03.12 - Rules Governing Manufactured or Mobile Home Installations.**
- Steve Keys**, Deputy Administrator of Operations, said the amendment to the rules was necessary to align them with statutory changes that were approved last year. He said those statutory amendments were made to ensure compliance with mandatory federal Housing and Urban Development (HUD) requirements regarding inspections of installations and tracking of manufactured homes. The Division of Building Safety serves as the State Administrative Agency (SAA) responsible for enforcing the federal installation standards in Idaho and has obligated itself by agreement with HUD to ensure that all installations in the state will be inspected. Amendments would require an inspection of the installation of all new and used manufactured and mobile homes by either the Division of Building Safety or the local city or county having jurisdiction. In compliance with statute, criteria is also set forth for approval by the Division of an installation inspection program by local jurisdictions, as well as training criteria for all inspectors.
- He said the recommendation would be that the pending rule be adopted as proposed. The permit fee for installation of a single section unit would be \$150; the permit fee for installation of a double section unit would be \$200; and the permit fee for installation of a home consisting of more than two sections would be \$250.
- Vice Chairman Patrick** asked for clarification if the fees were for homes or mobile homes. **Mr. Keys** said the fees were only for mobile homes. **Senator Schmidt** asked if there had been any voluntary withdrawals by cities or counties from the program. **Mr. Keys** said the provision for a voluntary withdrawal was inserted into the language in case a city or county wanted to withdraw. The rule was too new to have any city or county withdraw. **Senator Durst** and **Mr. Keys** had a conversation

regarding inspection fee schedules and the costs involved. They discussed costs of inspections relative to distance requirements. **Senator Durst** and **Mr. Keys** talked about the definition of a manufactured home and a non-site built home and how the rule applied to manufactured homes or mobile homes, but not modular. **Senator Lakey** and **Mr. Keys** discussed the fact that there were approximately 12 state inspectors scattered around the state who were certified residential building inspectors doing 100 inspections a year. **Mr. Keys** said the jurisdiction of the Building and Safety Department was for modular housing.

Mr. Keys said there would be no impact on the general fund. The fees imposed for installation permits were designed to cover the costs of the inspection service, and as such, were intended to provide revenue in line with incurred costs. The fees and costs incurred would be reviewed on an ongoing basis to assure they were appropriate. Should Idaho not provide the installation inspections, the federal government would provide the service at what would be anticipated to be a higher cost to the consumer.

The rule change would also require an installation tag for all new manufactured homes in order that their location and ownership may be tracked. Finally, the rule would establish the minimum requirements of each installation inspection that was performed.

MOTION: **Senator Schmidt** moved to approve **Docket No. 07-0312-1201**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 07-0501-1201 **Fee Rules Review - DIVISION OF BUILDING SAFETY - 07.05.01 - Rules of the Public Works Contractors License Board.**

Steve Keys Deputy Administrator of Operations, said in 2012, a new classification of Public Works Contractor Licensing (PWCL) was created in Section 54-1904, Idaho Code, called a "Class CC" license. This new class of license was brought forward in response to requests from contractors and public agencies in an attempt to broaden the base of qualified contractors available to bid on construction projects in the \$200,000 to \$400,000 range. Many contractors wanted to be able to bid on projects in this range, but were unable to qualify for the Class B license due to financial requirements. The Class CC license allows a contractor to perform work on public works involving an estimated cost of not more than \$400,000. Section 54-1904 allows the Public Works Contractor Licensing Board to establish rules to determine in which classification a contractor is qualified to engage in public works construction, according to each applicant's responsibility and scope of operations. Accordingly, by rule, all classifications have minimum financial requirements and amendments must be made to include the new Class CC. Additionally, Section 54-1904 only establishes a maximum initial and renewal fee for each classification of license; accordingly, actual fees for the Class CC license still must be established in rule. Finally, he said, the rule section related to financial statements submitted with an application for licensure, must account for the new CC classification of licensure. The rulemaking establishes minimum financial requirements for obtaining and maintaining a Class CC license in the amount of \$75,000 of net worth and \$25,000 of working capital. Additionally, it establishes an initial and renewal license fee for the Class CC license in the amount of \$125. It requires financial statements submitted with an application for a Class CC license to be accompanied by an independent audit report. The report must be reviewed or compiled by a certified public accountant.

MOTION: **Chairman Tippetts** moved to adopt **Docket No. 07-0501-1201**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 18-0144-1201 **Fee Rules Review - DEPARTMENT OF INSURANCE - 18.01.44 Schedule of Fees, Licenses and Miscellaneous Charges.**

Tom Donovan, Deputy Director, said this fee rule added vendor of portable electronics insurance as a new type of limited lines insurance producer license and the requisite fees to the Department of Insurance (DOI)'s general fee rule, pursuant to House Bill 649 (effective 7/1/2013). This rule increases fees for fingerprints as a result of increased costs from the Idaho State Police (ISP). He said the DOI conducted negotiated rulemaking by publishing the Notice of Intent to Promulgate Rules on July 4, 2012 in the Administrative Bulletin. The DOI also posted this notice and a draft of the rulemaking on its website as provided by the notice. There was a public meeting held on July 19, 2012 and no one attended the meeting other than DOI personnel. The DOI received no comments or concerns about the rule as drafted.

Mr. Donovan said there were two rule changes. One was for the original license application for a vendor of portable electronics insurance, a type of limited lines producer, engaged in portable electronics transactions at more than ten locations in the State of Idaho. The fee is \$1,000. For a vendor engaged in portable electronics transactions at ten or fewer locations in the state of Idaho, the fee is \$100.

In the House Business Subcommittee review of this rule, it was noted that the rule referred to "portable electronics" in Subsection j, but the singular "electronic" in the other places. During that sub-committee hearing, the DOI confirmed with Mr. Hawley from the Office of Administrative Rules, that they can correct the error by conforming to the statutory term, "electronics" without additional rulemaking.

For license renewal, a vendor of portable electronics insurance engaged in portable electronics transactions at more than ten locations in the State of Idaho, the fee would be \$500. For a vendor engaged in portable electronics transactions at ten or fewer locations in the State of Idaho, the fee would be \$100.

Mr. Donovan said the second change was for fingerprint processing fees, currently \$60, increased to an amount not to exceed \$80. He said this change followed a rule change by the ISP last year where the fee changed from \$10 to \$25. The increase will be phased in over time. The DOI was seeking an increase of up to \$80 to provide for possible additional costs recognizing that only some portion of its fee goes to the Idaho State Police (ISP). But additional amounts go to the FBI, testing and administration vendors. The fee would be administered in a revenue neutral manner.

Senator Guthrie and **Mr. Donovan** had a discussion relating to the rationale as to how the amounts were determined for the fee of \$1,000 for more than ten locations for a vendor of portable electronics in Idaho as opposed to \$100 for less than ten locations. They talked about how the determination was set forth in the statute and how frequently the larger fee would apply. They also discussed the fact the license would be a business license with a requirement for training and for the vendor to keep a list of locations within the state where the electronic insurance was available.

Chairman Tippetts asked for a clarification on portable electronics insurance offered when purchasing a portable electronic device. **Mr. Donovan** said there was a provision in the insurance code that exempted some service contracts from the regulation, as insurance and those kinds of protections would fall into the category of normal wear-and-tear, such as a warranty. The portable electronics insurance included risk of loss for the device as well as theft, which were not included in the service contract exemption.

Senator Goedde said he wanted to share a different perspective of 1,000 locations at a cost of \$1 per location or nine locations at the cost of \$10 a location. He didn't think \$1,000 would be considered a problem for larger vendors.

Vice Chairman Patrick made a comment that the fingerprinting charges seemed to

be quite high, even though the processing costs had gone up with the state police. **Mr. Donovan** explained the increases in processing costs. Prior to last summer, he said, the DOI charged \$60 for a fingerprint fee of which \$8.75 was retained by the DOI. Currently, the amount retained has gone down to \$4.00 because of the increased costs from the ISP, but a decreasing cost from the Federal Bureau of Investigation (FBI). Effective July 1, 2013, the DOI will be paying out to others \$2.50 more than the \$60, so the total fees would be \$62.50, or a loss for the DOI. **Mr. Donovan** said building in flexibility was a way to deal with changes that may come in the future that would be difficult to predict. **Vice Chairman Patrick** and **Mr. Donovan** had a discussion about phasing in the increase in fees over a period of time.

MOTION: **Senator Goedde** moved to adopt **Docket No. 18-0144-1201**. **Chairman Tippetts** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-0401-1201 **Fee Rules Review - BUREAU OF OCCUPATIONAL LICENSES - 24.04.01 - Rules of the Idaho Board of Cosmetology.**

Roger Hales, Administrative Attorney, said the Board of Cosmetology made changes in its fee schedule during the 2012 session. This fee change, in a separate section, is necessary to be consistent with the prior change. Changes were also made to the Board's law during the 2011 session that replaced the term "student instructor" with "instructor trainee." The proposed change updates the new title in the rules. Finally, changes were being made to clarify that animals allowed in a cosmetology shop must comply with the American with Disabilities Act's (ADA) definitions.

The fee schedule in these rules was changed during the 2012 session and the \$10 fee shown in Section 176 was being eliminated to be consistent with the prior rule change. There is no impact on the general or dedicated funds as the fee is not being assessed.

MOTION: **Senator Durst** moved to approve **Docket No. 24-0401-1201**. **Senator Kenyon** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Patrick passed the gavel back to the Chairman.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:08 p.m.

Senator Tippetts

Chairman

Linda Kambeitz

Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 19, 2013

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1014</u>	Relating to Removal of the Requirement that a Specific Percentage of Funds Be Allocated to Specific Programs and Providing a Sunset Date	Paul Leary, Department of Health & Welfare
<u>S 1100</u>	Relating to Health Care Sharing Ministries	Joe Guarino, Executive Director, Health Care Sharing Industries
<u>S 1041</u>	Relating to the Non-Competitive Appointment of Certain Disabled Veterans	Senator Marv Hagedorn
<u>S 1045</u>	Relating to the Revision of the Definition of "Veteran"	Senator Marv Hagedorn
<u>S 1068</u>	Relating to Rules Expediting Occupational Licensure for Active-duty Service Members and Their Spouses	Senator Branden Durst

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Kenyon(Martin)
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Tuesday, February 19, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Guthrie, Martin, Lakey, Schmidt and Durst
- ABSENT/ EXCUSED:** Senator Goedde
- 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 Tippetts** called the meeting to order at 1:30 p.m.
- MOTION:** **Senator Durst** moved to approve the minutes of February 5, 2013. **Senator Martin** seconded the motion. The motion carried by **voice vote**.
- MOTION:** **Vice Chairman Patrick** moved to approve the minutes of February 7, 2013. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.
- S 1014** Relating to Removal of the Requirement that a Specific Percentage of Funds Be Allocated to Specific Programs and Providing a Sunset Date, was presented by **Paul Leary**, Administrator, Division of Medicaid, Department of Health and Welfare. He said the purpose was to modify the current code to allow available funding to be used to cover program expenditures. This change was included in the Governor's budget recommendation for Medicaid.
- He said three Department of Health and Welfare (DHW) programs, Children's Health Insurance Program (CHIP) Plan B, Children's Access Card and the Small Business Health Insurance Pilot Program, were funded through use of dedicated funds from the Premium Tax Fund. Current statute directs a specific percentage of the funds to each of the three programs. For state fiscal year 2013, this allocation formula would leave the children's program underfunded, while excess funds for the adult program would remain idle. By modifying Title 41, Insurance, Chapter 4, fees and taxes would eliminate the need to revisit the allocation formula each year and would allow the DHW to fully fund each program. He said there was a sunset clause of October 1, 2015, included in the bill. The reason for the sunset clause was the Adult Premium Assistance Program which would be transitioned to the federal subsidy program on January 1, 2014, which is a part of the Affordable Care Act (ACA). Additionally, he said, through a section of the ACA, federal funding of the CHIP, would increase by 23 percentage points, up to 100 percent on October 1, 2015. He indicated that at that point in time, Idaho's CHIP program would be 100 percent federally funded and the premium tax fund would no longer be necessary to fund this program.
- There would be no impact on the General Fund. There would be no change to the total amount of premium tax fund used for these three DHW programs, as premium tax funds available to be used for these programs was defined in statute.
- Vice Chairman Patrick** and **Mr. Leary** discussed the programs and the allocation of surplus monies.

MOTION: **Senator Schmidt** moved that **S 1014** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote** with **Senator Cameron** voting nay. Senator Martin will carry the bill on the floor of the Senate.

S 1100 **Senator Nuxoll** introduced this bill, relating to Health Care Sharing Ministries. She said the health care sharing industries pay medical bills for those in need. There were 800 households in Idaho, involving 2,500 individuals who participated. The participants would be exempt from buying state insurance. Twenty-two other states have already exempted these types of ministries. She said a health care sharing ministry should not be considered to be engaged in the business of insurance for the purposes of the State Insurance Code. She introduced Joe Guarino, Executive Director of the Alliance of Health Care Sharing Ministries.

Mr. Guarino explained that Health Care Sharing Ministries were charitable organizations that catered to people of similar faith, who have chosen to help one another pay their medical bills. Participants in health care sharing organizations financially assisted other participants with large medical expenses. Over the last 30 years, the three national ministries that have health care sharing, have helped pay more than \$1.75 billion in medical bills. Their stellar performance was enough for Congress to recognize them as legitimate and exempted the participants in Health Care Sharing Ministries from the individual responsibility requirement in the ACA. **Mr. Guarino** said due to their voluntary and ministerial nature, the organizations should be recognized in the insurance code as health care sharing organizations and not as health insurance companies.

He said they were there to request an exemption for these organizations from Idaho's insurance regulations. Idaho would be joining 22 other states who have already exempted health sharing organizations, including Washington in 2011, South Dakota in 2012, and Utah several years ago. Simply, he said, this bill does two things: (1) it defines what a health care sharing ministry is in Idaho's code; and (2) it exempts these organizations from the insurance code, since they are not insurance companies.

Mr. Guarino said cost-sharing was accomplished through participants' monthly gifts directed to families in financial distress and not to an insurance reserve fund. In addition to addressing the financial needs of those facing health challenges, the health care sharing organizations also seek to help meet spiritual and emotional needs as a part of the sense of community which exists among participants. Nationally, health care sharing organizations serve more than 170,000 individuals in all 50 states. In Idaho, approximately 2,500 individuals participate. He mentioned this bill was before the committee because overzealous insurance regulators occasionally attempt to subject health care sharing organizations to the same requirements as insurance companies. It is impossible to meet such standards without destroying the voluntary, ministerial nature of these organizations. Fighting the regulators in court has been extremely expensive and strains the finances of the health care sharing organizations' participants, who are already a financially stressed segment of the population. The uncertainty created by such litigation could also harm the functioning of the organizations. In terms of consumer protection, health care sharing organizations are under the oversight and general regulation of both the Internal Revenue Service and the Attorney General offices, since they are 501(c)(3) charities. He commented the ministries should not be subject to the additional requirements of the state insurance code, which should specifically recognize health care sharing organizations as charitable organizations and not as insurance providers. Health care sharing organizations have a desire that the state insurance code explicitly recognize that health care sharing organizations are not identified as insurance companies who are seeking an exemption from

the insurance code. **Mr. Guarino** reiterated that since health care sharing organizations engaged in voluntary sharing and not a contractual transfer of risk, they were not an insurance company. The public good would be served by explicitly acknowledging this through a specific exemption in the state's insurance code to avoid uncertainty and unnecessary waste of legal expenses.

Mr. Guarino said the ministry never sees the money and they are only a facilitator. The reason the ministries didn't consider themselves an insurance company was because a transfer of risk to a third party would be required to qualify. Insurance companies are required to keep funds in reserve, but all money comes from the pool of participants.

Senator Guthrie and **Mr. Guarino** discussed the idea of someone abusing the system and using the money to pay for groceries instead of paying for their medical bills. They talked about medical bills that were extremely high, such as for a heart transplant. The ministry would negotiate the amount with the provider **Mr. Guarino** said. **Senator Lakey** discussed with **Mr. Guarino** the requirement of being of "similar faith" and the idea that the applicant was "Christian".

A discussion ensued between **Senator Cameron** and **Mr. Guarino** regarding claims, the voluntary payment of medical bills to providers, the signing of documents or contracts obligating payment, the reallocation of shares when all of the money was not raised to pay a bill, and how the risk was handled if an individual received more money than the medical bill. They discussed the definition of a provider, such as doctors, nurses, hospitals and ambulance companies. The application form and the process were discussed. **Mr. Guarino** indicated the ministry decided what was shared and the requirement to help determine pre-existing conditions for an individual. Because they were a private organization, they were able to reject someone participating in the service and since the ministry was not an insurance company, they were exempt from the ACA requirement. **Mr. Guarino** cited examples of contract violations, which were not attending church services at least three times a month and the consumption of alcohol. Yearly renewal of the application, requiring the pastor's signature for the participant was discussed. Payment limits for the first and second tiers were included in the discussion, along with the \$175 administrative fee.

Senators Guthrie and **Schmidt** discussed with **Mr. Guarino** the misuse of funds, disqualification of a participant, the enrollment of those who have health insurance, but use the ministry pool to pay deductibles, the idea that most participants didn't have health insurance, and legislative oversight. **Chairman Tippetts** said **Mr. Guarino's** examples had been medical needs and medical expenses. **Chairman Tippetts** cited the legislation which clearly stated in line 21 of the bill, "relating to the ministry acting as a facilitator among participants who have financial or medical needs", and line 26, "which provides for the financial or medical needs of a participant through contributions from one participant to another". He asked **Mr. Guarino** to give him an example of the kinds of financial needs that may be covered by his organization. **Mr. Guarino** said that because the participants were sending checks, his organization was referring to financial needs. He said some people may think that when they said medical needs, they could be thinking about helping someone get to a clinic, for example. A person was not paying the bill, but was helping someone get to the clinic. In this case, medical financial language was inserted to cover everything that helped pay for a medical bill. He stated there were approximately 800 participating households in Idaho.

TESTIMONY: **Chairman Tippetts** advised those wishing to testify to be brief, but the committee wanted to give them the time they needed to make their point. He asked those who testified to state and spell their names and indicate who they represented.

Tom Munds from Caldwell, Idaho, stated he had been a member of the ministry for about one and a half years. He quoted John Adams and explained the quote meant Americans, as individuals, should be able to take personal responsibility for their own actions. He said the paradigm had shifted. The government had to give us authorization to do something we have already decided to do on our own. He said we were accountable to one another as Christians and as a part of exercising faith and solid beliefs in the bible. He indicated the ministry was designed in faith with some protective measures, but they had to rely on the fact the participants were Christians. People should be trusted to exercise their freedom as long as they were not hurting someone else. He said his personal choice was based on moral grounds. He said the Samaritan Ministries were part of a system that took care of themselves and the government did not have to take that responsibility. He talked about the separation of church and state and restoring their proper relationship. He pointed out the cost saving benefit of the ministries. As a self-payer, his health care bills have been reduced by 25 percent. He talked about how many fortunate Christians try to help by giving extra money for non-covered medical needs.

Senator Schmidt asked Mr. Munds if it was his perception of the current bill that he would not be required to purchase health insurance. **Mr. Munds** said it was his understanding that he was not required by the government to have to submit to mandates, so long as he took responsibility for his own actions.

David Barrett of Boise, said he was in favor of the bill. He said his family had been a part of Samaritan Ministries for the last 15 years. He stated he had seven children and had been able to pay off all of his medical bills in a timely way. He indicated his participation was deeply related to his Christian beliefs.

Chris Brown, an attorney, said he was testifying as a husband and father, and was a member of the Samaritan Ministry. He shared that his many medical bills had been 100 percent paid. He compared the cost of the ministry with the cost of a Blue Cross policy, which increased, with no claims in one year, from \$400 to \$900 a month. He said he looked for an alternative 13 years ago and found Samaritan Ministries. He said he contracted directly with the doctors and had control over his own medical care. The voluntary program works. He stated the ministry was amazing, good and positive in comparison to traditional medical insurance. Currently, he is paying \$300 a month to the ministry to participate.

A discussion ensued with **Senators Cameron, Lakey** and **Schmidt** with **Mr. Brown** about the limitations of seven years for cancer treatments, diabetes or heart conditions that were not covered, the voluntary nature of the ministries, unsuccessful challenges by attorneys declaring the ministries to be insurance companies, and the lower monthly outlay for participants in the ministries.

Elyse Baumbach said she grew up in a family that used the Samaritan Ministries and was currently a member as an adult. She said she liked the ministry because she was in charge of her health care needs and she was a part of a Christian organization. Participants helped and prayed for one another. She valued the fact that she felt she helped a person when she received a monthly bill for that person's medical needs.

Katherine Frazier said she was not a subscriber, but wanted to be ready when the time came when she became ill. She liked the idea that the medical bill was between herself and her provider. She thought this was a remarkable program and a good way to pay medical bills and of keeping expenses down.

Lucas Baumbach testified he and his wife were members. He stated his wife was employed by the ministry, and he asked for support of the bill from the committee. He said the membership had grown and the concept was catching on. **Senator Cameron** asked Mr. Baumbach to clarify the fact that his wife worked for the ministry and asked if her position paid. **Mr. Baumbach** said she worked for Samaritan Ministries as an administrative assistant.

Michael Oswald, representing himself and his wife, Malia, said they were members for the same reasons as those who previously testified. He said he had the same kind of angst as others, and it took a while to become accustomed to the ministry concept, but when they made the decision to participate, they were at peace.

MOTION:

Senator Durst moved that **S 1100** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion.

Senator Cameron stated he had a possible conflict of interest pursuant to Senate Rule 39, since he was an insurance agent. **Senator Durst** said, speaking from an evangelical standpoint, participants were living in accordance with accountability. He said it was critical to recognize the power of prayer within a ministry as a body of believers, who were praying to prevent medical needs. He said he supported this legislation. **Senator Cameron** said he found the concept refreshing and satisfying when others banded together to help one another. He said he would prefer if there was additional language that would prevent someone from holding themselves out as an insurance plan and accepting risk on behalf of another.

Senator Nuxoll said that in answer to Senator Cameron's concerns, section 2 (f) provided written monthly statements to all participants that listed the total dollar amount of qualified needs submitted to the health care sharing ministry, as well as the amount actually published or assigned to participants for their contribution. She said that 39 departments of insurance had filed cases against health care sharing ministries and 39 had lost. Eight states came up with the same bill and passed it. In Obamacare, section 1501 (b) showed the ministries were exempted. Yearly audits are conducted with Samaritan.

Senator Cameron asked Senator Nuxoll if she would be opposed to friendly amendments or additional language that strengthened the fact that the health care ministries were not insurance. **Senator Nuxoll** said she thought the bill was fine the way it was written. **Senator Guthrie** and **Mr. Guarino** had a conversation regarding the administration fee of \$175 a year and the transparency of amounts held out in reserves from the administrative pool. **Senator Guthrie** asked Mr. Guarino if the amount in the account was disclosed during the audit. **Mr. Guarino** said they did keep some money in reserve, not like an insurance company, but like any prudent company for major expenses, such as replacing a roof. **Senator Guthrie** said that if someone who was already in the ministry could not pay for treatment and the claim was not paid in a timely manner and a third party application was made, would the ministry consider itself a financial resource to retire that debt? **Mr. Guarino** said the ministry could not be identified as a financial resource because the money was with the participants.

Senator Schmidt and **Mr. Guarino** discussed other ministries that have not been financially sustaining, but which have disbanded and joined the Samaritan ministries. **Senator Lakey** said he supported the bill. The ministries were not insurance and he appreciated the voluntary concept with no obligation to pay. **Senator Martin** said the ministry was truly a Christian act of faith and was appropriate for this organization. He said he agreed there was oversight and this was not insurance.

Attachment 1 was transmitted as written testimony by an individual who did not testify during the meeting (see attachment 1).

VOTE: The motion carried by **voice vote**. Senator Nuxoll will carry the bill on the floor of the senate.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:56 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 21, 2013

SUBJECT	DESCRIPTION	PRESENTER
PRESENTATION:	Group Insurance Overview	Teresa Luna, Director Department of Administration
<u>S 1019</u>	Relating to A Criminal History Check for Nurses	Sandra Evans, Executive Director, Board of Nursing
<u>S 1020</u>	Relating to Disciplinary Fines for Nurses	Sandra Evans, Executive Director, Board of Nursing
<u>S 1021</u>	Relating to Sharing Investigative Information for Nurses	Sandra Evans, Executive Director, Board of Nursing

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 21, 2013

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt, Durst

**ABSENT/
EXCUSED:**

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: MEETING CANCELLED DUE TO DEBATE ON FLOOR OF SENATE

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 26, 2013

SUBJECT	DESCRIPTION	PRESENTER
UNANIMOUS CONSENT REQUEST FOR <u>RS22086:</u>	Concurrent Resolution to reject Docket No. 24-2501-1201. Bureau of Occupational Licenses, Relating to Rules Governing Licensing of the Idaho Driving Business Licensure Board	Senator Patrick
UNANIMOUS CONSENT REQUEST FOR <u>RS22091:</u>	Concurrent Resolution to reject Docket 24-0101-1201, Bureau of Occupational Licenses Relating to Rules of the Board of Architectural Examiners, Section 550, Subsection 02, Relating to Professional Standards; Section 550, Subsection 03, Relating to Contracts, only, adopted as pending rules; and final rule Section 550, Subsection 04, Relating to Direct Supervision only.	Senator Patrick
<u>H 11</u>	Relating to Casualty Insurance Contracts	John Mackey, NAIFA
<u>H 28</u>	Relating to Manufactured Home Dealer & Installer Licensing	Jack Lyman, Idaho Housing Alliance
<u>H 9</u>	Relating to Banks & Banking - Ability to Engage in Basic Risk Mitigating Derivative Transactions	Mary Hughes, Bureau Chief, Financial Institutions - Department of Finance
<u>H 7</u>	Relating to the Department of Finance Multi-state Licensing Program	Michael Larsen, Bureau Chief - Department of Finance
<u>H 8</u>	Relating to Commercial Transactions - Clarification of License Requirements for Consumer Loans	Michael Larsen, Bureau Chief - Department of Finance
<u>H 10</u>	Relating to Amending the Licensing Provisions of the Residential Mortgage Practices Act	Michael Larsen, Bureau Chief - Department of Finance

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Tuesday, February 26, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst
- ABSENT/ EXCUSED:**
- 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 Tippetts** called the meeting to order at 1:30 p.m.
- MOTION:** **Senator Cameron** moved to approve the minutes of February 12, 2013. **Senator Martin** seconded the motion. The motion carried by **voice vote**.
- MOTION:** **Senator Goedde** moved to approve the minutes of February 14, 2013. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.
- MOTION:** **Senator Guthrie** moved to approve the minutes of February 19, 2013. **Senator Goedde** seconded the motion. The motion carried by **voice vote**.
- Vice Chairman Patrick** asked for unanimous consent to print Concurrent Resolution **RS 22086**, to reject **Docket No. 24-2501-1201**, Bureau of Occupational Licenses, relating to rules governing licensing of the Idaho Driving Business Licensure Board. **Chairman Tippetts** stated to the committee that since they were not a "privileged committee" they did not have the ability to print a new Routing Slip (RS), and that was why a "privileged committee" was asked to print the resolution. The RS will then go directly to the Tenth order of business on the floor of the Senate. There were no objections.
- Vice Chairman Patrick** asked for unanimous consent to print Concurrent Resolution **RS 22091** to reject **Docket No. 24-0101-1201**, Bureau of Occupational Licenses, relating to rules of the Board of Architectural Examiners, section 550, subsection 02, Relating to Professional Standards; section 550, subsection 03, Relating to Contracts, only adopted as pending rules; and final rule section 550, subsection 04, relating to direct supervision only. There were no objections.
- The RSs were referred to the State Affairs Committee for introduction and printing with the recommendation they be referred to the Tenth order of business on the floor of the Senate.
- Chairman Tippetts** said **H 9** would be heard first on the agenda, followed by the other bills listed on the agenda.

H 9

Mary Hughes, Financial Institutions Bureau Chief, Department of Finance (Department) presented **H 9** relating to banks and banking and the ability to engage in basic risk mitigating derivative transactions. This is a proposed amendment to the Idaho Bank Act. The amendment specifically states the provisions which regulate the amount of a loan that a bank may make to one person or related groups of persons. **Ms. Hughes** said a change in federal law has made this amendment necessary. The Dodd-Frank Wall Street Reform and Consumer Protection Act requires state law to take into consideration a state-chartered bank's credit exposure to derivative transactions. Many banks engage in non-complex derivatives transactions for the purpose of mitigating interest rate fluctuation and other types of risk, and to facilitate extensions of credit. Idaho Code § 26-705 is amended to ensure that Idaho state-chartered banks continue to have the ability to engage in basic risk mitigating derivative transactions.

Idaho state-chartered banks, which are smaller community banks, do not engage, to any significant degree, in activities that would be considered derivative transactions. To the extent they do, it is in order to serve their customers and protect the bank. Typically, these are mortgage rate locks or interest rate swaps to facilitate mortgage lending.

Ms. Hughes said to meet the federal mandate, the Department has (1) included a reference to "derivative transactions" in the Act's lending limits; (2) specified that any credit exposure in the transactions shall be considered the same as a traditional extension of credit for the purposes of the limits; and (3) directed that banks can evaluate the credit exposure in the same manner as national banks, by referencing rules implemented by the federal government. The fundamental idea, she said, is that credit exposure created by derivative transactions should be subject to the same limits that apply to traditional credit transactions. **Ms. Hughes** said it was important to remember that state banks have always had the authority to engage in these transactions. This legislation will allow state banks to continue to engage in these transactions but will limit the transactions by capping the credit exposure a bank can have. The failure to allow Idaho state-chartered banks to do this will limit their ability to manage risk, limit the types of credit they can make available to consumers, and place them at a competitive disadvantage with national banks and those banks chartered by other states.

Vice Chairman Patrick stated he had a conflict of interest pursuant to Senate Rule 39 because he is on the board of a small bank. **Senator Cameron** and **Ms. Hughes** had a conversation relating to the Dodd-Frank mandated changes for banks. They discussed the reasons an extension of credit would fall under the same guidelines as a loan. **Ms. Hughes** said the majority of other states in the country had addressed the federal mandate by amending their laws, were in the process of amending them, or had determined that verbiage in their laws contained the required language. She said the Department had worked with the Idaho Bankers Association (Association) on this bill and the Association supported the bill. The Department was not aware of any opposition.

TESTIMONY:

Curt Hecker, President and Chief Executive Officer (CEO) of Intermountain Community Bank of Idaho (IMCB), testified in support of **H 9**. He said he thought some day rates would go up again. He stated the current demand for loans from their customer base was for long-term real estate loans. In order to manage interest rate risk appropriately, he said banks should keep the duration of their portfolios to three years or less.

MOTION:

Senator Lakey moved that **H 9** be sent to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor of the Senate.

H 11

John Mackey, National Association of Insurance and Financial Advisors (NAIFA) presented **H 11** relating to casualty insurance contracts. He stated he was there on behalf of the United Heritage Property and Casualty Insurance Company. He said the bill would amend Idaho Code § 41-2507 by adding language which would allow automobile insurance companies to non-renew insurance coverage on automobiles that are registered in states other than Idaho. Each individual state regulates all automobile insurance activity within its borders. In order for an automobile insurance company to do business in a particular state, it must acquire a license from that state. **Mr. Mackey** said that not all automobile insurance companies licensed to do business in Idaho were licensed to do business in all the other states and were faced with a dilemma when an insured auto became registered in another state. Without a license, the insurer is prohibited from continuing the insurance coverage, yet unable to discontinue the insurance coverage because Idaho Code § 41-2507 does not provide for other state automobile registration as a reason for non-renewal of coverage. This leaves the insurer with a choice of either renewing the coverage, and most likely violate the law in the state where they are not licensed or non-renew the coverage and violate Idaho law.

Mr. Mackey and **Senator Durst** had a conversation regarding the dilemma of moving from Idaho to another state and current regulations for automobile insurance coverage. **Mr. Mackey** said **H 11** would alleviate the dilemma and align Idaho more closely with many of its neighboring states, which only require an automobile insurance company to provide notice, generally 30 days, for non-renewal of insurance coverage. He said he was not aware of any opposition and there was no fiscal impact. **Senator Guthrie** and **Mr. Mackey** discussed the carrier cancelling the insurance of someone who moved out-of-state, licensing, and the issuance of policies.

MOTION:

Vice Chairman Patrick moved that **H 11** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor of the Senate.

H 28

Jack Lyman, Idaho Housing Alliance, presented **H 28** relating to manufactured home dealer and installer licensing. He gave the background and history of the bill. He said this bill would eliminate the licensing requirement for companies that provide remodeling services for manufactured homes. He said a service company was defined as one that provided service, repair or tear down of manufactured or mobile homes. Three of the twelve service companies in the state are non-profit organizations who do low-income weatherization on these homes. He explained that a homeowner could have difficulty in finding qualified service companies in their area, as required under current law. The companies would be subject to the same local requirements that were applied to alterations on site-built homes. The current licensing requirements assumed that manufactured homes were subject to United States Housing and Urban Development (HUD) standards after their original installation. HUD had clarified the licensing was not needed because it did not exercise any jurisdiction once a home had been properly installed. Because there was no requirement that these homes continue to meet HUD standards, there was no need to require a separate manufactured home service company license.

Mr. Lyman said the bill also amends the provisions related to background checks required for the other license categories (retailer, resale broker, installer) to make them consistent with current Idaho State Police procedures. The bill would reduce the reach of state government, while continuing to protect homeowners. He said the repeal of this licensing requirement offered a unique opportunity for the committee to vote for a bill that would actually shrink the size of the Idaho Code.

Senator Durst and **Mr. Lyman** discussed obtaining input from the current owners of manufactured homes and the impact this bill would have on inspections. They talked about the requirement that a company cannot make any improvements to a manufactured home unless they are licensed as a service company under current Idaho law .

MOTION: **Senator Lakey** moved that **H 28** be sent to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor of the Senate.

H 7 **Michael Larsen**, Consumer Finance Bureau Chief, presented **H 8** relating to the Department of Finance multi-state licensing program. He said the bill was a proposal to amend the general powers provision of the Idaho Department of Finance (Department). If adopted, the bill would allow license applicants and licensees the option of utilizing an online nationwide licensing system for initializing and maintaining license records. The purpose of the proposed amendment was to provide licensees and license applicants the choice of utilizing the benefits of maintaining their licenses online. The benefits included being able to establish a single licensing record for use among various state jurisdictions and to utilize an online technology platform for submitting required licensing information.

Mr. Larsen said during the past year, the Department conducted a survey of its licensees and learned that there was significant interest among the Department's Collection Agency and consumer lender licensees for an online system for license management.

MOTION: **Senator Guthrie** moved that **H 7** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Guthrie will carry the bill on the floor of the Senate.

H 8 **Senator Heider** presented **H 8** relating to commercial transactions clarifying what constitutes engaging in business for which a certain license is required for consumer loans. He said the bill would amend the Territorial Application provision of the Idaho Credit Code that would benefit Idaho consumers, as well as Idaho businesses that have complied with license requirements, by adopting a "level-the-playing-field" provision clarifying that persons who advertise or offer to make consumer purpose loans in Idaho be licensed in the same manner as their competitors who have complied with license requirements. By adoption of this bill, other regulatory statutes would be consistent and would provide an exemption for state and federal agencies that are already subject to government oversight.

Senator Heider said the bill would establish that a license application be abandoned or withdrawn after a 60-day period during which an applicant had been unable to clear license application deficiencies. The Department is seeking to help license applicants avoid administrative denial orders resulting from a failure to submit a complete license application within a 60-day window. Such orders, when issued, are unnecessarily punitive because they must be reported in future license applications, not only in Idaho, but in all states where the applicant conducts business.

Senator Heider said, in addition, the bill would create license reinstatement provisions to allow licensees who fail to renew on time or who cannot clear renewal deficiencies by the renewal deadline, to reinstate a license within 60 days after the renewal deadline. This change would reduce the amount of documentation required to reestablish licensure. The total cost of \$200 per person for reinstatement would be no greater than the overall cost of applying for a new license, and would be less cumbersome for the applicant as well as for the Department. The benefit of a reinstatement period to the licensed business would be to not have to submit a new

license application package after missing a license renewal deadline, which would expedite the re-approval and issuance of a license.

Approval of the bill would extend prohibited acts that now apply to payday and title lender licensees and to individuals and businesses that are not licensed, but by law should be. For instance, current law prohibits payday lender licensees from engaging in unfair or deceptive acts. This proposal would extend the same prohibition to those who engage in unlicensed payday lending in Idaho. **Senator Heider** said he and Michael Larsen would be happy to stand for questions.

A discussion ensued between **Chairman Tippetts** and **Michael Larsen**, Consumer Finance Bureau Chief, Department of Finance (Department) regarding the explanation of "a loan for a consumer purpose." **Mr. Larsen** defined the term in the Idaho Credit Code as a loan for personal, family, or household purposes with the exclusion of any commercial purpose for the loan. They talked about the fact that a person who offered to make a loan must be licensed. They had a discussion about a person loaning money to a family member for consumer purposes and whether or not that person had to be licensed. **Mr. Larsen** said the bill does not change any of the exemptions currently in the Idaho Credit Code. The lender has to be in the business of making consumer-purpose loans and the Department would not look at the licensing requirement to make a loan to a family member. **Mr. Larsen** said that until a contract had actually been entered into, the Department could not issue a cease and desist order. **Mr. Larsen** explained that the Department was only interested in requiring a license from a person who actually was in the business of making that type of loan. They discussed where to locate the language in the Idaho Credit Code for exemptions. **Mike Brassey**, representing the Idaho Financial Services Association, directed **Chairman Tippetts** to page 9 of the bill, line 23 and line 30 relating to the license requirement and allowable exemptions.

Senator Durst and **Mr. Larsen** had a discussion about the validity of payday loans by out-of-state unlicensed lenders and that the loans were void and uncollectible. **Mr. Larsen** said the proliferation of on-line solicitation from around the globe prompted the drafting of this bill. **Mr. Larsen** said the Department wanted to take action before borrowers became involved in these types of loans. Principal and interest must be returned by law. **Senator Lakey** and **Mr. Larsen** had a conversation about the consistency with other agencies of the licensing exemption that was already subject to government oversight.

Senator Guthrie and **Mr. Larsen** discussed the additional annual revenue of \$5,000 to the state for reinstatement fees for re-licensure in Idaho, which was based upon an estimate of those businesses who may reapply to reinstate a license. Additional enforcement efforts by current employees would be undertaken for cease and desist orders. **Senator Martin** asked if the state regulated the percentage and structure of payday loans. **Mr. Larsen** said the state did not regulate the fees associated with payday loans, but did regulate the structure. He explained that an individual could have more than one payday loan with the same lender, as long as the cumulative amount did not exceed \$1,000. Individuals have the right to cancel the transaction the next business day, disclosures are required and the loan can only be renewed three times.

Chairman Tippetts and **Mr. Larsen** had a conversation about the reinstatement time and the \$200 fee, the conditions for an expired license and the cost of \$150 for renewal fees. **Mr. Larsen** explained there was a tremendous amount of work by the individual and the Department to reinstate an expired license. Industry favored keeping the fees at \$350, whether someone applied for a current license or reinstated their license. Renewal fees are \$150 if paid on time. **Senator Guthrie** asked **Mr. Larsen** if someone was caught doing business without a license beyond a cease and desist letter, what would the punitive components be? **Mr. Larsen** replied there were civil penalties and administrative hearings. The Department tries to partner and work with those who are unlicensed on how to conduct business in Idaho in accordance with the law, he said.

MOTION: **Senator Durst** moved to send **H 8** to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion.

TESTIMONY: **Mike Brassey**, representing the Idaho Services Association, said he worked with the Department to draft the legislation and they support the legislation.

The motion carried by **voice vote**. Senator Heider will carry the bill on the floor of the Senate.

H 10 **Michael Larsen**, Consumer Finance Bureau Chief, Department of Finance (Department), presented **H 10** relating to amending the licensing provisions of the Residential Mortgage Practices Act. **Mr. Larsen** indicated that in connection with this bill, members of the committee should have received letters of support from the Idaho Mortgage Lenders Association (IMLA), the Idaho Association of Mortgage Professionals (IAMP), and the Idaho mortgage industry leaders who serve on the Idaho Mortgage Advisory Board (IMAB), with whom the Department regularly meets to stay abreast of mortgage industry issues. He said that **H 10** included some significant regulatory reduction measures that the Department and the Idaho mortgage industry had worked on during the past year.

By adopting the bill, licensing renewal provisions for mortgage brokers, lenders, and loan originators would be amended to provide a license reinstatement period for licensees who fail to renew on time. A license reinstatement period would benefit licensees because if they failed to renew their licenses on time, the Department would be able to reinstate a license more quickly, with less interruption to their business, because the business wouldn't have to submit a completely new license application package. There would be no financial penalty for license reinstatement because the total cost for reinstatement would be the same as if the business or individual were applying for a new license.

The bill creates a provision allowing the Department to consider a license application to be withdrawn after a 60-day time period, during which a license applicant has failed to clear all license application deficiencies. This would help the Department, as well as licensed businesses, because this would avoid the necessity of issuing administrative denial orders that stem from a mere failure to submit a complete application within a 60-day window. Such orders, when issued, are reportable actions that must be disclosed in future license applications in every state.

License processes for inactive licenses would be clarified and inactive licenses could be renewed. This benefits loan originators by allowing a process whereby they can more readily change employment from one company to another without having to reapply for a new license each time.

The Department's investigative authority would be clarified, including administrative subpoena authority of persons engaging in mortgage brokering or mortgage lending in Idaho without a required license. The manufactured housing exception to the

definition of "mortgage loan originator" would be eliminated as required by the United States Department of Housing and Urban Development (HUD) as being inconsistent with the requirements of the federal Secure and Fair Enforcement Mortgage Licensing Act (S.A.F.E.). The bill provides an exemption from licensing of individuals employed by federal, state or local government agencies or housing finance agencies while acting in their official duties. In the commentary to its final S.A.F.E. Act rules, the United States Department of HUD stated that individuals who act as loan originators as employees of government or of housing finance agencies, are not subject to the licensing or registration requirements of the S.A.F.E. Act.

Chairman Tippetts had a conversation with **Mr. Larsen** regarding a similar situation where the renewal fee and the reinstatement fee were equivalent to the fee for an original license. They also discussed part of section 10 of the bill that referred to section 26-31-211 that said no mortgage broker or mortgage lender licensee shall "employ or otherwise appoint as a qualified person in charge any person who the director has found to have violated standards of conduct adopted by the Nationwide Mortgage Licensing System and Registry (NMLSR) applicable to a person taking a written test administered pursuant to section 26-31-308, Idaho Code, or who has obtained or attempted to obtain credit for education required pursuant to section 26-31-307 or section 26-31-310, Idaho Code, by means of false pretenses or representations". **Chairman Tippetts** said he thought the penalty for these violations for being convicted of or found to engage in one of the activities outlined, was a lifetime sentence. **Mr. Larsen** explained that with the passage of the Federal S.A.F.E. Act, pre-licensed testing and education is required, along with continuing education, to maintain a license. Some states violate the standards of testing. The "qualified person in charge", designated by a mortgage company, would be responsible for the conduct of the mortgage business in any particular location, but they don't have to be on-site. This part of the bill prohibits a company from employing as a "qualified person in charge", a person who has been found by the Director to have violated or cheated on the test or on the continuing education requirements. The person can still be licensed as a mortgage loan originator, however.

Chairman Tippetts discussed with **Mr. Larsen** the definition of expungement and the restriction on access to information regarding a criminal conviction. **Mr. Larsen** provided the background for this language in the bill. He said anyone who was convicted of a felony could not be in the mortgage business for seven years. If the felony was related to financial services in any way, the ban would be for life. An exemption was included in the final rules issued by HUD in 2011 for those who had a felony expunged. The Idaho Code did not have a definition of expungement. They discussed an expungement by court order. **Chairman Tippetts** asked **Mr. Larsen** if the director had the option of denying or disapproving a license if a conviction had been expunged. **Mr. Larsen** said the language in the bill was the model language the states have been encouraged to adopt. The Director is allowed to consider the underlying facts. All decisions are subject to due process and appeal.

Vice Chairman Patrick asked how a director or someone from law enforcement would find out if someone had a conviction, and **Mr. Larsen** said the person would have to self-disclose. **Senator Lakey** said there seemed to be some discretion if an individual committed some type of egregious felony. There could be leniency if the crime was expunged. He pointed out that on page 13, if someone had falsified their continuing education requirement or something to do with testing, they would be banned forever for being the "qualified person in charge", which seemed to be inconsistent with prior language. **Mr. Larsen** said they have had very few violators, but the person would be banned forever.

Senator Durst asked if the Department had some rationale for making the bill as long as it was. He wanted to know if the bill could have been put into smaller bills, so as to not confuse the issue. **Mr. Larsen** said the approach from the Department came about when working with the members of their Mortgage Advisory Board and with industry, because there were many things they wanted to work out and bring together.

TESTIMONY: **Teri Ottens**, Executive Director of the Idaho Association of Mortgage Professionals, testified her association was in support of the bill. They spent the last year-and-a-half with the Department of Finance going over the S.A.F.E. Act and changes that had to be made to the bill. She said she felt the Department had worked closely with industry to mitigate a negative impact of the S.A.F.E. Act by including the expungement, reinstatement and inactive status of licensees in this bill.

MOTION: **Senator Cameron** moved that **H 10** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Cameron will carry the bill on the floor of the Senate.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:52 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AMENDED AGENDA #2
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 28, 2013

SUBJECT	DESCRIPTION	PRESENTER
UNANIMOUS CONSENT REQUEST FOR RS 22158:	Concurrent Resolution to reject Docket 24-0101-1201, Bureau of Occupational Licenses Relating to Rules of the Board of Architectural Examiners, Section 550, Subsection 03, Relating to Contracts, only, adopted as a pending rule; and final rule Section 550, Subsection 04, Relating to Direct Supervision only.	Senator Patrick
<u>S 1041</u>	Relating to State Personnel to Provide for the Non-Competitive Appointment to State Agencies of Disabled Veterans	Senator Marv Hagedorn
<u>S 1045</u>	Relating to Revision of the Definition of "Veteran"	Senator Marv Hagedorn
<u>S 1068</u>	Relating to Expediting Occupational Licensure for Active-Duty Service Members and Their Spouses	Senator Branden Durst

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Thursday, February 28, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst
- ABSENT/ EXCUSED:**
- 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 Tippetts** called the meeting to order at 1:30 p.m.
- UNANIMOUS CONSENT REQUEST FOR RS 22158:** **Chairman Tippetts** explained how the rules of the Board of Architectural Examiners were partially rejected and in the process were renumbered, which caused confusion. A new RS was created and the new RS would be sent to a privileged committee and then to the Tenth Order of business on the floor of the Senate. **Vice Chairman Patrick** asked for unanimous consent to send **RS 22158** to a privileged committee for printing and to reject **Docket No. 24-0101-1201**, Bureau of Occupational Licenses relating to rules of the Board of Architectural Examiners, Section 550, Subsection 03, Relating to Contracts, only, adopted as pending rules; and final rule Section 550, Subsection 04, relating to direct supervision only. There were no objections.
- S 1041** **Chairman Tippetts** introduced **Senator Marv Hagedorn** who presented this bill relating to state personnel and providing for the noncompetitive appointment to state agencies of disabled veterans. He stated this bill was also sponsored by Senator Branden J. Durst. He said the legislation would change state hiring practices by establishing the option of noncompetitive appointment to state agency jobs when considering applicants who were qualified disabled veterans. The following must occur in order for the appropriate authority to appoint a disabled veteran on a noncompetitive basis: a) The disabled veteran has served in the United States armed forces and is included on a United States armed forces permanent disability list with a disability rating of at least thirty percent or the disabled veteran has been rated by the United States Department of Veterans Affairs as having a compensable service-connected disability of at least thirty percent; b) The disabled veteran presents to the appointing authority written documentation from an appropriate department of the federal government certifying the existence and extent of the disability. The certification must have been issued by the appropriate department of the federal government within the year preceding appointment; and c) The appointing authority determines that the disabled veteran meets the minimum qualifications for the vacant position.
- If an appointing authority elects to appoint a disabled veteran to a vacant position on a noncompetitive basis, an appointing authority is not required to interview any other person.

Chairman Tippetts and **Senator Hagedorn** had a conversation regarding the advantages currently built into the system for veterans. They discussed additional preference points awarded to veterans during the application and interview process.

Senator Cameron and **Senator Hagedorn** discussed the possible ramifications of not hiring a veteran, discretion of the agency or director to make the final decision to hire the best qualified person for the job, regardless of whether they were a veteran. They had a conversation about disabled veterans having a higher unemployment rate than non-disabled veterans, veterans having an unemployment rate of two to three percent higher than non-veterans, the contributing factor of the high suicide rate among veterans (22 suicides a day nationwide), and the idea that steps needed to be taken to get veterans back into the private sector as soon as possible. Costs of training, depending upon the disability of the veteran and medical coverage were discussed. **Senator Schmidt** questioned **Senator Hagedorn** regarding written documentation submitted by a disabled veteran certifying the existence and the extent of the disability. He asked whether the nature of the disability was transmitted or just the existence of and the extent of the disability.

Senator Guthrie and **Senator Durst** talked about definitions of a "nonclassified officer" (the classification in terms of employment) and "appointing authority" (the agency who is hiring the individual). They discussed the authority to appoint someone for a job, going through the proper hiring procedures, and clarification of terms in the bill.

Senator Guthrie and **Senator Hagedorn** discussed the three minimum requirements for thresholds of disability ratings. **Vice Chairman Patrick** mentioned the key words were "may appoint" with an option "to appoint", which did not require someone to be appointed.

Chairman Tippetts questioned lines 31 and 32 that said "an appointing authority is not required to interview any other person" and line 14 "the appointing authority may appoint a disabled veteran". **Chairman Tippetts** said he did not see anything in the bill that would require the agencies to advertise a vacancy. **Senator Durst** explained the bill referred to nonclassified jobs on line 13 that did not have to be advertised and line 37 referred to classified jobs that had to be advertised. **Senator Hagedorn** explained that if an agency advertised for a position, there were many applicants and one of the applicants was a qualified disabled veteran, the agency was not required to finish going through the hiring process, but could appoint a qualified disabled veteran. **Chairman Tippetts**, **Senators Durst**, **Goedde** and **Hagedorn** had a conversation about an agency being allowed to talk to a disabled veteran ahead of time about a job, hand-selecting someone, how much of the hiring process would be disregarded. They discussed how other veterans or disabled veterans could be precluded from consideration for an upcoming vacancy, hiring the best disabled veteran for the job, and job and agency priorities.

TESTIMONY:

Chairman Tippetts welcomed **Vickie Tokita**, Administrator, Division of Human Resources, who explained there was a current statute in Idaho Code § 59-1602, that federal merit system standards be applied to nonclassified positions, financed in whole or in part by federal funds, and that the standards must be applied to personnel administration of a merit system. The same language applied to classified employees. Currently, the classified system agencies receive a list of 25 applicants who they can consider, interview and hire. Disabled veterans have to be interviewed. The current system allows for a qualified disabled veteran to be hired if he or she is in the top 25 and no one else, including a veteran, has to be interviewed. **Ms. Tokita** and **Chairman Tippetts** talked about the 100 point rating system for a job applicant, including an additional five points given to a veteran and ten points for a disabled veteran with the possibility of a final score of 115 points.

TESTIMONY: **Tamara Mackenthun**, Deputy Administrator of Veterans Services, shared her own personal experience as a disabled veteran, the difficulty in getting hired due to the different skill set required for work experience, the exams that did not address knowledge, but emphasized work experience, and how difficult it was to make the transition from the military service to the private sector. She said the letter from Veteran's Affairs did not state the disability, but only that a veteran was 30 percent or more disabled.

Senator Hagedorn, in his closing comments, said this bill would give disabled veterans a greater opportunity for employment, send a positive message, and provide a solution to serve the group who has sacrificed so much for our country.

MOTION: **Senator Durst** moved that **S 1041** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. **Senator Goedde** said he was ready to support the bill, but had a concern about not making veterans aware of job openings and the potential for abuse. The motion carried by **voice vote**. Senator Durst will carry the bill on the floor of the Senate.

S 1045 **Senator Marv Hagedorn** presented this bill relating to the amendment of Idaho Code § 65-505 to revise the definition of "veteran." Currently, the definition of a veteran, as defined in § 65-502 § 17, requires a person to have served on active duty in the armed forces during a war or in a combat zone. The current definition of "veteran" under state code, alienates many who have served, but may not have served in what is considered a war or combat zone as defined by the federal government under United States Code. This revision strikes out the requirement "to have served in a war or combat zone" as defined by the federal government under United States Code. He cited the United States Code and cited a lengthy description of what the feds consider a "veteran" for hiring purposes. He indicated that Section 2108 of United States Code was repealed on April 10, 1989 which defined a "veteran" and this bill would remove that language from Idaho Code. **Senator Hagedorn** said, for the purposes of hiring only, the bill would change the definition of veteran to someone who served on active duty for a minimum of 180 consecutive days and was honorably discharged." He said the Idaho Division of Veteran's Services, the American Legion, the Veterans of Foreign Wars, the American Veterans, the Marine Corps, along with a variety of smaller veterans service organizations, have all expressed support for the change in definition.

A discussion ensued among **Chairman Tippetts**, **Senators Martin, Schmidt, Durst, Guthrie, Lakey**, and **Hagedorn** relating to a clear definition of "active duty" requirements. **Senator Hagedorn** requested unanimous consent for **S 1045** to be held in committee until the meeting of March 5, 2013 until the definition of "active duty" could be clearly defined. There were no objections.

S 1068 **Senator Branden Durst** presented this bill relating to the authorization of professional and occupational licensing boards within self-governing state agencies to promulgate rules expediting occupational licensure for active-duty service members and their spouses, with the requirement that the license seeker has an equivalent license in another state, commonwealth, possession or territory of the United States or the District of Columbia.

Senator Durst said a new section would be added to the code for a provisional certificate for a service member or spouse of a service member. They may obtain a certificate with stipulations, and a provisional educator endorsement in a specific content area or areas, if he or she holds a valid teaching certificate or license in good standing from another state, meets the qualifications of educators outlined in the chapter and rules of the State Board of Education, and has not engaged in any misconduct that would prohibit an individual from obtaining a license pursuant to Idaho law, including without limitation, any administrative rules of the State Board of Education. He defined "service member" as meaning any person who, at the time of application, was an active duty member of the United States Armed Forces or any reserve component of the United States Armed Forces or the National Guard of any state, commonwealth, possession or territory of the United States Armed Forces or the National Guard of any state, commonwealth, possession or territory of the United States or the District of Columbia. A provisional educator endorsement is valid until June 30 immediately following two years of the license being issued, during which time any remaining testing and coursework deficiencies must be met. Failure to satisfy all stated deficiencies shall mean the individual, including any service member or spouse who has obtained a certificate with stipulations and a provisional educator endorsement in a specific content area or areas, is ineligible to receive a certificate at that time. A provisional educator endorsement on a certificate with stipulations shall not be renewed.

Section two of the bill would be amended. Each of the professional and occupational licensing boards within the department of self-governing agencies may expedite the application of a member of the armed forces or reserves of the United States, the national guard of any state, the military reserves of any state or the naval militia of any state or a spouse of such person to receive licensure, certification or registration, if such member or spouse of such member possesses necessary education, qualifications or licensure or certification from another state, possession, commonwealth or territory. Each professional and occupational licensing board is authorized to promulgate rules to implement the provisions of this subsection.

A conversation ensued among **Chairman Tippetts**, **Senators Goedde**, **Schmidt**, **Cameron**, and **Durst** relating to requirements by the State Board of Medicine for doctors, the State Credentialing Commission for teachers, and the fiscal impact for the various boards and agencies relating to fees and promulgation of rules. **Chairman Tippetts** pointed out that the word "may" did not refer to whatever agency was issuing the certificate, but rather referred to the service member or spouse, and it was up to them whether they would get the certificate.

TESTIMONY:

Tana Cory, Chief of the Bureau of Occupational Licenses (Bureau), said she could only speak about the requirements of occupational licenses. **Senator Guthrie** and **Ms. Cory** had a conversation about how the Bureau tried to treat all applicants the same.

Senator Durst made some closing comments about the credentialing requirements for educators. **Senator Goedde** stated he had a concern about the provisional certificate and wanted input from the State Board of Education. He expressed a concern about the word "may" and said it was written at the option of the service member or spouse, not at the option of the Bureau. **Senator Durst** said he would support sending **S 1068** to the Fourteenth Order for amendment to clarify the Professional Standards Commission was issuing the certificate.

MOTION: **Senator Goedde** moved to send **S 1068** to the amending order. **Senator Durst** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:58 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, March 05, 2013

SUBJECT	DESCRIPTION	PRESENTER
UNANIMOUS CONSENT REQUEST FOR RS 22162:	Relating to the Premium Tax on Worker's Compensation Insurance	Thomas Limbaugh, Commissioner, Industrial Commission
<u>S 1045:</u>	Relating to Revision of the Definition of "Veteran"	Senator Marv Hagedorn
<u>S 1019:</u>	Relating to A Criminal History Check for Nurses	Sandra Evans, Executive Director, Board of Nursing
<u>S 1020:</u>	Relating to Disciplinary Fines for Nurses	Sandra Evans, Executive Director, Board of Nursing
<u>S 1021:</u>	Relating to Sharing Investigative Information for Nurses	Sandra Evans, Executive Director, Board of Nursing
PRESENTATION:	Group Insurance Overview	Teresa Luna, Director, Department of Administration

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 05, 2013

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst

ABSENT/ EXCUSED: Chairman Tippetts

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: **Vice Chairman Patrick** called the meeting to order at 1:30 p.m.

TESTIMONY: **Thomas Limbaugh**, Commissioner, Industrial Commission (Commission), made a presentation regarding **RS 22162**. The Industrial Commission is required by Idaho Code § 72-523 to collect a tax each year from insurance companies and self-insured employers equal to two and one-half percent of the net premiums collected on all workers' compensation insurance policies written by an insurance company in Idaho (or on the premium that would have been paid for an insurance policy from the state insurance fund by a self-insured employer). This tax is deposited in the Industrial Administration Fund, created by Idaho Code § 72-519, and is used by the Commission for administering the worker's compensation law. The law does not provide the Commission with authority to reduce the amount of tax collected. **Mr. Limbaugh** said in 2011 the legislature amended Idaho Code § 72-523 to allow for a temporary premium tax rate reduction (from two-and-a-half percent to two percent) during the period of January 1, 2012 through December 31, 2013. The Industrial Commission collects premium tax on a semi-annual basis and only completed its collections for calendar year 2012 at the reduced rate in March of 2013. The expected decline in premium tax collections was somewhat mitigated by the increase in the volume of premiums written. This proposed amendment will extend the legislature's temporary tax relief to sureties and self-insured employers through December 31, 2015. This temporary premium tax reduction may be passed on to businesses in the form of lower workers' compensation insurance premiums for all insured Idaho employers. The fiscal impact to the Industrial Administration Fund is estimated to be a \$1.6 million revenue reduction in each of fiscal years 2015 and 2016 for a total impact of \$3.2 million.

Senator Goedde asked for unanimous consent for **RS 22162**, relating to a premium tax on Worker's Compensation Insurance, to be sent to a privileged committee for printing. There were no objections.

S 1045 **Senator Marv Hagedorn** proposed an amendment to the wording of this bill. He said "active duty" meant full-time duty in the active military service of the United States. Such terms included full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or designated by the secretary of the military department concerned.

MOTION: **Senator Cameron** made a motion to send **S 1045** to the amending order. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

Sandra Evans, Executive Director, Board of Nursing (Board), presented this bill relating to criminal history checks for nurses. She said that in order to safeguard public health, safety and welfare, it was in the public interest to regulate and control nursing in the State of Idaho, to promote quality health care services, to prohibit unqualified and dishonest persons from practicing nursing, and to protect against acts or conduct which may endanger the health and safety of the public. She said that a recent Federal Bureau of Investigation (FBI) audit of the Board's existing statutory authority to conduct criminal background checks of applicants for a nursing license, revealed some deficiencies and resulted in recommendations to amend Section 54-1401, Idaho Code. This legislation seeks to adopt the auditor's recommendations eliminating the inadequacies identified in the statute. **Ms. Evans** stated that only a person who holds a valid and current license to practice registered nursing in this state or a party state pursuant to Sections 54-1408 and 54-1418, Idaho Code, may use the title "nurse", "registered nurse," "graduate nurse" or "professional nurse" or the abbreviation "R.N." or any other designations, titles or abbreviations to indicate that the person was practicing nursing in this state. She said all applicants for original licensure and for license reinstatement must submit a full set of their fingerprints and any relevant fees directly to the Board for forwarding to the appropriate law enforcement agency for processing. Criminal background reports received by the Board from the Idaho State Police and the FBI would be used only for licensing decisions and handled and disposed of in a manner consistent with requirements imposed by the Idaho State Police and the FBI.

She said the legislation was intended to improve and clarify the Board's grounds for denying or disciplining a nurse and denying a license as found in Section 54-1413, Idaho Code. First, she said, the legislation aimed at correcting an oversight in the current statutory language that allowed room for an argument that the statute did not apply to applicants for licensure. Second, the legislation would authorize the Board to impose discipline on an applicant or licensee holding a professional license (not just a nursing license) when the license had been revoked or suspended, if the applicant or licensee has had any formal discipline, in any jurisdiction. These changes are consistent with the Uniform Licensing Requirements of the National Council of State Boards of Nursing that have been endorsed by the Idaho Board of Nursing. This bill has no fiscal impact.

Senator Cameron and **Ms. Evans** had a discussion about the definition of "discipline" and violations in the past by holders of two licenses. **Senator Lakey** commented he thought some of the wording in the bill was imperfect, even though it was in the statute. **Senator Schmidt** questioned how the Board could discipline an applicant for a license when they did not yet possess a valid license. **Ms. Evans** explained that if an applicant, for example, failed to disclose a felony, that would be grounds for discipline or denial of a license and would be reportable to other states and to the national database. **Senator Schmidt** clarified that the Board was trying to delineate having the authority to report the refusal of an applicant or what would be considered non-reportable reasons. **Senator Durst** queried if this bill would set a precedent by raising the level of scrutiny. He asked how many other boards in other states used the same language for discipline.

TESTIMONY:

Roger Gable, Attorney General's Office, testified on behalf of the Nursing Board. He said he had not researched Senator Durst's question about how many other boards used the language as outlined in this bill.

Senator Durst and **Ms. Evans** had a conversation about discipline and the intent of the Board not to automatically discipline someone, how the National Council of State Boards of Nursing works on behalf of all of the member boards and the idea that this bill would give the Board the authority to investigate allegations to better protect the public.

Senator Goedde and **Ms. Evans** discussed reciprocity and endorsement of nursing licenses from state-to-state. **Senator Goedde** expressed a concern that if Idaho did not adopt the uniform licensing requirement, the other 23 states, based on reciprocity, would extend privileges to someone even though there was a problem with another license. They would not be granted a license in that state. **Ms. Evans** stated she thought the Idaho Board was conscientious in granting licenses with the understanding that the privilege was granted to practice in other states. The State of Idaho can grant a single state license that does not provide the privilege of reciprocity, but the Board has to have grounds to do that. **Senator Durst** indicated it would be helpful to know whether other boards, such as Occupational Licenses, medical or others having the same purview, have had the same authority to discipline that is being sought for in this bill of nursing. He repeated this could be a precedent-setting decision, and he had a concern that we understand the potential and unintended consequences. **Vice Chairman Patrick** said we had other agencies with similar requirements.

A conversation ensued among **Senator Cameron**, **Mr. Gable**, and **Ms. Evans** relating to the revocation of dual licenses for behavior on the part of an individual that did not result in a criminal conviction, but was considered a violation of nursing law. They also discussed the jurisdiction of the Board and the ramifications for someone who engaged in and was convicted of a criminal violation. **Senator Guthrie** and **Mr. Gable** discussed the broad authority and latitude outlined on page 2, line 23 of the bill referring to "failing or refusing to report criminal conduct or other conduct by a licensee that endangers patients" and the interpretation of that language. **Senator Lakey** and **Mr. Gable** talked about the language that related to conduct of a licensee or a licensed nurse and the word "applicant" and how each term was applied. **Senator Cameron** said adding the words "applicant" and "current licensees" was confusing. He said he thought one set of actions should be for each one and the definitions on lines 27 and 28 were too broad. He said the term "otherwise disciplined" broadened the spectrum and thought the language needed to be reworked and brought back next year.

Senator Schmidt mentioned the wording "grounds for discipline" and the idea that professional boards wanted more latitude. **Senator Martin** said he thought the word "applicant" and "licensee" should be separated so the parameters could be understood.

MOTION: **Senator Cameron** made a motion to hold **S 1019** in committee. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

S 1020 **Sandra Evans**, Executive Director, Board of Nursing (Board), gave a presentation relating to disciplinary fines for nurses. She stated the Board of Nursing did not currently have statutory authority to impose disciplinary fines, except in the rare case of unlicensed practice. The legislation would amend Section 54-1404, Idaho Code, to add "fining authority", in an amount consistent with several other licensing boards. This amendment will grant the Board the option and ability to impose a fine against a nurse who has violated Board statutes or rules, but where revocation or suspension of the license might not be warranted, which, she said, would be too harsh a sanction. There was no impact on the general fund. She indicated additional historical information had been provided at the request of Senator Martin, on the number of fines that had been assessed by the Board over the last short-term period.

Senator Martin said he commended nurses and wanted to disclose he had a conflict of interest pursuant to Senate Rule 39 because he has a daughter who is a Registered Nurse at St. Alphonsus and a son who works in the emergency room at St. Luke's. **Senator Martin** and **Ms. Evans** had a conversation relating to fines of \$100 per incident, per day and the cap of \$1,000 and how the Board arrived at the amounts. Citing page 1 of the bill, lines 34 to 41, an "administrative fine not to exceed \$1,000 for any violation of this chapter or the rules promulgated by the board", **Senator Cameron** and **Ms. Evans** discussed using the current practice relating to fines and the change in statute which would extend to other violations. **Senator Schmidt** asked that if the previous bill had not been held in committee, would the applicant be susceptible to a fine? **Mr. Gable** replied "yes, as literally written", however, in reality, the application would be denied.

MOTION: Due to the lack of a motion, the bill died in committee.

S 1021 **Sandra Evans**, Executive Director, Board of Nursing (Board), gave a presentation relating to sharing investigative information for nurses. She indicated this legislation revised a provision on sharing investigative information and provided authority for the Executive Director of the Board of Nursing to cooperate with government regulatory and law enforcement agencies. She said the Board defines investigative information to be "information that the Board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, has reason to believe is not groundless. If proved true, more than a minor infraction would be indicated; or investigative information could indicate the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and has had an opportunity to respond." **Ms. Evans** indicated the proposed legislation was identical to legislation signed into law in 2010 granting this same authority to the 29 regulatory boards within the Idaho Bureau of Occupational Licenses and was similar to statutory language authorizing the Boards of Pharmacy and Medicine to share information.

MOTION: **Senator Martin** moved to send **S 1021** to the floor of the Senate with a **do pass** recommendation. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry this bill on the floor of the Senate.

PRESENTATION: **Teresa Luna**, Director of the Department of Administration, gave a PowerPoint® presentation regarding group insurance and the composition of the Office of Group Insurance. She said the annual operating budget was \$896,500. They administer over nine different plans. She talked about the notable achievements of her department, including the medical plan design, premium rates, and enrollment by plan type. She explained the insurance plans for employees and retirees. **Ms. Luna** went over cost sharing history and premium splits, and the idea that one percent of the plan was shifted to employees, costing each between \$4 and \$28 a month. She outlined the appropriation of \$9,100 per employee for insurance in 2014.

Senator Guthrie and **Ms. Luna** discussed different plan options with the possibility of implementing health savings accounts (HSA) in the future and the lack of incentives for employees to move to a HSA because of the amount of money the state is currently paying (90 percent) for employee premiums. **Senator Cameron** had a conversation with **Ms. Luna** about Voluntary Employees' Beneficiary Association (VEBA) plans, which is funded by the amount of unused sick leave that an employee has at the time of retirement, (contributed by the employer into the plan) and whether the Department of Administration was looking into that type of cost-effective plan as a HSA. **Senator Martin** and **Ms. Luna** discussed obtaining bids and re-signing with the current insurance companies. **Senator Lakey** and **Ms. Luna** talked about **S 1106** and that the bill encourages group insurance and

removes any statutory language that would prohibit the state from moving in that direction should they find that is the best thing to do.

Ms. Luna introduced **Nicole Fitzgerald**, Wellness Benefits Coordinator, who gave a PowerPoint® presentation and talked about the Wellness Program Proposal, which included State of Idaho statistics; a Wellness Program Assessment; program vision and recommendations; and the actual program proposal. She said the top five disease were diabetes, coronary artery disease, asthma, heart failure and chronic obstructive pulmonary disease (COPD). She talked about implementing a program to reduce health risks, increasing the quality of life, enhancing personal effectiveness and benefits to the organization's bottom line. Recommendations included developing an in-house wellness program, implementing a five-year strategic plan, implementing an annual health screening and health risk assessment, implementing health status rewards, and providing ongoing programs, support, education and workplace policies. **Ms. Fitzgerald** went over the program proposals for each of the five years.

She discussed with **Vice Chairman Patrick, Senators Martin, Guthrie and Cameron** how many employees were in the program, the annual premium, incentives for healthy lifestyles, management of the incentives for each year, the idea of tying points to premiums for an incentive and the legal ramifications of this approach. **Ms. Luna** said the program was voluntary. There would not be a premium differential, but a reward for employees who stay healthy and participate in the program. She said the program had been reviewed with the Attorney General, but this plan was not mandatory and they were still gathering information.

ADJOURNED: There being no further business, **Vice Chairman Patrick** adjourned the meeting at 3:02 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, March 07, 2013

SUBJECT	DESCRIPTION	PRESENTER
Gubernatorial Appointment:	Committee Consideration and Confirmation Hearing of the appointment of Terry Gestrin of Donnelly, Idaho, to the State Insurance Board to serve a term commencing April 30, 2012 and expiring December 1, 2014	Terry Gestrin
<u>S 1106</u>	Relating to Health Savings Account System for State Employees	Senator Thayn
<u>H 26</u>	Relating to the Installation of HVAC Systems	Steve Keys, Deputy Administrator of Operations, Division of Building Safety
<u>H 46</u>	Relating to Fire Escapes and Doors	Mark Larson, Idaho State Fire Marshall, Department of Insurance
<u>H 44</u>	Employment Security Law	Bob Fick, Communications and Legislative Affairs Manager, Department of Labor

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Thursday, March 07, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst
- ABSENT/ EXCUSED:**
- 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 Tippetts** called the meeting to order at 1:30 p.m.
- GUBERNATORIAL APPOINTMENT:** The appointment of Terry Gestrin, Donnelly, Idaho, to the State Insurance Board to serve a term commencing April 30, 2012 and expiring December 1, 2014. **Terry Gestrin** said he is currently a member of the House of Representatives, and he also owns and operates Long Valley Farm Service in Donnelly, Idaho, which is a general store that was established in 1956 by his father, F. W. Gestrin, that sells plumbing, hardware, electrical, Purina feed, lawn and garden supplies, and oil. He has been a board member of the Idaho Foundation for Parks and Land for over ten years. He has served as a Valley County Republican Precinct Committee member for several years and is currently Chairman of the Valley County Republican Central Committee. He holds a Bachelor's Degree in Business Administration from Idaho State University, Pocatello, and completed a six-month life underwriter's training course while employed with Farm Bureau Mutual. He is a fourth generation Valley County resident, has been married for 36 years, has two children and two grandchildren. He enjoys snow and water skiing, golf, jet boating and fishing.
- MOTION:** **Senator Goedde** moved to send the gubernatorial appointment of Terry Gestrin to the State Insurance Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry the appointment on the floor of the Senate.
- S 1106** **Senator Thayne** presented this bill relating to setting up a funded health savings account (HSA) system for state employees.
- Senator Thayne** said low deductible policies contribute to high premiums. He said the intent was to fund the Health Savings Accounts with savings from insurance. He referred to an article called "Hoosiers and Health Savings Accounts" from the Wall Street Journal, relating to a study done in Indiana about health savings accounts. He cited from the article that "individually owned and directed health-care coverage has a startlingly positive effect on costs for both employees and the state." He said that when someone was spending their own money with a high deductible plan, they tended to visit the doctor and emergency rooms less, and were much more likely to use generic drugs as compared to those enrolled in a conventional plan. He pointed out that consumer decision-making was a major factor in the Indiana study. He said his intention was not to remove funding from employees, but to offer an alternative.

Senator Nonini explained the Total Loss Ratio chart for group insurance. He focused on the total loss ratio figures on the chart, stating that the total loss was 123.32 percent. For the year 2011 for every dollar the insurance company received, they paid out \$1.23. They lost money. He referred to plans that were offered to employees on the chart. One was \$250 deductible with 90 percent of employees subscribing and the other plan was \$1,000 deductible with 10 percent of the employees subscribing. The third plan was \$1,500 deductible, qualifying-type health savings account plan. With that plan, there would be a \$250 deductible with 25 percent subscribing, 10 percent with a \$1,000 deductible and 65 percent moved to the \$1,500 deductible. He said the total loss ratio was 88.92 percent, which was a drastic drop. Renewal rates were attractive on the HSA plan. Premiums were \$317 a month per employee who had a \$1,500 deductible and \$490 a month premium for the \$250 deductible. He said the high deductible HSA plans brought costs down.

Senator Guthrie and **Senator Nonini** talked about deductibles, HSAs and the impact underwriting and actuarial work could have on the costs. **Senator Nonini** said discussions were held with the insurance companies and currently there were not many options. Due to larger profit margins, insurance companies wanted to offer the \$250 deductible plan. **Senator Goedde** and **Senator Nonini** discussed the difference between an HSA and a Voluntary Employee Beneficiary Association (VEBA) plan. They also talked about the idea that a VEBA was only for government agencies and they could be more expensive because of the management fees. **Senator Nonini** pointed out that banks were best at managing HSAs, because they charged less. **Vice Chairman Patrick**, **Senator Schmidt** and **Senator Thayn** had a conversation about the fiscal impact of an HSA and the idea there would be no added cost. The intent of the bill is to take away any obstacles for the Department of Administration.

Chairman Tippetts stated he has a potential conflict of interest pursuant to Senate Rule 39 because he has a couple of sons who work in the insurance industry and they occasionally work with states. He asked Senator Thayn to outline what the Department of Administration would have to do to implement an HSA. **Senator Thayn** wanted to direct that question to Director Teresa Luna, Department of Administration, after he went through the bill. He said it was the intent of the Legislature to encourage, facilitate and fund health savings accounts for employees of the State of Idaho who are enrolled in a high deductible health plan. By encouraging state employees to create a health savings account, they will be empowered to make sound, responsible decisions and better manage their own medical care. All state officers or employees may, for themselves and their eligible dependents, create and maintain a health savings account and choose a high deductible health plan in accordance with the provisions of the bill. He said that for each pay period, the employer would deposit into the health savings account the difference between the employer premium for a State of Idaho high deductible health plan and the employer premium of the lowest deductible group health plan offered by the Department of Administration. **Senator Thayn** said the deposits should not exceed the United States Internal Revenue Service's maximum allowable contribution to a health savings account. Nothing should prohibit state officers or employees with a health savings account from contributing to an account of their own. The Division of Human Resources may promulgate rules to implement the provisions of the bill. He asked the committee to send the bill to the 14th Order, saying he felt the Department of Administration should make the rules and not the Division of Human Resources.

TESTIMONY:

Donna Yule, Executive Director of the Idaho Public Employees' Association, said she opposed this bill. She said she spent time conversing with Senator Thayne and Director Teresa Luna from the Department of Administration regarding this bill and she had many unanswered questions. She wanted to know where the money was going to come from to fund the HSA, the deductible was too high, and she felt the Department of Administration was not prepared at this time to administer the program. She said it would make more sense if the Department of Administration would come up with a plan.

Bruce Krosch from Southwest District Health, testified in favor the bill. He said he thought line 13 of the bill encouraged state employees to create a health savings account, which would empower them to make sound, responsible decisions and better manage their own medical care. He referred to line 39 of the bill saying that for each pay period, the employer would deposit the difference between the employer premium for a high deductible health plan and the employer premium of the lowest deductible group health plan offered, which potentially would drive down costs in the long run. He said he could see why there was a conflict with the Division of Human Resources promulgating rules as opposed to the Department of Administration.

Teresa Luna, Director of the Department of Administration (Department), said she had met with Senators Thayne and Nonini regarding this legislation. She said this legislation would create an option to pursue HSAs on a voluntary basis. Currently, the Department cannot offer an HSA. They would have to restructure a high deductible plan because the current plan does not qualify, since an HSA plan cannot provide prescription benefits. Premium differentials would have to be created that would allow for monies to be deposited into an account. The Department would have to do some bookkeeping with the provider to make the funds available.

Chairman Tippetts and **Ms. Luna** had a conversation about implementing a HSA high deductible plan through the state. **Ms. Luna** indicated the state could manage the administration of an HSA by turning the current plan into a high deductible/health savings account plan. She said this bill would allow the state to manage a HSA, since they are currently not allowed to do so.

Senator Durst and **Ms. Luna** had a conversation about the possibility or potential of having an HSA be the only option for state employees and the intent of the Department. She indicated they were looking at all sorts of options for administering insurance in a better fashion that is more financially responsible and would require the state employees to take a larger role in how they spend their health care dollars. However, she said, an HSA would not be mandated by the Department or the legislation. **Senator Martin** asked Ms. Luna if her department was in support of the bill, and she said they had no problems with this bill.

Senator Guthrie and **Ms. Luna** had a conversation about the fiscal impact on employees with an HSA and the costs involved with depositing money into the account. **Ms. Luna** said currently, the state pays for the cost of the claim plus the administrative fee of six percent, which is very close to being self-funded without doing the administrative work and claims processing. The cost of the plan is the cost of claims, which will continue no matter what kind of plan is implemented. They would have to create a premium differential within the state's budgeting system that would allow for the difference to be more visible than it is today.

Keith Reynolds, Chief Fiscal Officer, Department of Administration, explained the current insurance structure. He said all of the money is appropriated across the state based only on the number of employees. They do not differentiate by plan type. He said this bill would put in process a system that does differentiate by plan. Currently, the difference between those premiums is zero. A zero impact is anticipated because the state would be saving money because someone has enrolled in a high deductible plan at a lower cost. They are making up the difference between those two plans, and there is no premium differential. What the state has done is maintain the same system of paying the same amount per employee, but are rewarding them for saving the state money by giving them the money in the HSA.

Senator Schmidt and **Mr. Reynolds** had a conversation about the extensive studies and documentation done by the State of Indiana for their transition to an HSA . They talked about preliminary research that had been done by the Department and the Group Insurance Advisory Committee. Senators Thayne and Nonini were involved in discussions, but no actual in-depth study had been done. **Mr. Reynolds** pointed out that if the Department was going to do a global change to the current plan, they would conduct a study.

Senator Goedde and **Mr. Reynolds** talked about Preferred Provider Organizations (PPO)s, the differentiation of premiums, with more money going into the HSA with someone who is in a PPO, and encouraging the use of HSAs to make a substantial difference in the state's cost of insurance. They discussed the incremental piece of additional costs between the basic plan and the PPO and that an in-depth study would have to be done regarding the fiscal impact.

Senator Thayne made some closing remarks about rising health care costs, the new legislation being a tool and that HSAs, in order to work, had to be funded. He encouraged the committee to pass this bill and move it forward to the Fourteenth Order of business.

MOTION:

Senator Schmidt moved that **S 1106** be sent to the Fourteenth Order of business. **Senator Martin** seconded the motion. **Senator Schmidt** said the bill needs further study. He liked the voluntary choice. He commented that the State of Indiana made the HSA attractive to its employees by funding the account. He said he didn't think the State of Idaho was ready, and he would expect the State Employee Insurance Council to consider HSAs carefully before moving forward.

The motion carried by **voice vote**. Senator Thayne will carry the bill on the floor of the Senate.

H 26

Steve Keys, Deputy Administrator of Operations, Division of Building Safety, presented this bill relating to the installation of heating, ventilation and air conditioning (HVAC) systems. He said that prior to the adoption of statutes establishing the HVAC regulatory scheme in 2004, the plumbing industry installed fuel gas piping, steam and chilled water piping, and hot water boiler systems. Since 2004, such installations have fallen under the jurisdiction of the HVAC Board, and HVAC installers were expressly provided the authority to make such installations. Since that time, however, HVAC installers, as well as plumbers and plumbing contractors, have performed such installations. It has been widely accepted throughout both industry trades that historically such installations have been a component of plumbing work. That understanding served as the basis for the original exemption. The statute does not clearly establish that a holder of a plumbing license may perform fuel piping or piping for steam and hot water boiler systems, thus clarification of the exemption is necessary. The plumbing industry would like to clarify the legal authority of plumbers to perform these types of installations within the scope of a plumbing license and to continue to provide these services. This proposal has received wide support from both the

plumbing and HVAC industries, as well as both the plumbing and HVAC boards. This statutory amendment would clarify that a holder of either a plumbing or HVAC licence may make such installations. The separation of "fuel piping" and "piping for hydronic systems" is intended to clarify that both systems may be installed with either license. Amending "gas" to "fuel" aligns the scope of fuel piping with that identified in the Idaho State Plumbing Code. This bill has no adverse financial impact.

This legislation clarifies the permissive language that allows licensed plumbers to perform work that falls under the purview of the HVAC board. The changes were instigated by the plumbing industry, and originally brought before the plumbing board. The resulting legislation reflects a cooperative effort involving both boards and both industries. The language in this legislation in line four on page two changes the term "license" to "certification" reflecting the actual statutory reference to certificates of competency applicable to plumbing. Changes reflected in language found in lines seven through ten on page two clarify that plumbers are allowed to perform specific portions of HVAC work traditionally performed by plumbers, namely piping comprising parts of fuel systems, hydronic systems, and steam and hot water boiler systems. This legislation imposes no additional costs in the form of fees or actual construction costs to the building owner. The division is aware of no opposition to this proposed legislation.

Chairman Tippetts and **Senators Goedde, Schmidt** and **Durst** asked Mr. Keys to define several terms. **Mr. Keys** explained that a hydronic system was a system that circulates hot or cold water for heating or cooling purposes. He also explained that gas was changed to fuel to accommodate and include oil heat. He said a steam fitter was someone who was a pipe fitter who deals with steam. **Mr. Keys** said the trades were very supportive of this bill.

MOTION:

Senator Martin moved that **H 26** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Goedde** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry the bill on the floor of the Senate.

H 46

Mark Larson, Idaho State Fire Marshall, Department of Insurance, presented this bill relating to fire escapes and doors. He said the sections of Idaho Code that the Department of Insurance was asking to repeal were put in place prior to the existence of any building codes or fire codes. The International Code Council Fire Code (aka International Fire Code) is a companion code to the International Code Council (ICC) building code. The chapter in the building code that deals with exiting is reproduced in the fire code, and, according to Idaho Code § 41-253, the International Fire Code is adopted as a statewide minimum standard. It is enforceable even if a city or county has not adopted the building code.

The enforcement of the code is covered by Idaho Code, § 41-256 in that fire chiefs (or their deputy) of every city or fire district act as assistants to the State Fire Marshal in carrying out the provisions of the fire code. In those areas outside any fire jurisdiction, the county sheriff (or his deputy) is given the authority to enforce the fire code.

This provides the opportunity for enforcement of the exiting requirements in all areas of the state. The safety of the citizens of Idaho would not be jeopardized if the provisions in Title 39, Chapter 19 were repealed, and repeal would reduce confusion and redundancy of applicable provisions. He said it was not anticipated there would be any fiscal impact.

He indicated the first three sections of the fire code deal with fire escapes in that the requirement that all buildings over two stories have an external fire escape, how they are to be attached and the penalty for not complying with the law. The fourth statute requires that all doors in a public building open outward. He said the first four sections of the code were first passed in the early 1900s. Current fire and building codes do not have similar requirements. These sections have not been enforced in years, and removing them would eliminate an opportunity for confusion and misapplication.

Vice Chairman Patrick asked for a clarification on doors opening outwards and the idea that any regular door would qualify. **Mr. Larson** explained that currently when the occupant load exceeds 50, the doors must open outward. **Senator Durst** expressed a concern about the Fire Fighters' Association not being involved in this decision.

MOTION:

Senator Guthrie moved that **H 46** be sent to the floor with a **do pass** recommendation. **Senator Goedde** seconded the motion. **Senator Durst** said he would be inquiring with the Fire Fighters' Association and if there was an objection, he may change his vote on the floor. The motion carried by a **voice vote**. Vice Chairman Patrick will carry the bill on the floor of the Senate.

H 44

Bob Fick, Communications and Legislative Affairs Manager, Department of Labor (Department), presented this bill relating to the Employment Security Law. He said the Federal Trade Adjustment Assistance Extension Act of 2011 requires states to amend their unemployment insurance laws to impose a monetary penalty on benefit claimants whose fraudulent acts result in overpayments; to require the first 15 percent of an assessed civil penalty to be paid into the Employment Security Fund; to prohibit employers from being relieved from charges to their unemployment insurance accounts when their actions lead to improper benefit payments; and to amend the definition of "rehire" in the State Directory of New Hires to include individuals previously employed by the employer who were separated from that employer for at least 60 consecutive days prior to reemployment.

There is no fiscal impact to local government funds. The Office of the State Controller has reviewed the bill and determined that modifying the Controller's computer to accommodate the change in rehire reporting will cost between \$2,000 to \$5,000. The requirement to deposit into the Employment Security Fund 15 percent of civil penalties imposed on benefits collected due to fraud or misstatement of fact, will reduce revenue to the Department's Penalty and Interest Fund by \$460,000 a year.

Mr. Fick said that an experience-rated employer's account may not be relieved of liability for benefits paid to a claimant that are subsequently determined to be overpaid, if the covered employer or an agent of the covered employer is at fault for failing to respond timely or adequately to the Department's written or electronic request for information relating to a claim for unemployment insurance benefits and the covered employer or agent of the covered employer has established a pattern of failing to timely or adequately respond. He went over what defined "timely", "adequate" and a "pattern of failure to respond".

He said a covered employer should be notified in writing of the Department's determination, which would become final unless, within fourteen days after notice as provided in section 72-1368 (5), Idaho Code, an appeal is filed by an interested party with the Department in accordance with the provisions of section 72-1361, Idaho Code.

Mr. Fick talked about the civil and interest penalties for any person who receives benefits or overpayments to which he was not entitled.

H 44 contains three changes to Idaho's Employment Security Law required by the United States Department of Labor to keep Idaho's unemployment insurance program in compliance with federal requirements. The first provision requires employers to respond in writing to the Idaho Department of Labor within seven days of the filing of an initial unemployment insurance benefit claim by a former employee. If the employer fails to respond, the employer's account will be charged with any benefits allowed the employee even if the employee is later determined ineligible for benefits. Currently, employers are notified by mail the day after a claim is filed and asked if they dispute the claim. They are also contacted by phone within a week. But if they fail to provide their side of the story, the Department has no alternative but to base a decision on benefit eligibility relying on the employee's side of the story. The employer is then notified of the determination and given 14 days to appeal. If the employer wins on appeal and benefit eligibility is withdrawn, the Department stops benefit payments and begins collection of the previously paid benefits as an overpayment. The employer is not charged for those erroneously paid benefits. Instead, the charge is spread among all employers, and that can have a negative effect on their future tax rates. **H 44** would charge the employer account for benefits paid. Employers would be given a pass on the first failure to comply with the seven-day response deadline and would not be charged for any benefits granted and later withdrawn. Last year, about 100 claimants were allowed benefits after the employer failed to respond to the initial claim and then successfully protested the eligibility determination. In these cases, over \$110,000 was paid in what were determined to be overpayments after the employer finally responded. Under the current law, the employer was not charged for those benefits. The cost was spread among all the employers in the state.

The second provision requires that 15 percent of any civil fine imposed on benefit overpayments due to misstatement of fact or fraud be deposited in the Unemployment Insurance Trust Fund rather than the Penalty and Interest Fund, which is used to subsidize other Department operations, such as the Human Rights Commission.

Idaho currently has a three-tiered penalty system for overpayments. Twenty-five percent of the overpayment on the first instance, 50 percent on the second and 100 percent on the third. All that money currently goes into the Penalty and Interest Fund. **H 44** would deposit the first 15 percentage points into the main trust fund. This would have the advantage of building up the trust fund, which tempers employer tax rates. It also would mean the Department will have about \$460,000 a year less in penalty and interest fund revenues for its other operations. The final provision reduces the period for reporting rehires under the New Hire Reporting law from one year to 60 days. The law was implemented as part of welfare reform in the mid-1990s. Its primary purpose was to identify parents who had obtained jobs and had back child support so their paychecks could be garnished. The United States Department of Health and Human Services is requiring the shorter reporting period for rehires under penalty of withholding operating grants from the State Department of Health and Welfare.

As a by-product of this law, the Department of Labor is able to more quickly identify benefit claimants who have returned to work but are still collecting benefits. Because new hires must be reported within 20 days of hire, the Department cross-matches that list with benefit claimants and more quickly identifies those who are trying to obtain benefits improperly. The relatively quick notification of new hires keeps the amount of improper benefit payments down so the money is easier to collect. Last year the Department identified over 1,500 individuals who had gone to work without reporting to the Department and continued to try to collect benefits. The overpayments involved totaled about \$3 million. Had the Department relied on the quarterly reports filed by employers to identify these

claimants, the overpayments would have been triple or quadruple that amount, since the difference in timing can easily be five or six weeks versus five months.

The first two provisions of **H 44** take effect October 22, 2013, the deadline set by the United States Department of Labor for adopting those requirements. The new hire provision takes effect July 1. Failure to adopt these mandated changes will put the state's unemployment insurance program out of conformity with federal requirements. That would subject Idaho employers to a loss of the 5.4 percent federal tax credit on the first \$7,000 paid to each worker every year. Employers now pay a 0.6 percent tax, or \$42 per employee. Loss of the tax credit would increase that tax to \$420 per employee. In addition, the state would lose the \$28 million it receives from the federal government to operate the unemployment insurance and employment services programs.

A discussion ensued among **Senators Cameron, Goedde and Durst and Mr. Fick** regarding when the federal requirements for the civil penalties of the bill were paid. **Mr. Fick** said the penalties were three-tiered or 25 percent for the first offense, 50 percent for the second offense and 100 percent for the third offense. He explained the federal government has mandated they want 15 percentage points or 3/5ths of the \$25 penalty, in the case of a 15 percent penalty, they want 15 percentage points of that or 3/10ths and in the case of the 100 percent penalty, they wanted 15 percentage points. The federal government is requiring all states to have a penalty. He said the penalty was not additional. When the state receives the cash, the civil penalty is paid to the United States Department of Labor. The Department has the strategy and plans in place to deal with tighter resources as they have had to do in the past.

He also said that in the case of failure to comply within seven days or a first offense, there is a "pass" issued to the employer. He further stated the Unemployment Insurance Trust Fund is a federally held trust in the name of Idaho and is the fund where employers tax payments are held. Only benefits can be paid from this trust fund. The trust fund is built up to a point that when there is a downturn, the trust fund has the ability to withstand 18 months of severe downturn. However, when the fund is drawn down, it triggers higher payments for employers until the fund is built back up. When the account balance is maintained at a higher level, costs for employers decrease.

The committee members and **Mr. Fick** discussed whether the employer or employee would win or lose with the impact of the legislation. The 45,000 employers who do respond, don't have claims filed against them. They benefit because they would no longer be liable, and the claims would not be spread upon their liability. New hires lose if, for example, this is a person who has failed to pay his child support. Employers win because they are able to identify more quickly people who have gone back to work and who have failed to notify them and continue to collect unemployment. That leaves more money in the trust fund that the Department can avoid paying out, which keeps the balance higher. When workers are found who are taking advantage of the system and identified and penalized, it increases the confidence and the credibility of the program. That ultimately benefits workers and employers.

MOTION: **Senator Goedde** moved to send **H 44** to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. **Senator Durst** said he was not in favor of the bill because the scales were in the favor of the employer. The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor of the Senate.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:52 p.m.

Senator Tippetts

Chairman

Linda Kambeitz

Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, March 12, 2013

SUBJECT	DESCRIPTION	PRESENTER
<u>H 43</u>	Relating to the Economic Advisory Council	Jeff Sayer, Director, Department of Commerce
<u>H 100</u>	Relating to the Opportunity Fund	Jeff Sayer, Director, Department of Commerce
<u>H 199</u>	Relating to Self-Funded Health Care Plans	Bill Deal, Director of Insurance & Representative Dell Raybould

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 12, 2013

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst

**ABSENT/
EXCUSED:**

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 Tippetts** called the meeting to order at 1:30 p.m.

MOTION: **Senator Martin** moved that the minutes of February 26, 2013, be approved. **Senator Goedde** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Lakey** moved that the minutes of February 28, 2013, be approved. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Schmidt** moved that the minutes of March 5, 2013 be approved. **Senator Durst** seconded the motion. The motion carried by **voice vote**.

H 43 **Jeff Sayer**, Director, Department of Commerce (Department), introduced this bill relating to the Economic Advisory Council (Council). He said this bill clarifies that members of the Council serve at the pleasure of the Governor, and the bill provides that no more than four members of the Council be from any one political party. This is consistent with other boards and councils.

Mr. Sayer said the Council advises the Department and the director in the preparation, development and execution of plans, projects and programs in connection with all decisions concerning the administration and development of plans, projects and programs. The Council consists of seven persons, who are appointed by and serve at the pleasure of the Governor, and who will serve for three-year terms. Members are compensated as provided by section 59-509 (b), Idaho Code. One person represents each of the six planning regions of the state and one member serves in a statewide capacity.

A discussion ensued with **Vice Chairman Patrick**, **Senators Durst** and **Goedde** and **Mr. Sayer** regarding a phrase in the bill that said "no more than four members of the Economic Advisory Council shall be from any one political party". They discussed the idea that not everyone claims a political party affiliation and the possibility someone could be excluded. **Mr. Sayer** said the Department was cognizant of this issue but they try to maintain balance. They also talked about the possibility of someone changing their party affiliation after being appointed to the Council. **Chairman Tippetts** said that if someone was appointed to a position and they changed their party affiliation, they would no longer qualify for that position. **Senator Goedde** commented he could not remember an instance where this issue had come up.

MOTION: **Senator Martin** moved that **H 43** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry this bill on the floor of the Senate.

Jeff Sayer, Director, Department of Commerce (Department), then introduced this bill relating to the Idaho Opportunity Fund, which codifies the Business and Jobs Development Fund, created through intent language by the Joint Finance and Appropriations Committee (JFAC) in 2006. This bill changes the name of the Business and Jobs Development Fund to the Idaho Opportunity Fund. In addition, it establishes Idaho Code § 67-4736 to provide the director of the Department with rulemaking authority and establishes provisions for use and disbursement of Idaho Opportunity Grant Funds. The bill requires the director to publish an annual report on the state of the Idaho Opportunity Fund. **Mr. Sayer** said while there was no direct fiscal impact to the General Fund, this legislation corresponds with a recommendation by the Governor for a \$3 million one-time transfer from the General Fund to the Business and Jobs Development Fund at the Department of Commerce. JFAC just supported the transfer.

He said there are three important factors in this bill. First, this bill requires a community match and a partnership; second, this bill provides for negotiation directly with the companies and establishes criteria for companies to receive grant monies. He explained the number of jobs and the capital investment required and what the company would be bringing to the table. This lays the foundation for the third factor, which is a performance-based mechanism. Most importantly, the Opportunity Fund would not deploy grant monies until a company has delivered on its promise for job creation and capital investment. In addition, a portion of the grant could be retained for a period of three to four years to ensure job commitments are maintained in the long term. The Department will write out the check but the company must deliver the results. This money can only be used for infrastructure.

Mr. Sayer explained the intent of the Idaho Opportunity Fund was to promote economic development and provide financial assistance, through the Idaho Department of Commerce and to retain, expand or attract quality jobs in industries deemed vital to the health of the local and statewide economy. He went on to say that monies in the Idaho Opportunity Fund may be expended by the Department, according to the provisions of this act, to assist in securing commitments for the retention and expansion of existing businesses and recruitment of new businesses. He outlined the amounts that could be deposited in the fund, including any amounts appropriated by the legislature, repayment of any monies originally distributed from the fund that were improperly disbursed according to the company performance agreement or the local government grant agreement and gifts, grants and other donations received for the fund.

Mr. Sayer said the monies in the Idaho Opportunity Fund may be allocated to local governments for any lawful purpose consistent with the intent of the act. That may include construction of or improvements to new or existing water, sewer, gas or electric utility systems for new or existing buildings to be used for industrial or commercial operations, flood zone or environmental hazard mitigation and construction, upgrade or renovation of other infrastructure related items. Railroads, broadband, parking lots, roads or other public costs that are directly related to specific job creation or expansion projects would be included. He said that funds may be disbursed from the Idaho Opportunity Fund only in accordance with agreements entered into between the Department and one or more local governments. He described the types of agreements that were acceptable for compliance.

Mr. Sayer indicated funds could be disbursed from the Idaho Opportunity Fund to the local government only after the local government had demonstrated that the business had complied with the negotiated terms of the company performance agreement.

He pointed out that the director of the Department would annually publish a report regarding the state of the Idaho Opportunity Fund, which would be made available to the public. He discussed the type of information that should be contained in the report and said the goal was to provide more transparency. In addition, quarterly reporting to the existing Idaho Economic Advisory Council would be required. Commerce is developing a series of reporting measurements to publicly report on the economic impact of Opportunity Fund grants. Commerce will be able to come back in a year and demonstrate job creation, capital investment, leverage ratio, break even calculations, and revenues returned to the state and local community as a result of these investments.

A discussion ensued among **Senators Martin, Cameron, Durst, Chairman Tippetts** and **Mr. Sayer** about the appropriation of a one-time \$3 million appropriation by JFAC. **Chairman Tippetts** discussed with **Mr. Sayer** the mandatory agreements outlined on pages 2 and 3 of the bill and the opportunity the director has, previous to the agreement, to review the agreement anticipated between the local government and the grantees. **Mr. Sayer** said the language was meant to be flexible for the companies so the Department could adapt to any situation. He said some of the criteria may or may not apply to different transactions. **Senator Schmidt** asked if a tribal government would qualify as a local government, and **Mr. Sayer** said the agreement was originally intended to be between a county and a city, but he would not be opposed if the application was for an appropriate economic development project.

TESTIMONY:

Wayne Hoffman, Executive Director of the Idaho Freedom Foundation, said he was in opposition to this legislation. He said some of the objections were from people in the business community who want to be left alone, don't want to engage in a government program and do not want to receive funds from an agency or entity within the government. He said the businesses want low taxes, less regulation and want to be free to be entrepreneurial. One of his clients complained that his competition was utilizing a particular fund within state government to pay for new employees. This client feels he may have to put his principles aside and join the bandwagon like everyone else. He said what this bill does is set the parameters for a particular business to go to the government to work out a deal and move ahead. Others would not be as successful. He didn't think it was fair for certain people to receive waivers for fees while others didn't. The bill is problematic and creates an unlevel playground. **Mr. Hoffman** said he did not like the performance agreement outlined on page 2 of the bill where it says "a provision allowing the director or the local government to inspect all records of the business that may be used to confirm compliance with the agreement or with the requirements of this act". He said he could not think of any other provision within the state law that allows what is being proposed in the bill. He said this bill would allow the inspection of all records in the possession of the business.

Senator Cameron asked Mr. Hoffman if his organization was against economic development and what sort of strategies he would support. If this bill was created with no requirements for sharing information, no additional jobs, no commitments, and the director was allowed to do what he thought fit, would Mr. Hoffman support it? **Mr. Hoffman** said he thought there was a right way and a wrong way; when government sits in judgment of certain types of economic development, that is a problem. **Senator Cameron** said the legislature was in favor of reducing taxes and the economic burden. He stated that the legislature is attempting, when they allocate resources, to earn a return on investments. When improvements are made, businesses and others benefit. **Mr. Hoffman** pointed out that judgments were based on artificial parameters, and this bill is saying that one business is better than the other. He further stated that the government should not be in the business of allocating money, and there should be some fine delineation of their role in the marketplace. He would take out the provision opening up records for government inspection.

Senator Goedde pointed out there was similar legislation in the past that brought Cabela's and a Super Walmart to this area, and without that development, Cabela's would have been in another state paying taxes. He said the infrastructure was being paid back time-and-time again and asked Mr. Hoffman if he supported this type of growth. **Mr. Hoffman** said that other things are impacted when there is that kind of development. He suggested that legislation should avoid economic planning and not choose winners or losers. He said he believed in the free market. **Senator Schmidt** said he disagreed with Mr. Hoffman's interpretation of inspection of business records and said the language did not mean all records. **Mr. Hoffman** said he thought the state inspection could be unlimited under this bill.

MOTION:

Senator Goedde moved that **H 100** be sent to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion. **Senator Goedde** said in the past we were putting money on the table to entice new businesses. Now we are saying we will give new businesses money based on performance, after the fact, and he said he thought this was a good way to approach the issue. **Senator Durst** said he concurred with the motion and wanted to add that, unlike other attempts of economic development that have been done in the state in the past, he thought we were being much more precise, and we have expectations about outcome, so that businesses know what to expect from the investment. The motion carried by **voice vote**. Chairman Tippetts will carry this bill on the floor of the Senate.

H 199

Bill Deal, Director, Department of Insurance (Department), presented this bill relating to self-funded health care plans. He gave a brief history of the legislation for self-funded plans. He said this bill, when enacted, will amend existing chapter 40, title 41, Idaho Code, currently relating to employer-based self-funded health care plans, to provide that certain qualified public or private postsecondary educational institutions may, as a plan sponsor, establish a self-funded student health benefit plan and trust for student and dependent beneficiaries and the regulation of such plans and trusts. There is no fiscal impact.

This particular bill came to the Department via Brigham Young University (BYU), Idaho to have an employer-based, self-funded employee benefit plan for that institution. **H 199** authorizes colleges and university-level schools to set up self-funded student benefit plans in a trust that says plans must be registered under Idaho law and subject to public supervision. It also provides for trust fund surplus requirements and ongoing regulation and oversight to help maintain financial stability of these plans. Under current Idaho law, the self-funded Health Care Plan Act applies to any single employer or multiple employer arrangement to the extent that the state regulation of the arrangements or a plan is not preempted by the Employee Retirement Income Security Act of 1974 (ERISA). Idaho law would not be changed by this bill and how it interacts with ERISA with regard to employer-based self-funded benefit plans. This bill would authorize postsecondary educational institutions to establish a self-funded student health benefit plan, and it also provides for certain reporting requirements and minimum surplus requirements.

Mr. Deal said **H 199** does not apply to student health insurance plans, but only to self-funded student health benefit plans. A self-funded student plan is not subject to the requirements of the Public Health Services Act because it is neither health insurance coverage, nor is it a group health plan, but individual. The Public Health Service Act and the Affordable Care Act give the United States Health and Human Services (HHS) regulatory authority over health insurance issuers in the group and individual markets and over non-federal government group health plans, but self-funded student health benefit plans do not fit into these categories. These self-funded student plans may be regulated by the states. Just a few days ago, HHS proposed a new rule that would deem self-funded student health benefit plans offered by an institution of higher learning a "minimum essential coverage" plan.

Mr. Deal defined the term "minimum essential coverage" as the type of coverage an individual needs to have to meet the "individual responsibility requirement" under the Affordable Care Act. He said in Internal Revenue Code, this includes government-sponsored coverage, employer-sponsored plans, individual market plans, grandfathered health plans and other coverage, including self-funded student health benefit plans.

He said the bill provides that postsecondary schools may establish a self-funded health benefit plan. In both employer-based and postsecondary school self-funded health benefit plans, there is a special relationship between the employer and the employee and between the school and the student. This bill recognizes this special relationship.

Mr. Deal added that some of the other amendments to this plan were definitions added for an irrevocable trust, definition of a post-educational institution, registration required exemption (basically a dental plan that has a benefit of \$5,000 or less), plan requirements, application for registration, grant or denial of registration, requirement for a trust fund, investment of trust funds, requirement of reserves and surpluses, records accounts or annual statements, and prohibited pecuniary interests in plan management. He asked for support from the committee.

Senator Durst had a question about the impact on existing private "for profit" institutions that may have operations in states beyond Idaho, and if they could currently offer these types of plans. He gave the example of the University of Phoenix that has operations on-line, but also a physical campus in Meridian, and asked if they were considered to be in Idaho. **Mr. Deal** said the intent of this bill was to apply to institutions of higher learning in Idaho only and referred to page 4, lines eight through thirteen, which included the definition of a postsecondary educational institution. **Senator Goedde** wanted to know if an annualized enrollment of 800 or more full-time students was sustainable and who was going to fund 50 percent of the estimated minimum surplus. **Mr. Deal** answered that one of the issues that the

Department found with a self-funded plan was that it was easy to create, but the hard part was to maintain the self-funded plan in a financially solvent way. He said one of the biggest problems the Department has seen is that self-funded plans do not begin with enough cash to maintain their solvency.

Senator Guthrie referred to page 4, line 8 of the bill and asked if a postsecondary institution was a "person". He said he thought that the wording should have been "institution". **Mr. Deal** replied that in legal terms, a person can be any of these entities. **Chairman Tippetts** pointed out there was a definition of "person" on page 4, which would indicate it includes individuals, corporations, and other organizations. A discussion ensued among **Senators Lakey, Durst, Schmidt, Cameron** and **Mr. Deal** about the definition of "person", expanding this idea to public entities and that this bill is specific to institutions of higher learning. They discussed private career colleges who don't have enough enrollment possibly banding together to reach the minimum requirement of 800 full-time students as long as they qualified for institutions of higher learning and met the other criteria.

TESTIMONY:

John Keenan, Deputy Attorney General, stated that Multiple Employers' Welfare Arrangement (MEWA) rate would not be applicable to the schools because they have to be an employer. They could probably band together for their employees, but not for the students. **Senator Cameron** said the purpose of having the language was to allow that permissiveness, and asked what was the purpose of having the multiple employer welfare language. **Mr. Deal** said this same chapter allows the Department to have registration and oversight regarding the new laws. Plans are limited by ERISA, but there is a plan for a higher institution of learning. **Senator Cameron** clarified that the language could not be used for students, but could be used for employees of those organizations. **Mr. Deal** verified that was the case as it is today. **Senator Cameron** asked about adding in the terminology (page 6, line 22) of multiple employer welfare plans and the requirement that they contribute to the trust fund, clarifying that was the intent for those multiple employer plans. **Mr. Keenan** clarified the language regarding employer-based plans to make a clear distinction between university student plans and that employers and employees were required to contribute to the plan. **Senator Durst** asked if there was a definition of an educational degree, such as an Associate of Arts, Bachelor of Arts or Science degree, and he was wondering about those institutions that offer technical certificates, if they would qualify. **Mr. Deal** responded by saying, that in his opinion, this was something technical schools could use if they could get the approval of the State Board of Education.

MOTION:

Senator Martin moved to send **H 199** to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Hill will carry the bill on the floor of the Senate.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 2:32 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, March 14, 2013

SUBJECT	DESCRIPTION	PRESENTER
<u>H 76</u>	Trust Deeds Relating to An Invalid Trustee Sale	Kris Ellis, Idaho Land Title Association
<u>H 127</u>	Occupational Licenses - Fees Relating to Criminal Background Checks	Tana Cory, Bureau Chief, Occupational Licenses
<u>H 185</u>	Occupational Licenses Relating to Drinking Water and Wastewater Professionals and Fees Relating to Certain Examinations	Tana Cory, Bureau Chief, Occupational Licenses
<u>H 162</u>	Relating to Cosmeticians- Post-Secondary Institutions	Kris Ellis, N. W. Career Colleges Federation of Idaho Cosmetology School Association

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 14, 2013

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst

**ABSENT/
EXCUSED:**

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 Tippetts** called the meeting to order at 1:30 p.m.

H 76 **Kris Ellis**, representing the Idaho Land Title Association, presented this bill about trust deeds relating to an invalid trustee sale. She said this legislation will clarify that when a rescission of the trustee's deed is recorded within 15 days, it puts all affected parties in a status quo position as of the time the trustee's sale was held, and not when the trustee's deed is recorded, which can be several days later.

She said when a trustee sale held pursuant to section 45-1506, Idaho Code, is invalid by reason of automatic stay provisions of the United States bankruptcy code, or a stay order issued by any court of competent jurisdiction or otherwise, recordation of a notice of rescission of the trustee's deed will restore the condition of record title to the real property described in the trustee's deed and the existence and priority of all lienholders to the status quo prior to the trustee's sale. There were more properties going into foreclosure than ever before and because of that, there were errors in the process. A loan modification could have been taking place with the bank, and sometimes the trustee didn't realize that and took the property into foreclosure. This section of code would return the title of the home to the homeowner prior to the date of sale. The change clarifies in statute that the property returns status quo to the homeowner prior to the date of sale.

Vice Chairman Patrick asked if the liens were taken care of at the time of the sale. **Ms. Ellis** introduced Jesse Hamilton and deferred the question to him.

TESTIMONY: **Jesse Hamilton**, General Counsel for Pioneer Title Company and President of the Idaho Land Title Association, said if the sale should not have occurred by bankruptcy or otherwise, meaning the bank was working in good faith for the borrower for modification and there was a lack of communication, this bill gives the beneficiary of that deed of trust the right to instruct the trustee to rescind the sale. These subsequent liens that showed up in the interim during the 90-day period from when the trustee sale was held versus when the trustee's deed actually recorded (which could be weeks later), puts everyone in the status quo position. That means that any subsequent liens attached to that property are going to be junior in line to everybody that previously existed.

Vice Chairman Patrick asked if during a typical sale the title report shows which liens are on the property, if that makes the title completely clear. **Mr. Hamilton** said assuming all steps in the statutory process were strictly complied with and a valid sale was held, in the case where the deed of trust was being foreclosed and the trustee's deed resulted, that would wipe out any junior lienholders. A federal tax lien has a redemptive right. They have 120 days to redeem their interest, but they would have to make the purchase before the auction. He said, in his experience, he has never seen the federal government do that. **Vice Chairman Patrick** and **Mr. Hamilton** had a conversation about the first mortgage holder who owns the property, and who has a secured interest, and the trustee sale pursuant to the beneficiary's instructions. **Mr. Hamilton** said the bank could bid entirely on what they are owed or less than what they are owed. They are supposed to bid what the property is worth. In a third party purchase, where \$1 more is bid than the beneficiary's credit bid, then they would receive the property free and clear of all liens and encumbrances, junior to the deed of trust being foreclosed.

Senator Lakey said he could see where this could be a problem. He asked if this was being done to avoid a problem or had there actually been problems. **Mr. Hamilton** said they were being proactive. He said they had one of their title insurance underwriters call this to their attention. They wanted to clarify and put all parties in the status quo position prior to the trustee's sale. Due to a lapse in time that exists, the beneficiaries or trustees who facilitate these sales don't record the trustee's deed for two or three weeks, so they want to be very clear. Everyone is put in the same position for protecting the consumer, working with the bank in good faith, protecting the beneficiary and the rights they have under the deed of trust, and protecting the trustee. They do not want a third party to say, "I don't care if this sale should not have been held because it was not pursuant to the statutory code." They don't hold title, but want money. They did have those situations prior to this legislation, and this bill is a point of clarification. **Ms. Ellis** said she has talked with the Bankers' Association, and they support this legislation.

MOTION: **Vice Chairman Patrick** moved that **H 76** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Patrick will carry the bill on the floor of the Senate.

H 127 **Tana Cory**, Bureau Chief, Occupational Licenses, presented this bill relating to fees for Criminal Background Checks. She said this bill would allow the Bureau of Occupational Licences (Bureau) to collect and pay fees for background checks required by law for the Driving Business Licensure Board. These licensees are instructing students between the ages of 14-and-a-half and 17 years of age. In order to process these applications, estimated at four per year, the Bureau will need to be able to collect fees and process the fingerprint background checks through the Idaho State Police.

Senator Durst asked what the current practice was regarding fees and **Ms. Cory** said the Idaho State Police has been working with them, but with this bill they can collect the fee.

MOTION: **Senator Lakey** moved that **H 127** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**.

Senator Lakey will carry the bill on the floor of the Senate.

H 185 **Tana Cory**, Bureau Chief, Bureau of Occupational Licenses (Bureau), presented this bill relating to drinking water and wastewater professionals and fees relating to certain examinations.

The Bureau is a service agency that serves 29 self-governing boards and commissions by providing their administrative, fiscal, investigative and legal services. She introduced Mr. Barry Burnell who was in the audience and who serves on the Board of Drinking Water and Wastewater Professionals (Board). **Ms. Cory** said she was there on the Board's behalf to present **H 185** which makes a change on line 14 by striking "equal to" and replacing it with "not greater than". This change will allow the Bureau to do two things: 1) Charge less for the on-line exam; and 2) Not cause delay for examinees.

By way of background, the Board currently offers on-line and written exams around the state. An examinee pays \$36 dollars to take the exam. The Bureau collects the fee and then pays the exam administrator. This is in accordance with the current language in the law that states the Bureau shall "collect a fee equal to that charged by the exam administrator". A few weeks ago, the exam administrator sent the Board a new contract in which the on-line fee increases to \$39 dollars, and the fee for written exams increases to \$37 dollars. Last week, when the Board met, the Bureau explained that this disparity in fees will cause an issue for examinees and may cost more to administer the tests. In 2012, there was a total of 691 exam takers. Out of that number, 40 to 50 changed from written to on-line exams after they submitted their exam applications. With the fee being the same, the Bureau could make the change and accommodate the request. The current law requires that the Bureau collect a fee equal to that charged by the exam provider. Now the Bureau will have to charge an additional \$2 when a request is made. Administratively, it may cost more than \$2 to collect and process, and it may cause a delay for examinees if the Bureau has to wait to schedule the exam until it receives the additional \$2. By changing the language on line 14 to "not greater than", the Board can charge \$37 for both exams. The law still does not allow the Board to charge more than that charged by the exam administrator, but this bill would allow them to charge less.

As stated in the Fiscal Note, based on last year's numbers, this change would reduce the Board's cash balance by approximately \$1,100. This reduction will not be an issue for the Board as it does have a positive balance. **Ms. Cory** said that it was her understanding that the Idaho Rural Water Association and the Association of Idaho Cities support this change. This is a customer service issue, and the Board is asking the committee to approve this change so that administrative costs can be saved and they can provide seamless service to examinees. She said she was not aware of any opposition.

MOTION: **Senator Durst** moved that **H 185** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**.

Senator Durst will carry the bill on the floor of the Senate.

H 162 **Kris Ellis**, representing Northwest Career Colleges Federation and the Cosmetology School Association of Idaho, presented this bill relating to cosmeticians. It requires that all schools whose student's receive Title IV funding to be designated as post-secondary institutions. She indicated the legislation is the result of a new United States Department of Education rule scheduled to go into effect July 1. Schools of Cosmetology are defined as "post-secondary" institutions and the bill clarifies that the schools are licensed by the Board of Cosmetology through the Bureau of Occupational Licenses. An emergency clause is added to allow the Board of Cosmetology to change their licensure designation before July 1.

Ms. Ellis pointed out there are 27 licensed schools in Idaho. They educate an average of 2,000 students a year. Over 90 percent of these students utilized financial aid. Approximately 85 to 95 percent of these students have jobs upon graduation. The default rate for students in this industry averages nine percent or lower, which is significantly below the national average for students across-the-board.

This legislation has been worked on collaboratively by the Board of Cosmetology, the attorneys at the Bureau of Occupational Licenses, as well as both associations representing cosmetology schools in Idaho. She said this legislation is critical to maintaining a workforce in the cosmetology industry in Idaho.

Senator Schmidt and **Ms. Ellis** had a conversation regarding the definition of a post-secondary school versus the designation for a cosmetology school and the idea that some of the attendees at a cosmetology school may not be high school graduates. **Senator Schmidt** pointed out that the definition of post-secondary does not match with the Department of Education definition. **Senator Goedde** asked if the language for this bill was discussed with the State Board of Education and **Ms. Ellis** said they reviewed the language and brought forth a couple of changes.

TESTIMONY:

Phillip Scott, representing Toni & Guy Hairdressing Academies in Boise and Coeur d'Alene, testified in support of this bill. He said their concern was there would be a complete segment of students who would be disenfranchised if this bill is not passed and put through as of July 1. The Department of Education said they will discontinue all student aid for those students if this change is not made. He urged the committee to pass the bill. **Senator Goedde** asked what the debt load was per student. **Mr. Scott** said if a student qualifies for a Pell Grant, that would reduce their amount of debt. A Pell Grant is made up of two award years because of the length of the program of 2,000 hours so \$11,000 of a student's tuition would be paid. The school charges \$15,000 for tuition, so their students when they graduate would have debt between \$5,000 to \$10,000, depending if they chose cost-of-living as part of their student aid. Currently, the frustration is that their schools get lumped in with public colleges and universities, which have spiraling default rates. Their default rate was five percent. He said they were held to a much higher standard and if their default rates were to ever approach 25 percent, they would lose their ability to provide student aid.

Senator Durst commented that the federal government came out with rule changes to ensure that students were not getting into debt for the degree they were going to earn and could never pay for. He said he was not very excited about defining a cosmetology school as a post-secondary institution because he thought it had a degree of academic meaning, but at the same time, he did not want to stand in the way of a student that chooses cosmetology as a profession. He said we have to look at the bigger picture.

MOTION:

Senator Guthrie moved that **H 162** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

Senator Martin will carry the bill on the floor of the Senate.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 1:56 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AMENDED AGENDA #2
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Auditorium Room WW02
Tuesday, March 19, 2013

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1145</u>	Relating to Workers' Compensation to Extend a Temporary Premium Tax Reduction and to Extend Deduction Provisions	Thomas Limbaugh, Commissioner - Industrial Commission
<u>H 248</u>	Relating to the Health Insurance Exchange	David Hensley, Chief of Staff, Governor's Office & Tammy Perkins, Senior Special Assistant to the Governor

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 19, 2013

TIME: 1:30 P.M.

PLACE: Auditorium Room WW02

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst

**ABSENT/
EXCUSED:**

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 Tippetts** called the meeting to order at 1:30 p.m.

S 1145 **Thomas Limbaugh**, Commissioner of the Industrial Commission (Commission), presented this bill relating to Workers' Compensation to extend deduction provisions. He said the Commission is required by Idaho Code § 72-523 to collect a tax each year from insurance companies and self-insured employers equal to two and one-half percent of the net premiums collected on all workers' compensation insurance policies written by an insurance company in Idaho (or on the premium that would have been paid for an insurance policy from the state insurance fund by a self-insured employer).

This tax is deposited in the Industrial Administration Fund, and is used by the Commission for administering the workers' compensation law. The law does not provide the Commission with authority to reduce the amount of tax collected. However, in 2011, the legislature amended the code to allow for a temporary premium tax rate reduction during the period January 1, 2012 through December 31, 2013.

The Commission collects premium tax on a semi-annual basis and only completed its collections for calendar year 2012, under the reduced rate, in March 2013. The expected decline in premium tax collections was somewhat mitigated by the increase in the volume of premiums written. Therefore, this proposed amendment will extend the legislature's temporary tax relief to sureties and self-insured employers providing workers' compensation benefits. The Commission administration fund balance as of January 31 was \$18,459,000. This represents 160 percent of the current year's budget. The fiscal impact is estimated to be a \$1.6 million revenue reduction in each of fiscal years 2015 and 2016 for a total impact of \$3.2 million to the Industrial Administration Fund. Including the current statutory reduction for fiscal year 2014, the overall impact should be close to \$5 million.

TESTIMONY: **Suzanne Budge**, representing the National Federation of Independent Business (NFIB), said members had some core concerns about business issues. Workers' compensation was one of the concerns, along with unemployment insurance and health insurance. She said they were supportive of the Commission and their efforts to reduce premiums on businesses. They applaud their efforts in considering the business community and they are supportive of the bill.

MOTION: **Senator Cameron** moved that **S 1145** be sent to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the bill on the floor of the Senate.

Chairman Tippetts went over the rules for testifying and asked those who appeared to state and spell their name, to say who they represented, testify and stand for questions. Testimony would be limited to three minutes. He cautioned the audience about maintaining a sense of decorum and there should be no applause or booing. He suggested testimony be in reference to changes between this bill and the previous legislation, S 1042.

Chairman Tippetts said he had been questioned about a conflict of interest as chairman of this committee, since he sits on the board for the Idaho Association of Commerce and Industry (IACI). They are primary supporters of the Health Insurance Exchange. He said it is true that he represents his employer, Agrium, on the board of IACI, and he has done so prior to being appointed as a state Senator, but he was here to represent his constituents. He said he has not declared a conflict of interest because his relationship with IACI does not constitute a conflict of interest. He said he checked with the Attorney General's office and they concurred there was no conflict. He said it was important to him that everyone had confidence that the system is fair and impartial.

H 248

David Hensley, Chief of Staff, Governor's Office, presented this bill relating to the state Health Insurance Exchange (Exchange). He said he wanted to highlight and call attention to some of the changes in the language that has been added.

Mr. Hensley pointed out the first major change was on page 2, where the membership of the board increased from 16 to 19 members. The additional members will be legislators, one member from the House, selected by the Speaker of the House, one member from the Senate, selected by the President Pro-Tempore, and a member of the minority party, selected by minority leadership. These legislators will serve as voting members of the board. New language was also added to further restrict the board in the operation of the Exchange. These restrictions include the requirement that the board accept Requests for Proposals (RFP). The Exchange must certify to the Governor and the Department of Insurance that the Exchange user's information is secure, before it begins taking applications from people who are voluntarily looking to purchase insurance.

The board is prohibited from changing its legal structure, asking the state for state funds, taxing or encumbering state assets, or inquiring about gun or ammunition use, ownership, possession or storage. The Exchange is further limited that in any event any provision of the law is overturned by a federal court, the Exchange must cease implementing that provision, unless there is a stay of the decision and an appeal.

Provisions were added to increase transparency and oversight. He said there was new language to make sure meetings of the board are either televised or streamed over the internet, in addition to the previous requirements of the open meeting laws of the State of Idaho. He referred to the bottom of page 3, and said sub-section 11 was added to make sure premium rates charged by a health carrier for a health benefit plan or stand-alone dental plan offered in the Exchange will be based upon Idaho rating areas established by the director consistent with 42 United States Code title section 300gg, *et seq.* **Mr. Hensley** said the legislation recognizes there will be an exchange in Idaho. The state chooses to build and run the Exchange, instead of defaulting to a federal Exchange and encourages using Idaho contractors where practical. There will be a market outside of the Exchange to purchase health insurance. The Exchange is completely voluntary and there is no requirement to use the Exchange to purchase insurance. The Exchange can assume no other functions beyond the powers given, and it is to be a marketplace to shop, compare and buy health insurance coverage.

Mr. Hensley said the legislation provides legislative oversight because board members would be subject to Senate confirmation. Three legislators would be on the board as voting members. An annual report must be submitted to the legislature. The board must report to the germane committees of the legislature during session and provide information on changes to its bylaws, changes in federal laws or rules, and any fee changes to Exchange users. Those reports have to be done on or before January 31 of every year. A new provision was added to encourage the board, to the fullest extent practicable, to contract with Idahoans and Idaho businesses as needed, to support the Exchange. Language was also added in the emergency clause, which would require the Governor to delay implementation if the requirements for the completion of the Exchange or federal grants are changed by Congress or Health and Human Services (HHS).

Senator Cameron said he thought Idaho had done everything to prevent abortion and potential abortifacients from being covered by the Exchange. There seems to be some consternation about the abortifacients, such as Plan B One-Step® or Ella®, called the "week after" pill. **Mr. Hensley** said he concurred the state has done all they can to prevent abortion. The concern arising about Plan B One-Step® and Ella®, stem from the fact that the Food and Drug Administration has categorized those as contraceptives. Contraceptives will still be offered, beginning in 2014, through the essential benefits package of a qualified health plan through a state, federal, and in some of the plans, outside of the Exchange in the marketplace, as part of the full-grown market reforms of Obamacare.

Senator Cameron said there was nothing the state could do except fight against abortifacients, and it would require a change in the federal law. He said one of the common ideas is that if the state does not adopt a state-based Exchange, somehow there is no tax penalty that would occur for businesses. Passage of this bill requires the state and the state Exchange to enforce such a tax penalty. He wanted to know, for the record, if a state-based Exchange would have any authority to enforce any kind of tax penalty. **Mr. Hensley** said the specific language of the bill prevents the Exchange from enforcing or implementing a penalty. He said they have sought the Attorney General's opinion on that subject and they concur it will be the responsibility of the Internal Revenue Service.

Senator Durst said the chairman of the House Appropriations Committee was quoted in the "Idaho Statesman" as saying that her perception from the Governor's office was that there would be a cap or restriction on fees. He asked Mr. Hensley to explain why those kinds of changes would be considered. **Mr. Hensley** said he did not know that the chairman of the House Appropriations Committee had said that. He said, as we look at the costs, which have been clearly debated throughout this process, and whether the cost estimates that they believe would be true or not, they have tried to provide flexibility for the board, to operate as a business, make fees necessary to cover costs and to provide oversight to the legislature to review those fees. If the legislature feels those fees are unwarranted or unjustified, then that situation would be addressed.

Senator Durst said that his understanding of the federal Exchange was that there is a limit on the amount of fees paid by the user. He said that in this bill there is no limit in the actual value of the fee or the actual percentage of the cost of operation, that is paid by the user. **Mr. Hensley** said the federal government has said, in terms of operating a federal Exchange, they are going to charge a 3.5 percent premium tax on policies purchased through that Exchange. He said that was in the regulations, and he said the federal government may agree to change the tax. He said that was our starting point for the analysis for the potential ongoing costs. He indicated that what we have done is to try to compare that against the information provided over the course of the summer by the Governor's task force, and that the operating cost would be \$10 million. In terms of looking at that, those are estimates and they believe they were provided by experts who understood the information and gave their best guess as to what that means. Also, they are not opposed in the future, if there are appropriate sideboards, to look at the fee structure. They tried to provide flexibility to address costs as they may encounter in operating the Exchange in the first couple of years.

Wayne Hoffman, Executive Director of the Freedom Foundation, said he opposes the insurance Exchange. He pointed out areas that he thought were problems remaining with the bill. He said on page 3, subsection 11, under the Affordable Care Act (ACA), rating areas can be put in place without having to create a state Exchange, so it is a fallacy that a federal Exchange will all be under one rating area. He added that by directly referencing the ACA 42 of the United States Code section 300gg, *et seq.*, there is a problem because Congress is writing Idaho statute for the legislature, which is easily remedied by putting in the code section as it exists on a particular date such as January 1. He said he was concerned about the fees outlined on page 4, line 9 of the bill. We do have the ability to set some kind of rate, and we should.

He said when testimony was heard in committee on S 1042, the committee was told the rate was going to be \$4.80 per patient, but he heard on the House floor the figure was now \$7 per patient per month. He felt some amount should be placed in the bill because otherwise the rate cannot be controlled. In the Idaho Individual High Risk Insurance pool, the rates were calculated with no dollar amount, however, the formula is calculated as set by statute. The rate is subject to review by the director of the Department of Insurance. The legislature has the ability to revise the bill to put some limitations in place.

On page 5, subsection g, the language states the board certifies to the director and governor that personal information collected from and about any person who voluntarily uses the Exchange will be secure. They want to see some kind of limitation on which agencies, whether federal or state, that would have access to the data. Where it states the data is secure, hackers like to prove that it is not.

When the bill refers to firearms and ammunition, under the ACA, it specifically says that the secretary cannot cause the collection of information relative to ammunition or firearms. He referred to the part of the bill that says if a section of the ACA is ruled unconstitutional, then the Exchange will immediately cease enforcing a portion of the provisions and said it was vague. He said this was a delegation of the legislature's lawmaking authority.

He referred to the bottom of page 5 and said it causes a potential increase in costs to the consumer. He talked about a part of the old bill on page 3, subsection 6 (a), saying neither the members of the board nor any other person working or performing services for the Exchange, can be considered public officials. According to the Idaho public records law, information concerning the pay of public officials is a matter of public record. He is concerned that if the members are not public

officials, then any employees who are hired by the Exchange would be exempted.

Mr. Hoffman said the changes in this bill makes things worse. At a minimum, the legislature should consider putting some sideboards and amendments on this legislation, if they choose to move forward with a state Exchange.

TESTIMONY:

The following people submitted written testimony and testified: **Greg Ferch**, who said he represented himself, and said he was in opposition to a state Exchange. He said the House suggested that because there is a \$20 million federal grant, that the Exchange was not going to cost Idahoans very much money. He said he thought that comparing the state Exchange to a high risk pool was not good. He said with the high risk pool, Obama's fingerprints were not all over it. He said some of the arguments for a state Exchange are nebulous, such as a seat at the table and having control. He said we keep hearing statements about what we don't have control over, such as whether or not we will be paying for abortifacients. He gave the example of his 20 years of dealing with medicare, how they tell you what you are to do, and that practical choices are very limited. He said he finds it foolhardy that we are going to sign off on something when we don't know the impact. There are too many unknowns. He said he wanted to add his materials as part of the testimony. See attachment 1.

Peg Munson said she was a volunteer for the American Association of Retired Persons (AARP) and testified AARP is in support of **H 248** .

Kerry Uhlenkott, Legislative Coordinator for the Right to Life, Idaho, testified in opposition to **H 248**. She said she was concerned there is no explicit protection for unborn life with regards to abortifacients. The Idaho Attorney General's office legal opinion states that under a state or a federal Exchange, insurance companies in Idaho may not provide coverage for either surgical abortion or the abortion-inducing drug RU486. Under a state Exchange, insurance companies would be required to provide for Plan B One-Step® or Ella® (potential abortifacients), which are considered emergency contraceptives, because they are also considered contraceptives. She cited Dr. James Trussell, who is considered a leading authority on emergency contraception, He said doctors have a duty to inform women that emergency contraception could prevent a newly-conceived embryo from implanting in the womb, causing an abortion. She stated that insurance companies in Idaho would be required to provide for emergency contraception, whether there is a state or federal Exchange. Employer-mandated tax can only be imposed under the state Exchange. The ACA requires businesses with more than 50 employees to provide a government-approved health care plan and if they don't, they can face a tax penalty up to \$3,000 per employee. Due to the way the law was written, the ACA is dependent upon the existence of a state Exchange to impose this tax penalty. She urged the committee to vote no.

Senator Durst asked if amendments were added to **H 248**, that prevented the coverage of emergency contraception, would Right to Life support the bill. **Ms. Uhlenkott** said they would support the bill. **Senator Durst** said different faiths have opinions on abortifacients, and what would she say to those who were of the evangelical viewpoint. **Ms. Uhlenkott** said that was why they went to Dr. James Trussell, who came out with his position in February. Quoting him, "to make an informed choice, women must know that emergency contraceptive pills prevent pregnancy primarily by delaying or inhibiting ovulation and inhibiting fertilization, but at times inhibit implantation of a fertilized egg in the endometrium."

Karen Calisterio, representing the Republican Liberty Caucus of Idaho, testified in opposition to the bill. She said the committee refused to see the facts. What will the people of Idaho do when they discover that Obamacare was brought to Idaho, courtesy of the Idaho legislature, she said. There were other options available, but we didn't explore them. She said she thought we should wait for more facts before making a decision. **Vice Chairman Patrick** said that use of the Exchange was not mandatory and it was not anticipated that there would be many Idahoans using the Exchange. **Ms. Calisterio** said by adopting a state Exchange, the state is opened up to the federal mandate.

Chad Inman testified he was in opposition to **H 248**. He said he wanted to leave a copy of a speech that the Honorable Daniel Eismann wrote about Obamacare. See attachment 2. He said in addition to himself, many others are opposed to the Idaho version of the health care Exchange for many reasons, and they feel they have not been told the truth. When people ask how many options do we have, he has heard people say we have only two choices and those are a federal or a state Exchange. He questioned that we have been told that by having the state run Exchange, we will have control and have a place at the table. Lies will come out and will continue to be told, but he does not blame the committee because they are under a lot of pressure from lobbyists and the Governor. He said he hoped the legislature does the right thing because his children and their children are depending upon it.

The following people testified, but did not submit written testimony: **Jack Stuart**, said he was a World War II veteran and was a member of the Board of Directors of the Boise Tea Party, but was representing himself. He testified in opposition to the health care Exchange. He said that since the federal government would be in control and still writing the rules, we cannot estimate the costs, which could be in the millions. He said someone has to pay for it. He urged the committee to wait and see what the rules will be. He said he thought the state Exchange was unconstitutional and an intrusion by Idaho into citizen's affairs. He said he recommends the state refuse the ACA as unconstitutional and let the courts rule on the Act.

Tom Shores, representing the Idaho Association of Health Underwriters (IAHU), testified in support of the Exchange. He said he thinks this bill addresses oversight problems of the legislature, the money is not coming out of the state coffers, and starting January 1 of this coming year, no health information will be asked on any of the applications. We will be moving to a community rating system where every 52-year old individual will be rated based on the age, geographic areas and whether or not they smoke.

Brad Bolicek, representing himself, testified in opposition to the bill. He said the state Exchange will be at the mercy of the federal government as to how it will be designed and run. He said the state Exchange would operate the same as Obamacare. He asked, why would Idaho republicans create this Exchange? The Idaho Health Exchange Alliance was formed to back Governor Otter's Exchange. These companies have poured money into campaigns and will benefit from a state-run Exchange. The industry stands to gain in the short term. The people will pay the price in the long run for Governor Otter's Exchange. He urged the legislature not to support the bill. He said there are almost 30 states who have said no to Obamacare, so why not wait for the outcome of the Oklahoma lawsuit. He said lobbyists and insurance companies are pushing for the Exchange. He urged a no vote or all of our rights will be gone.

Toni Lawson, Vice President of the Idaho Hospital Association (Association), testified in support of the Exchange. She said it was important to the members of the Association because, from their experience, they know what it is like to deal with the feds for state and federal programs. She said it is always best to work with a state agency rather than the feds. She said their Association has conducted a poll and over 70 percent of Idaho voters were in favor of moving forward with a state-based Exchange rather than a federal Exchange. She said their hospitals have taken the same position as the Association.

James Widmeyer, representing himself, testified in opposition to this bill. He said he has seen several polls and a majority do not support a federal takeover of health care. He said AARP makes their money through selling insurance and they don't disclose they expect to make between \$1 billion to \$2 billion dollars in profits on the Obamacare fiasco. The health care data, a person's income, and very personal health information is currently scheduled to be transferred through at least three federal government agencies. The information will be there to be hacked. In the 1960s, expenses were considerably less. As other government agencies have become involved, medical costs have skyrocketed. All decisions should be made between the patient and their doctor without the government being involved. He urged the committee to save the people of Idaho by stopping the invasion of our people.

Steve Millard, President of the Idaho Hospital Association (IHA) testified in support of the state health care initiative.

Cory Surber, representing Saint Alphonsus Health System and the Director of Community Health Initiatives, submitted written testimony, and testified in support of the bill and the changes made by the House. She said a state-based Exchange will be cheaper. Colorado has already demonstrated their state Exchange is cheaper than the feds. She said the State Department of Insurance was better suited to enforce the Exchange.

Steve Thomas, representing the Idaho Association of Health Plans, referred to the remarks of Mr. Hensley and Mr. Shores and said that **H 248** has many contributing authors and said it was strong, fair and more conclusive. He testified in support of a state-run health Exchange, but submitted no written testimony.

Elizabeth Criner, representing the Idaho State Dental Association, submitted written testimony, and testified in support of the bill. She said it was the best for our state. She said the ACA has been followed closely by her association and is the law they have to work within. The federal law is very clear that in the absence of a state Exchange, a federal Exchange will be enforced. She said our state is far better at responding to the people of Idaho than the federal government. The state health Exchange is not mandatory and it is an on-line marketplace designed to provide information on health insurance policies that are available, where businesses and individuals can choose to purchase insurance. Consumers will be able to make informed decisions about the purchase of health insurance. She said it is important that we keep in mind that concerns about the ACA can only be addressed by Congress. They do not endorse the ACA.

Stacey Satterlee, Idaho State Director of Government Relations for the American Cancer Society, Cancer Action Network, testified in favor of the state-based health Exchange because she said it would save money. She said it is important that cancer patients have access to immediate and quality health care. Increased access to health care coverage would be in the best interest of Idahoans, which translates into earlier detection and better outcomes for those fighting cancer and other diseases. For the estimated 7,720 Idahoans who will be diagnosed with cancer this year, having that access to health care coverage is critical. They

appreciate the work that has been done to add transparency to the Exchange. She did not submit any written testimony.

Senator Sheryl Nuxoll, representing District 7 and Idaho Catholics, submitted written testimony, and testified in opposition to this bill. She said that Catholic bishops, in their publication, "Forming Consciences for Faithful Citizenship", stated that a direct and intentional destruction of innocent human life from the time of conception until natural death is always wrong, and it must always be opposed. Cardinal Archbishop Timothy Dolan has expressed that it violates our conscience and religious liberty when he said, "In effect, the president is saying we have one year to figure out how to violate our consciences." To force Americans to choose between violating their consciences and foregoing their health care is literally unconscionable. It is as much an attack on access to health care as on religious freedom. She quoted Pope Francis I who has said, "defend the unborn against abortion even if they persecute you, calumniate you, set traps for you, take you to court or kill you. No child should be denied the right to be born, to be fed and to go to school." She said Plan B One-Step® and Ella® are potential abortifacients. Our state has the duty, according to the statute, to protect us in our freedom and our religion. We can't hand this duty over to the mercy of the federal government. The state Exchange implements an intrinsic evil, such as abortion and the loss of our religious freedom, and we need to reject it.

Christine Tiddens, Public Policy Coordinator for the Catholic Charities of Idaho, representing the Roman Catholic Diocese of Idaho, who did not submit written testimony, testified in favor of the Exchange. She said their goal in advocating this bill was to promote affordable high quality coverage for all people in Idaho. They believe that human rights must be protected. It is the foundational belief of Catholic Charities of Idaho, the Roman Catholic Diocese of Idaho, Catholic Charities USA and the United States Conference of Catholic Bishops to oppose federal mandates that require health insurance plans to cover contraception, abortion, and abortifacient drugs. They recognize the mandates can only be changed at the federal level. They need to take action now to protect the lives of all vulnerable populations in Idaho. Idaho has already taken proactive measures to limit abortion coverage. A state-based Exchange will promote better value for the dollar. She urged support of **H 248**.

Woody Richards, representing America's Health Insurance Plans, submitted written testimony, and testified in support of the bill. He emphasized that, based on the best information we have, the state Exchange will be less expensive. He said we will have a better opportunity to negotiate at the table, and it is the best deal for Idaho citizens. By having a local Exchange, it is the best opportunity for consumers when complaints or problems arise.

Carol Cassidy, representing herself, testified in opposition to the bill, but did not submit written testimony.

Senator Cameron stated that for the record, he had a conflict of interest because he sells insurance, pursuant to Senate Rule 39, but intended to vote, even though a piece of the bill will harm his business. He said he has been on record long before Obamacare was passed as stating ACA would do harm to Idahoans and health care. He said he believes that the passage of a state-based Exchange is the only option in order to prevent intrusion by the feds, for our health care decisions. He said the state-based Exchange was a Republican idea long before Obama included it in the ACA. He said he thought a state Exchange was our only choice to protect Tenth Amendment rights. He said there are some who believe we have the option of nullification, and he wished he believed that was an alternative, but he does not. He said he was convinced that if the state does not act, the federal government will. It was a difficult decision for the Governor, who took a long time

evaluating, a state-based Exchange, and after counsel with legal entities, he thought it was in the best interest of Idahoans. He is willing to stand behind that decision as we continue to fight. **Senator Cameron** said he has a perfect voting record when it comes to the termination of pregnancy and fighting against abortion. He was elected on the pro-life platform which he still maintains. He thinks Idaho has done all they can to protect the rights of the unborn, and if there are additional provisions or laws that need to be passed or considered, he is certainly willing to help. It is an awkward position between what the federal law says and what the state law says. He said the state protects us so our companies are not required to offer abortion as a required service, both under the state Exchange and the federal Exchange. Once a federal Exchange is established, there will be no more input from state companies. He said companies that are selling in other states where abortion is required will then offer those same plans to Idahoans. He believes the federal government will not, in spite of our actions, force the other states to abide by that decision. He said we are more at risk that abortions will be covered under a federal Exchange than a state Exchange.

MOTION: **Senator Cameron** moved that **H 248** be sent to the floor with a **do pass** recommendation. **Senator Guthrie** seconded the motion. **Senator Durst** said there was no option given to the Senate to make suggestions for changes. There are things in the bill that are significantly lacking pertaining to the fees that those who use the Exchange will have to pay. Most people who use the Exchange will be of middle to low income and who can least afford to pay the costs for operating the Exchange. He would feel much better if there was some sort of language inserted about the user fee to indicate that those who would profit from this endeavor would pay the fee.

SUBSTITUTE MOTION: **Senator Durst** moved to send **H 248** to the Fourteenth Order for possible amendment. The motion died for lack of a second.

Senator Goedde stated he wanted to disclose for the record, that he had a conflict of interest pursuant to Senate Rule 39, because he is licensed to sell health insurance, however, he does not use his license, but he intended to vote.

ROLL CALL VOTE: **Chairman Tippetts** called for a roll call vote. **Vice Chairman Patrick** and **Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt,** and **Chairman Tippetts** voted aye. **Senator Durst** voted nay. The motion carried. Senator Tippetts will carry the bill on the floor of the Senate.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 3:02 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, March 21, 2013

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1158</u>	Relating to Social Security Benefits - Amending Existing Law to Revise Terminology and to Extend Benefits to Police Officers and Firefighters	Dan Goicoechea, Chief Deputy State Controller
<u>H 196</u>	Relating to Credits for Assessments Paid and the Premium Tax	Woody Richards, Guarantee Associations
<u>H 232</u>	Relating to Insurance Contracts	Michael Kane, Property & Casualty Insurers Association of America
<u>HCR 23</u>	Rejecting a Rule of the Division of Building Safety - Uniform Plumbing Code	Representative Jeff Thompson
<u>HCR 24</u>	Rejecting a Rule of the Idaho Driving Business Licensure Board	Representative Jeff Thompson
<u>H 91</u>	Relating to the Employment Security Law	Phil McGrane, Chief Deputy, Ada County Clerk's Office
<u>H 197</u>	Relating to Insurance Holding Company Systems	Tom Donovan, Deputy Director, Department of Insurance

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Thursday, March 21, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst
- ABSENT/ EXCUSED:**
- 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 Tippetts** called the meeting to order at 2:00 p.m.
- MOTION:** **Senator Durst** moved to approve the minutes of March 7, 2013 as written. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**.
- MOTION:** **Vice Chairman Patrick** moved to approve the minutes of March 12, 2013 as written. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.
- MOTION:** **Senator Cameron** moved to approve the minutes of March 14, 2013 as written. **Senator Martin** seconded the motion. The motion carried by **voice vote**.
- S 1158** **Senator Winder** began the presentation of this bill and said the controller's office discovered a problem with social security issues related to firemen and policemen. He explained the process they had gone through during the past year of having votes in various fire and police districts to deal with social security issues. He said this bill was a timing issue. If this bill doesn't get done, the firemen and policemen run the risk of having to do their elections over again because there is a deadline for social security to approve their plans.
- He introduced **Dan Goicoechea**, Chief Deputy State Controller, who presented this bill relating to social security benefits. He gave a history of the law, citing Public Law 92-603 that was effective October 30, 1972 and section 218 of the Social Security Act of 1935. He went over Social Security definitions. He defined an absolute coverage group, and said it includes all positions not under the retirement system either on September 1, 1954 or on the applicable date of the agreement or modification. A retirement system coverage group consists of positions under a retirement system. Coverage can be extended to a retirement system coverage group only after a referendum has been held among the members of the retirement system. He said this proposed law would amend the exiting law to revise terminology and extend benefits to police officers and firefighters. He said this legislation amends Idaho Code to ratify federal authority by adding a provision establishing state authority to cover police officers and firefighters under a retirement system. This legislation further clarifies the acceptance of benefits of the Federal Social Security Act to encompass all of its agencies, counties and cities, and all of its municipal corporations, political subdivisions, governmental entities, and independent bodies. This list is not meant to be exhaustive and is meant to include all legal entities providing governmental functions. This legislation also simplifies the federal mandatory exception to such coverage by referring to the exceptions in the Act.
- Mr. Goicoechea** said this problem has existed for over 42 years. This problem was brought to their attention about three years ago by a fireman from Coeur d'Alene,

who had a question about social security coverage. Under the 218 Agreement and the Social Security Act, entities and positions within those entities that wish to be covered under social security could do so. A vote was to have taken place 42 years ago (and it did not) at all of these entities, with the positions that were covered to codify their wishes to be part of social security. The basis for that was, the Firefighters' Retirement Fund was insolvent and through legislative action, as well as federal authority, Idaho allowed that to occur. The General Accounting Office of the federal government and social security took a look at this issue and worked with them through this process. **Mr. Goicoechea** said no one would be required to be a part of social security. This is corrective legislation that gives Idaho the language approved by the federal government. The referendum was held last July and we have two years to have those certified by the Social Security Administration. When the referendums are submitted, it will take a minimum of six months for approval. The Firefighters support this legislation and they have heard no opposition. Finally, this legislation is needed to meet the time requirement to modify the State's section 218 Original Agreement. There is no fiscal impact to the general fund.

MOTION: **Senator Cameron** moved that **S 1158** be sent to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Winder will carry this bill on the floor of the Senate.

H 196

Woody Richards, representing Guaranty Associations, namely the Property/Casualty Guaranty Association and the Life and Health Guaranty Association (Associations), was unable to attend the meeting, so his daughter, **Angela Richards**, representing the Idaho Insurance Guaranty Association and the Idaho Life and Health Guarantee Association, presented this bill relating to credits for assessments paid and the premium tax. She said this legislation clarifies the Idaho Life and Health Insurance Guaranty Association Act and the Idaho Insurance Guaranty Association Act concerning the timing of permitted premium tax offset rights of member insurers for certain assessments periodically imposed by these Associations on their respective members to fund each association's obligations, with regard to covered insurance products of impaired or insolvent life, health, property, and casualty insurers.

Ms. Richards said that when national and local insurance companies become bankrupt or insolvent, the two insurance Associations step in and health insurance coverage is provided; life insurance benefits are paid; and damage to property is compensated according to the statutory provisions in Idaho law. The two Associations hire experts to resolve claims, and they come up with the money to pay for everything. This is all done under the supervision of the Idaho Department of Insurance (Department). The Associations raise the money to accomplish these jobs by assessing their insurance company members. Idaho law requires that all insurance companies that are licensed to sell life, health, property and casualty insurance be members of the Associations and pay the assessments, as money becomes necessary. Since the 1970s, the Property/Casualty Guaranty Association has assessed its members almost \$15 million and the Life and Health Guaranty Association has probably done more. In return for paying these assessments to the Associations, the insurance company members paying the assessments are allowed certain tax offsets to their premium taxes over a five-year period. In the past, the Department has interpreted the insurance laws, so that if the insurance companies paid an assessment in 2011, they could start taking part of the offset to the premium tax that is due for calendar year 2011 on March 1 of 2012. They may continue taking one-fifth of the premium tax offset for each of the following four years on March 1 of each of those years.

Ms. Richards said this legislation is being proposed because several states have the same or similar language as Idaho's laws, however, some of them are interpreting the language differently than Idaho has. Under the interpretation by those other states, if an assessment is made in 2011, then the offset could not start to be taken until March 1, 2013, which is a delay of an extra year. The Associations and the Department are willing to continue the practice that has existed in the past, but in order to do so, the Department has requested that we clarify the statutes, so that there are no doubts about how they are to be applied.

This legislation clarifies the language contained in section 41-4313 and section 41-3616 which has been subject to conflicting interpretations in other states. Idaho Code § 41-3616, page 1, applies to property/casualty insurers who are members of the Idaho Insurance Guaranty Association. To clarify the offset time period, the first nine words on line 20 have been stricken and replaced by the underscored words in lines 20 through 23. All this change does is allow the traditional interpretation regarding the year in which the offset can be taken. This legislation continues the historical interpretation in Idaho of these sections by the Idaho Department of Insurance prior to 2012. This legislation does not affect the existing coverage levels and other benefits provided by the Guaranty Associations to the public.

Additional words are being stricken in lines 16 through 18. They are being replaced by the words that are underscored in lines 25 through 28 on the same page. This is a further clarification, also requested by the Department, because not all property/casualty insurance companies pay premium taxes to the Department. Instead, some workers' compensation insurers pay premium taxes only to the Industrial Commission. The premium tax offset, following an assessment by the Associations, is intended to work the same for these workers' compensation insurers as it does for all of the other insurers. The offset is to the Industrial Commission premium tax rather than to the Department premium tax. The Associations and the Department believe that some minor word changes and relocation of the sentence to the end of the paragraph would make the intent more clear. All this change does is allow the traditional interpretation to continue.

Ms. Richards referred to age 2 of the legislation and section 41-4313 applies to life and health insurers who are members of the Idaho Life and Health Insurance Guaranty Association. In lines 4 and 5, the same words scratched on the prior page have also been eliminated and the same words added on the prior page have been added in lines 5 through 8. All this change does is allow the traditional interpretation regarding the year in which the offset can begin. The final change is the deletion of Idaho Code § 41-4313(3) in lines 18 through 24 on page two. At some point in time, the wording of subsection two was duplicated in subsection three and the duplication needs to be eliminated.

There is no change in the amount of tax or the tax offset as a result of these amendment. **Ms. Richards** said she was not aware of any opposition to this legislation.

MOTION:

Senator Guthrie moved that **H 196** be sent to the floor with a **do pass** recommendation. **Senator Goedde** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor of the Senate.

H 232

Michael Kane, Property and Casualty Insurers Association of America, presented this bill relating to the insurance contract. He said the purpose of this legislation is to allow electronic delivery of insurance-related documents to an insured, when the insured has affirmatively consented to such delivery. This legislation has no negative impact on the general fund or to the funds of any county or city.

With the advent of the Internet, more and more business is being conducted online. Goods and services are being bought online, and the documents associated with those transactions are increasingly being electronically delivered to consumers. Banks, credit card companies and many other types of businesses are already sending billing notices and related account information via e-mail, and posting that same information online so that consumers can access the information when they need it. Such easy online access to account documents benefits all involved. It spares companies mailing and printing costs and frees consumers from having to store paper copies that they may end up losing anyway. This bill simply says insurers can do what these companies are already doing with respect to insurance policies, notices and forms. This bill does not change anything for those who wish to continue to receive paper documents. Rather, it merely allows those policyholders who wish to receive their insurance documents electronically to elect to do so. If someone chooses this option and later changes his or her mind, this bill allows that too. Because this bill simply allows insurers to do whatever other businesses are already doing, and because the bill simply gives consumers the option of receiving documents electronically, he asked for support from the committee.

MOTION:

Senator Goedde moved that **H 232** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. **Senator Durst** said he supported the motion, and he said the corrections that were done on lines 7 through 9 were good. The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor of the Senate.

HCR 23

Representative Cindy Agidius presented this concurrent resolution for Representative Jeff Thompson, which was rejecting a rule of the Division of Building Safety - Uniform Plumbing Code. She said the purpose of this concurrent resolution was to reject section 011, subsection 09, only, Division of Building Safety, Rules Concerning Uniform Plumbing Code, Docket No. 07-0206-1201, as the rules are not consistent with legislative intent. There is no impact to the general fund or the Division of Building Safety. She said this resolution related to the location of water heaters in crawl spaces. She said there was no problem with ventilation. The main concern was there was no definition of a crawl space.

Senator Durst and **Representative Agidius** had a conversation about the size, location, ventilation and access to a crawl space. **Representative Agidius** pointed out that inspectors were not concerned about the location of a water heater, as long as there was adequate ventilation. **Senator Cameron** and **Representative Agidius** talked about the previous rule and inspections of crawl spaces. **Senator Schmidt** and **Representative Agidius** discussed the installation of gas and electric water heaters and the consequences of rejecting this rule. **Representative Agidius** said by rejecting this rule, the rule would revert back to the previous rule.

MOTION:

Vice Chairman Patrick moved that **HCR 23** be sent to the floor with a **do pass** recommendation. **Senator Guthrie** seconded the motion. **Senator Durst** commented that he would like to look at the replacement for this rule, but he could not get on the website.

SUBSTITUTE MOTION:

Senator Durst made a substitute motion to hold **HCR 23** for a time certain. **Senator Schmidt** seconded the motion. **Vice Chairman Patrick** commented he could not see how holding this for definitions for another year would accomplish anything. **Senator Guthrie** said he favored the original motion because there is an inspection that takes place and the rule would revert back to the previous rule. **Senator Durst** asked if a vote could be delayed for ten minutes so the committee members could get on-line. **Chairman Tippetts** agreed. After hearing **HCR 24** and **H 91** and after accessing the website for the changes to **HCR 23**, **Senator Schmidt** said he withdrew his second on the substitute motion. The substitute motion failed due to the withdrawal of the second. **Senator Durst** withdrew his motion. The original motion to send **HCR 23** to the floor with a **do pass** recommendation carried by **voice vote**. Vice Chairman Patrick will carry the bill on the floor of the Senate.

HCR 24

Representative Jeff Thompson was unable to present this concurrent resolution because he was chairing another committee. **Chairman Tippetts** said the purpose of this concurrent resolution was to reject section 225, subsection 07.a, only, Bureau of Occupational Licenses, Rules of the Idaho Driving Board, Docket No. 24-2502, as the rules are not consistent with legislative intent. There is no impact to the general fund or the Bureau of Occupational Licenses. **Vice Chairman Patrick** said he had just appeared before the Business Committee in the House and that we rejected more of the rule than they did. He said he thought we should approve this House Concurrent Resolution (HCR). **Chairman Tippetts** said this was a moot issue since the House passed the Senate concurrent resolution rejecting the same rule. He asked Vice Chairman Patrick to communicate with Representatives Thompson and Barbieri and the committee would not take any action at this time.

H 91

Shannon Hohl, Election Specialist, Ada County, testified in place of Phil McGrane, Chief Deputy, Ada County Clerk's Office. She presented this bill relating to the Employment Security Law. She said that during the past year, unemployment claims have been filed based upon temporary election work that occurs largely on election day. The purpose of this bill is to exempt temporary election workers, such as poll workers, from unemployment eligibility, based upon that work. There is no fiscal impact to the general fund or local government funds. She said there were unemployment claims from polling place workers, who worked only one day. Ada County asked for an appeal and an exemption from these claims and lost. This bill exempts workers from filing claims if they make less than \$1,000 and is in line with the federal law. This bill passed the House. **Senator Durst**, **Ms. Hohl** and **Kris Rich**, Ada County Clerk, had a conversation about the average wage of an election worker, which was \$125 and the chief judge's wage of \$150. Other temporary workers get paid \$12.25 an hour. They also talked about the eligibility of a temporary worker who typically would not make more than \$1,000 in a given week. The County Clerk's office views the pay as a stipend for volunteer work.

MOTION:

Senator Martin moved that **H 91** be sent to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. **Senator Schmidt** asked for a clarification on the motion and wanted to know if was "as amended." **Senator Durst** said he opposed the motion. **Senator Cameron** said our secretarial staff does not collect unemployment benefits because they know their jobs are temporary. The motion carried by **voice vote**. **Senator Durst** voted "nay" and wanted his vote recorded.

Tom Donovan, Deputy Director, Department of Insurance (Department), presented this bill relating to insurance holding company systems, repealing and replacing title 41, chapter 38. He introduced Department of Insurance Chief Examiner and Bureau Chief for the Company Activities Bureau, Georgia Siehl, who was available to assist with technical questions. **Mr. Donovan** said many of the provisions from the existing law will remain. The new proposed chapter 38 is an updated National Association of Insurance Commissioners (NAIC) model law of the Insurance Holding Company System Regulatory Act, that is designed to provide more detailed monitoring for system risk issues that might exist in non-insurance affiliates of an insurance company and could ultimately jeopardize the solvency of the insurer. This model law will also be required for accreditation of the Idaho Department of Insurance by the NAIC. Accreditation is important to maintain consistent, streamlined and fair regulation of insurers.

Mr. Donovan said the first 33 pages of the bill include both a repeal and rewrite of what is mostly already in existing law. The remaining 18 pages of the bill are technical changes, such as corrections to new code references, and conforming existing language to current legislative protocol in terms of capitalization and spelling. Earlier in the year, he said he submitted to the committee a three-page Summary of Changes document, dated March 1, 2013. He explained the first page provided an introduction, the second page described many of the key existing provisions in chapter 38 that are being retained in **H 197**. The third page set forth some of the general increased oversight of the holding company systems and particular changes in the bill, and stating why **H 197** is important. Also included with the summary and labeled Exhibit A was a 33 page, red-lined comparison showing the changes to the current chapter 38. This chapter applies to "insurance holding company systems", which are basically groups of affiliated persons or companies where one "person" is an insurance company.

Mr. Donovan said in answer to a previous question, **H 197** does not have anything to do with, nor does it in any way implement, the Affordable Care Act (ACA), and is completely unrelated to the ACA. The current chapter 38 applies, and the bill effecting a rewrite of the chapter will apply to insurance companies within an insurance holding company system regardless of whether they are authorized to transact disability (i.e., health) or life, or property and casualty insurance. Insurance companies are closely regulated and monitored, due to the nature of the product of insurance, or in essence, a promise of future performance by the insurer. Insurance companies are required to maintain specific capital and surplus requirements, are limited in the types and extent of permissible investments, follow a unique and conservative accounting system, file annual and quarterly financial statements with the Department and are subject to and undergo examinations by the Department. In addition, those in management are required to have appropriate skills and competence. This extent of regulation of insurance companies on page 2 and subsequent pages, maintain the financial solvency and integrity of an insurance company so it will be able to pay claims in the future and protect the public. The existing chapter 38 of the insurance code, is based on an NAIC model act and applies to insurance holding company systems. The NAIC is a national organization of the insurance regulators from all of the states.

The proposed rewrite of chapter 38 is based on the updated NAIC Model Holding Company Systems Act that was adopted by the NAIC in 2010. The origin of the main changes to this model act stem from concerns about the risk to insurance companies posed by affiliated companies of insurers, even when the insurance companies themselves are sound. Additional concerns addressed in the updated model act relate to increasing global and international interests and affiliations within insurance holding company systems.

It is important to enact the provisions in **H 197** to continue to help protect the solvency and integrity of insurance companies and the insurance buying public. It is also important because this 2010 NAIC Insurance Holding Company System Regulatory Act (Model Act 440) will become a new accreditation standard of the NAIC. The NAIC accredits the various state insurance regulators according to standards jointly agreed to. The standards include minimum legal protections in state law, and process and procedures in conducting review of company analysis and examinations of companies. It is important for the Department to maintain accreditation with the NAIC to provide complete and consistent regulation among states in key areas such as financial solvency. It is also important to our Idaho domestic companies that are licensed in other states for the Department to maintain accreditation, because if we maintain accreditation, other insurance regulators will defer to the Department's examination reports of those companies. If the Department were to lose accredited status, our Idaho domestic companies could be subject to duplicative examinations and oversight, costing them additional time and money. The Department has worked with insurance company representatives on this legislation and is not aware of any objections. **Mr. Donovan** said he understands that the American Council of Life Insurers (ACLI) supports the bill.

Mr. Donovan proceeded to review the bill with the committee. He said section 1 of the bill repeals existing pages 3 to 6, section 2, which provides for the rewrite of chapter 38. Page 2 through page 33 includes updates from the revised NAIC model, as well as some clean-up of existing language. sections 3 through 14 of the bill on pages 33 through 51, amend other sections of the insurance code and primarily address changes to references, as a result of renumbering current sections of chapter 38. Those changes correct code references, in addition to making some other technical corrections that are not substantive. He highlighted the primary requirements of the existing law being retained and focused on the key new provisions and changes from current law.

Insurance companies domiciled in another state other than Idaho are known as "foreign insurers." The definitions in section 41-3802, starting on page 2, line 18, primarily tracks existing law. He pointed out that on page 2, line 39, a new definition appears for "enterprise risk." That is basically an activity or circumstance involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole.

He said all of chapter 38 applies to insurance holding company systems, defined at the top of page 3, line 1 as, "two or more affiliated persons, one of whom is an insurer." Page 3, line 23, section 41-3803 is not substantially changed from current law and permits a domestic insurance company to own subsidiary companies for any kind of business, and also provides that the insurer may invest in its subsidiaries within certain limits. On page 4 starting on line 42, section 41-3804 provides for requirements where one party acquires control or a controlling interest in a domestic insurance company. **Mr. Donovan** said, again, this mainly tracks current law. When a person seeks to acquire a controlling interest or merge with a domestic insurance company, the identity and background information on the applicant and individuals in charge, as well as the details of the transaction, are to be reported and filed with the director prior to, or upon, entering into an agreement to accomplish the change in control. The information required to be provided is spelled out in what's called a "Form A" (Statement Regarding Acquisition of Control), the requirements of which are set forth in Department rule at Idaho Administrative Procedure Act (IDAPA) 18.01.23, as well as generally described at subsection 2, starting on page 5, line 39. A new requirement in this section is added on page 5, lines 11 through 23. He explained this provides that a person already in control of a domestic insurer who seeks to divest that controlling interest must file a notice of the proposed divestiture 30 days prior so that the director can determine whether any additional information is required.

Other new language or requirements for the Form A appear on page 4. On page 7, lines 18 through 26, are essentially an agreement and acknowledgment that the newly required Enterprise Risk Report and other needed information will be filed and supplied to the director. On page 8, line 22, section 41-3806 governs hearings, and also closely tracks the provisions in current law. There is a presumption that the director will approve the purchase or merger filing in Form A, and this section provides that a hearing must be provided prior to any disapproval by the director and spells out the required findings to support any disapproval. On page 9 there are some minor changes to the time periods applicable. Also on page 9, line 30, through page 10 line 4, new subsections are added, including that where a proposed acquisition or change of control will require approval by more than one commissioner (i.e., insurance regulator), the director may hold consolidated hearings. In subsection 4, if there is a change in control, the Department must promptly inform the new controlling parties of any requirement for a capital infusion into the company. At the bottom of page 10, line 47, section 41-3808 is largely unchanged from the current code section. This comes up when a foreign insurer (that is a company domesticated in a state other than Idaho) seeks to acquire an interest in another foreign insurer authorized to do business in Idaho. If the transaction is not exempted, the Department requires a "Form E"/Pre-Acquisition Notification filing. However, **Mr. Donovan** said this section does not come up often, as most of the time, the transaction is exempt under one of the exemptions in subsection 2. Page 15, line 24, section 41-3809 requires an insurer that is part of an insurance holding company system, to file an annual registration statement, referred to in Rule 23 as a "Form B." A general description of the requirements appears in subsection 2 on page 16, line 4. This section is very close to current statute. However, he said, the revised section has a few additions to it, including one very significant change that appears on page 18, line 6, where there is a new filing requirement for an Enterprise Risk Report to be known as a "Form F."

The Department will need to amend its Rule 23 to include the requirements for this new Form F filing. This new Enterprise Risk Report, to be filed with the Form B (Registration Statement), is to be filed by the ultimate controlling person, and the material risks should be identified within the insurance holding company system, i.e., various risks to affiliated companies, that could pose enterprise risk to the insurer. On page 18, line 18, section 41–3810 provides the general rule that transactions between affiliates that are within the holding company system are to be fair and reasonable and charges are to be reasonable with proper allocation on the books of each company, so that the transaction is clearly reflected. Additionally, there is a requirement that certain transactions (those above a minimum materiality threshold) to be entered into between affiliates, be done only after prior notice is filed with the director. This prior notice is referred to as a "Form D" (Prior Notice of a Transaction) filing, and the elements to be included are set forth in Department Rule 23. Most of these requirements in this section are similarly set forth in current code. However, there are a few changes including, for example, that amendments to previously filed agreements must also comply with the notice provisions. At the top of page 21, starting on line 7, section 41–3812 governs a domestic insurer within an insurance holding company system paying dividends and distributions. **Mr. Donovan** said this, too, is an existing code section but some slight changes have been made. The notice period is changing, and the threshold in determining what constitutes an extraordinary dividend or distribution requiring notice to the director is effectively lowered.

At the bottom of page 21, line 43, through page 22, line 39, a new section that does not exist in current law, section 41–3813, appears. This section institutes a requirement for one-third of the board members to be independent, that is, not officers or employees of the insurer. The board is also to establish at least one completely independent committee for the purpose of nominating directors and evaluating the principal officers of the company. Subsection 6 provides the opportunity for a company to obtain a waiver of the requirements in certain situations. At the bottom of page 22, line 40, section 41–3814 governs the examination of insurance companies and obtaining records and documents from an insurer and affiliates. This section basically tracks the current applicable section, but it provides a little more direct and expressive language regarding the duty of the insurer to obtain information from its affiliates.

At the bottom of page 23, line 44, section 41–3815 is a new section. It authorizes the director to participate in supervisory colleges which may be instituted for any domestic insurer where part of its insurance holding company system has international operations. The powers of the director are set forth on the top of page 24 and include the ability to initiate the establishment of a supervisory college, clarify the membership in the supervisory college, the functions and role of other regulators, and coordinate ongoing activities. The purpose of both the supervisory college and the director's participation are set forth on lines 21 through 32. They include assessing the business strategy, financial position, legal and regulatory position, risk exposure, and so on. The director is authorized to participate in a supervisory college with other state, federal or international regulatory agencies who have similar responsibility of supervising the insurer or its affiliates. Finally, there's nothing in this section that constitutes a delegation to the supervisory college of the authority of the director to regulate or supervise the insurer or its affiliates within the state of Idaho.

Mr. Donovan said another new section 41-816, providing confidential treatment, appears on page 24 starting on line 33 through page 26, line 29. This section provides heightened protection of all the reports submitted to the director pursuant to this chapter in that, not only is the information contained in those reports to be considered exempt from public records disclosure, as is provided by current law, but under this new section, the reports would not be subject to subpoena, not subject to discovery, and not be admissible in a private civil action. The director would be authorized to use the information, however, in furtherance of the official duties of the Department. Much of the language on page 25 addresses sharing confidential information with other regulators and receiving similar information and the entry into confidentiality agreements to accomplish that. While more detailed and extensive, these provisions authorizing the sharing of confidential regulatory information with other agencies, is consistent with authority the director already has.

On page 27, line 26, section 41-3819, providing for sanctions are set forth. This section exists in the current code. However, there are a few changes to draw to the attention of the committee. In subsection 1, the maximum penalty remains unchanged. However, on line 29 the per-day penalty is increased from \$100 to \$200. On page 28, in subsections 4 and 5, the criminal penalty, which under current law provides for imprisonment not greater than one year, which would be a misdemeanor, is increased to not more than two years under subsection 4 and not more than three years under subsection 3. On page 30, starting on line 10, section 41-3824, dealing with mutual insurance holding companies, is basically retained without substantive changes. This is a section that is not part of the model NAIC law but it has been in existing chapter 38 since 1998.

In conclusion, the Department believes these changes are necessary and appropriate to continue effective regulation and monitoring of insurance holding company systems, and to maintain its accreditation within the NAIC. Presuming the enactment of **H 197**, the Department will need to amend its Rule 23 (IDAPA 18.01.23) to expressly recognize the electronic filing of required forms, include the idea of divestiture of control in Form A, add Form F (the Enterprise Risk Report), and any other relatively minor changes to the forms or text of the rule. There is no fiscal impact.

Senator Goedde and **Mr. Donovan** talked about whether the bill applied to domestic companies only. They also discussed what areas of the bill would apply to foreign companies, that the new parts of this bill is all model NAIC language and the definition of a supervisory college. **Vice Chairman Patrick** expressed a concern about the penalty for someone who willfully violates and is convicted of a felony that carries a maximum jail sentence of two years. **Mr. Donovan** explained, that in general, criminal law if someone is sanctioned for one year, the crime is considered to be a misdemeanor. A felony exists when sanctioning is beyond one year.

Senator Lakey referred to page 5, line 15, where it says, "the director shall determine those instances in which the party seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction," and asked if those factors were going to be included in updating Rule 23. **Mr. Donovan** said he was not sure. They discussed approval of a divestiture. **Mr. Donovan** said that if there was a controlling interest, the requirement was that a Form A should be filed with the Department. **Mr. Donovan** pointed out there were some groups who gave part of their company interest to various charities and that if there was a concerted effort for the owners to divest themselves of a sense of responsibility and control of the company, he said the director would want to see a Form A pre-acquisition notice filing. **Senator Lakey** asked what the process would be if the director determines the individual wants to get out, but determines they need to stay in place, and the company continues to fail. **Mr. Donovan** said chapter

33 in the bill addresses that concern, which works in a coordinated fashion with the guarantee associations. There is an express exemption from the bankruptcy code for insurance companies. There is a current law for the director to take over the company as a rehabilitator or liquidator which acts like a bankruptcy case. The director is vested by law. There is a state statute that highlights the priority level when claims are paid from the insurance company's assets, which is handled in the Fourth District Court.

MOTION: **Senator Cameron** moved that **H 197** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. **Senator Durst** asked **Mr. Donovan** what the overriding factor was to repeal existing sections of code and write this bill to establish the new statutes. **Mr. Donovan** replied, they would have done it differently, with a more traditional format, and they would have moved some sections around. The motion carried by **voice vote**. Senator Cameron will carry the bill on the floor of the Senate.

CONVENED: There being no further business, **Chairman Tippetts** adjourned the meeting at 3:22 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary

AMENDED AGENDA #2
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:00 P.M.
Room WW54
Tuesday, March 26, 2013

SUBJECT	DESCRIPTION	PRESENTER
<u>H 45</u>	Relating to Engineers and Surveyors to Revise Definitions and Other Corrections	Dave Curtis, Board of Engineers and Land Surveyors
<u>H 178</u>	Relating to Immunization Board Extending Sunset Date	Representative Jeff Thompson
<u>H 273</u>	Relating to Motor Vehicle Financial Responsibility	Representative Jeff Thompson
<u>H 265</u>	Relating to Public Work and to Provide an Exemption for Certain Public Works That Have Been Certified by a Professional Engineer	Representative Mike Moyle

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Martin
Vice Chairman Patrick	Sen Lakey
Sen Cameron	Sen Schmidt
Sen Goedde	Sen Durst
Sen Guthrie	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 26, 2013

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst

**ABSENT/
EXCUSED:**

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 Tippetts** called the meeting to order at 1:00 p.m.

MOTION: **Senator Goedde** moved to approve the minutes of March 19, 2013. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Guthrie** moved to approve the minutes of March 21, 2013. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

Chairman Tippetts announced that due to the fact the House was going back on the floor at 1:30 p.m., the order of the agenda was going to be changed. He said **H 45** would be moved to last on the agenda. He asked that those testifying for **H 178** be brief, there was a full agenda and the meeting had to stop at 2:00 p.m.

H 178 **Representative Jeff Thompson** presented this bill. He said the purpose of this legislation was to extend the authority of the Immunization Board to sunset on July 1, 2015. He gave a brief history of the bill, how the program works, and why the sunset date should be extended.

He said in response to state budget cuts, eliminating the state general funds for vaccine purchase, Idaho's Assessment System Program was created in 2010. Legislation was enacted, with the combined efforts of medical providers, the community, the Legislative Health Care Task Force, and the Idaho Immunization Program and health insurers. He said the Immunization Assessment Board determines an annual assessment from insurance carriers, based on the number of children aged zero to eighteen, who are covered by each insurer. The number of children covered is determined by the insurers themselves as part of an annual survey sent out at the beginning of the year. Assessments are collected by the Department of Insurance and transferred to the immunization program of the Department of Health and Welfare. The funds are then used to purchase vaccines at a reduced price of 30 percent less). He said immunizations were voluntary. In the past, doctors purchased vaccines from the private market at a higher cost. He said vaccines were purchased at a reduced price, under a federal contract, in order to save money and lower costs. By utilizing federal contract prices, state governments are allowed to purchase vaccines, thus, saving the 30 percent.

This benefits Idaho in several ways. Families benefit because they have easier access to vaccines. This is especially true for families in rural areas. **Representative Thompson** pointed out that if doctors or other medical providers were required to purchase vaccines on the private market, some were not going to be able to afford to continue to offer immunizations. In some parts of Idaho, doctor's offices are few and far between. If even a few of those offices were to stop offering vaccines, it would cause a hardship for families in those areas. Reduced price

vaccines help our physicians and other medical providers, such as local health departments and nurse practitioners, by not having to maintain separate stocks for vaccines for federal and state-eligible children. Insurance companies benefit by having vaccines purchased at a lower cost. Individuals may pay for the syringe or other items, but not for the actual immunization. He outlined the benefits of the sunset date. He said there was no fiscal impact to the general fund.

Vice Chairman Patrick said the bill does not require children or adults to be immunized, and the program is voluntary. **Representative Thompson** confirmed that the program was voluntary. **Chairman Tippets** asked those who were going to testify to state their name, say who they represent, and to stand for questions.

TESTIMONY:

Danielle Ahrens, representing Ingri Cassell, District 1, National Vaccine Information Center (NVIC) Advocacy.org, Idaho Director, testified on behalf of Ms. Cassell in opposition to **H 178**. She said the Vaccination Board was a bad idea and a blatant violation of Idaho Code. She said it was unethical for those who can still afford health insurance in Idaho to have to foot the bill for all vaccines purchased by the state for Idaho's children who don't qualify for the federal Vaccines for Children Program (VCP). She said vaccinations were made from aborted fetuses. Pro-Life advocates do not want to have to pay for vaccines because of this reason. She said parents are pressured to have their daughters vaccinated with Gardasil, not knowing the side effects. Gardasil has not prevented cervical cancer (Attachment 1). She urged the committee to vote no.

Mr. Pro-Life testified in opposition to **H 178**. He said there was nothing in the federal or state constitutions about health. In the state constitution, it says the state has the right to have regulations and laws having to do with the safety in the mines. He said he believed vaccines were harmful. **Senator Schmidt** advised Mr. Pro-Life to look at Article 10, section 1.

Dr. Rook Torres, Chiropractor, represented himself and testified in opposition to **H 178**. He said he had testimony he had previously submitted to the senators (Attachment 2). He said he has dedicated the last 15 years of his life studying vaccines. He said the Immunization Board was designed as an oversight board to help insurance companies buy vaccines at a discount. He said this cost is passed on to the general population in the form of increased premiums. Dangerous side effects have not been explained to the public. Vaccine dosages do not change, no matter how old the recipient.

Senator Cameron and **Dr. Torres** discussed the idea that prior to the passage of section 4, chapter 32, Idaho Code in 2010 due to budgetary constraints, the state stopped paying for vaccines for people that were insured. **Senator Cameron** said the natural consequences of that decision were that physicians were forced to keep two stocks of vaccines (one purchased by the state at a lower rate and those purchased from the private sector at a higher rate). Physicians did not keep adequate supplies of vaccines, and so the actual costs for those people purchasing insurance actually started to go up more rapidly because they were not able to get the vaccines at the state discounted rate. He said the benefits of the bill passed in 2010, allowed everyone to buy vaccines at the same state-discounted rate. The fully insured population could get vaccines at the same rate that people on Medicaid or who had other services, which allowed physicians to have one stock of vaccines. This still does not require anyone to use or obtain a vaccine.

Mary Migliori, representing herself and Integrative Medicine of Idaho, said she was a board certified anesthesiologist and spoke in opposition to **H 178**. She said her youngest son was diagnosed with autism after receiving several immunizations. She said she trusted the Center for Disease Control (CDC) when she had her son vaccinated and was not aware of the dangers and risks that go along with immunizations. She said she thought immunizations were unnecessary and we were trading experiments on our children for a lifetime of misery. She said it was unfair for insured Idahoans to pay increased premiums. **Senator Schmidt** said he understood from her testimony, that in her opinion, that vaccines are a significant problem, but asked Ms. Migliori if she felt parents should have a choice in vaccinating their children. She replied, "yes."

Dr. Suzanne Allen, representing the Idaho Academy of Family Physicians, testified in support of **H 178**. She said the administrative burden would greatly increase if we had two different stocks of immunizations.

Susie Pouliot, representing the Idaho Medical Association, testified in support of **H 178**.

Dr. John Hanks, Treasure Valley Pediatrics, representing his colleagues, testified in support of the bill. He said the Immunization Board provides for lower costs for children's vaccines in the state. The primary vaccine supply is affordable for all families. There were challenges in determining Vaccines for Children (VFC) eligibility, which is very confusing for families. They don't understand whether their insurance covers vaccines or what it means to be underinsured. If this bill was not passed, smaller practices who decide not to offer vaccines to those families who are VFC eligible, are often then referred to the state health departments for vaccines, which is inconvenient. This is better, though, for those families who are not VFC eligible, who are often referred back into the community. There is no continuity of care.

Dr. Jerome Hirschfield, representing himself as a pediatrician and his colleagues in pediatrics and family medicine, spoke in favor of **H 178**. He said any barriers or complexity added to the immunization system, will decrease the frequency and level of immunizations. There has been an immense amount of work done to support access to immunizations. In rural Idaho, in order to receive immunizations, a family may have to travel over 50 miles. Over 90 percent of parents who want to voluntarily provide immunizations for their children, deserve the right and the lack of a financial burden, to get their immunizations where they can get the continuity of care. Parents are given informed consent in the office for immunizations. If a parent has to find transportation, go to another center, or take time off from work, it is a disservice. Of more severity, as our immunization rates begin to decline, we will begin to see more wild disease. He said he refuted many of the erroneous statements about immunization and the dangers that were stated by some who testified at this meeting. The risk of wild disease is one-thousand fold greater than the risk from an immunization.

Mitch Scoggins, Manager of the Idaho Immunization Program, Division of Public Health, Department of Health and Welfare (Department), testified in support of the Department's stance on **H 178**. He gave an overview of the bill. He said it was impossible to compare the baselines from 2010. He said the Department wanted an extension of the sunset clause in order to continue to evaluate the assessment system of the vaccination program to make sure it was meeting the needs of the people. He said Blue Cross supported the extension of the sunset clause.

Dr. Ted Epperly, representing the Idaho Immunization Assessment Board, testified in support of **H 178**. He said the creation of the Vaccination Board has been good

for Idaho and has saved taxpayers money. Idaho ranks towards the bottom of immunization rates in the nation. There is nothing in this bill that mandates that a child be vaccinated. According to data, the safety and the efficacy of the vaccines shows this is not harmful to children. The lifespan of people has increased about 30 years since 1900, due to safety and purification of water and vaccines.

Steve Thomas, representing the Idaho Association of Health Plans, testified in support of the bill.

Dr. Gregory Janus, pediatric cardiologist and the current Executive Medical Director, St. Luke's Children's Hospital, represented himself and testified in support of **H 178**. The assessment system benefits Idaho families, doctors and vaccine providers. Families have benefitted because the system provides easier and better access to the vaccines, if they choose to be vaccinated. Providers do not have to manage individual stocks for privately-insured families.

Representative Thompson thanked all for their testimony and asked the committee to support **H 178**. He said this bill supports the authority of the Immunization Board and the sunset date of July 1, 2015.

MOTION: **Senator Cameron** moved that **H 178** be sent to the floor with a **do pass** recommendation. **Senator Durst** seconded the motion. The motion carried by **voice vote**. Senator Cameron will carry this bill on the floor of the Senate.

H 273 **Representative Jeff Thompson** presented this bill relating to motor vehicle financial responsibility. This legislation delays the implementation date to allow the Department of Transportation (Department) and the insurance industry to coordinate their efforts. It also provides further clarification of amendments on two technical issues in section 49-1234, Idaho Code. He said the Department will establish and maintain an online insurance verification system for motor vehicle insurance coverage required by the provision in code. The main portion of this legislation is the new language in section 3 at the bottom of page 2. When this legislation was conceived, it was designed to dovetail with the build-out of the Department's computer system. Delays were not anticipated, and beyond the control of any of the parties, the implementation of the system has been held up. To prevent unnecessary costs, the effective date is being moved to July 1, 2015.

He pointed out that when the legislation was enacted last year, it failed to exclude golf carts. That is being corrected so that when the driver crosses the street in a golf cart, he or she will not be stopped to be checked for insurance.

This legislation makes a technical correction regarding the review of surplus lines policies. There is no fiscal impact.

MOTION: **Senator Goedde** moved that **H 273** be sent to the floor with a **do pass** recommendation. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry this bill on the floor of the Senate.

H 265 **Steve Price**, General Counsel, Ada County Highway District, presented this bill on behalf of Representative Mike Moyle, relating to public work and which provides an exemption for certain public works that have been certified by a professional engineer. He said for any public construction work, the current law requires that the applicable government entity retain a professional engineer to develop plans, specifications, and estimates for all public work involving public health and safety.

In addition, the professional engineer is also required to review the completed public construction work. There are numerous instances that the public work is very small in scope, and cost and compliance with the existing law exceeds the cost of the work.

This legislation would adopt and incorporate the same exemption, as mentioned above in the first paragraph, to public works contractors, to recognize that smaller projects with an estimate cost of less than \$10,000 for which no responsive statement of interest was received from a licensed public works contractor, are exempt. There is no fiscal impact.

MOTION:

Senator Lakey moved that **H 265** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry this bill on the floor of the Senate.

H 45

David Curtis, Executive Director, Board of Engineers and Land Surveyors, presented this bill relating to engineers and surveyors, to revise definitions and other corrections. One of the objectives of the bill has to do with the definitions of the practice of engineering and land surveying. He said the Federal Emergency Management Agency (FEMA) has a process by which flood elevations are established for the purposes of flood insurance determination. That process is a collaborative one between surveyors and engineers. The surveyors determine the elevation datum and the engineers determine the base flood elevation at various locations along a floodway. Both surveyors and engineers must certify elevations in that process. In addition, FEMA has an "Elevation Certificate" for the purpose of qualifying for the National Flood Insurance Program. That certificate must be signed and sealed by a land surveyor, engineer, or architect "authorized by law to certify elevation information." No current section of Idaho Code authorizes any profession to certify elevations. This legislation would authorize both engineers and land surveyors to do so.

One objective of the bill has to do with the ability of the Board to dismiss charges in a disciplinary matter. Current law allows the Board to dismiss a charge against a licensee if they find the charge to be "unfounded or trivial." The Board is hesitant to dismiss a charge as "trivial" because the charge would not have been made by a complainant if the complainant believed it was "trivial." The Board does, however, occasionally find that a charge relates to such a minor matter that it is not cost effective or appropriate to pursue disciplinary action against a licensee. This legislation would change the word "trivial" to "de minimus" to reflect the minor nature of such offenses.

Another objective of the bill has to do with the Board's ability to reissue or reinstate a license. Current law allows the Board to reissue or restore a license that was revoked by affirmative vote of three of the board members. The board believes there may be circumstances under which they would want to reinstate or restore a revoked license, but believes that since the license could only be taken following an action authorized in the Administrative Procedures Act, it should only be reinstated or restored through a hearing, as provided in the same act. This legislation would require a hearing in order to reissue or restore a revoked license and it clarifies matters regarding re-issuance of a lost, destroyed or mutilated wall certificate.

The last objective of the bill has to do with terminology. In surveying terminology, if the location of a corner can be reestablished by evidence, rather than mathematical proportion, it is an "obliterated" corner, not a "lost" corner. Section 54-1228 of the Idaho Code talks about reestablishing a corner location through taking testimony, under oath; hence, the corner location is "obliterated", not "lost." In the original bill the term "obliterated" was added to the definition section. The Ada County Highway District developed an amendment to the bill that would have added to the definition the phrase, "beyond reasonable doubt", which was in previous versions of the Bureau of Land Management publication, "Manual of Surveying Instructions," but is not in the most recent version (2009). The Ada County Highway District (ACHD) and the Board of Professional Engineers and Professional Land Surveyors agreed to an amendment which simply removed the definition of an "obliterated corner" from the bill. The engrossed bill does not contain that definition.

There is no impact to the general fund or to the dedicated funds of the Board of Professional Engineers and Professional Land Surveyors.

MOTION: **Senator Durst** moved that **H 45** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Vice Chairman Patrick will carry this bill on the floor of the Senate.

PAGE PRESENTATION: **Chairman Tippetts** asked Senate Page Megan Johnson, to please stand and be recognized. He thanked her for her service to the Senate and called her to the podium to explain to the committee what she had learned. **Miss Johnson** said this was a wonderful experience and a privilege to be here. She said the Senate does amazing things and she had a huge amount of respect for all Senators. She said she has learned so much and she will never forget the experience. **Chairman Tippetts** presented Megan with a letter of recommendation from the committee, a card and a Senate watch.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:05 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary