

# Senate Commerce & Human Resources Committee

Minutes  
2007



## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** Thursday, January 11, 2007

**TIME:** 1:30 p.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** Chairman Andreason

**GUESTS:** See attached sign-in sheet.

**CONVENED:** The meeting was called to order by **Vice Chairman Coiner**. **Chairman Andreason** was excused from the meeting as he was in Washington, D.C. attending a meeting of the Government Accounting Standards Board (GASB).

**INTRODUCTIONS:** **Vice Chairman Coiner** introduced **Senator Bart Davis** and **Senator Diane Bilyeu** to the committee as new members for this 59<sup>th</sup> Legislative Session, and welcomed **Olga Copley**, committee secretary, and **Tyler Barlogi**, Senate Page.

**MINUTES:** **Vice Chairman Coiner** welcomed **Alan Winkle, Executive Director of the Public Employee Retirement System of Idaho (PERSI)**, to address the committee regarding RS16456C1, RS16457 and RS16458.

**RS16456C1** **Public Employee Retirement System: Membership Service Related to Certain Active Duty in the Armed Forces**

This legislation contains technical corrections and amendments to comply with United States Internal Revenue Service (IRS) requirements. Sections 1, 5, and 6 of the bill implement changes required by the Uniformed Services Employment and Re-Employment Rights of 1994 (USERRA) and final IRS regulations. Section 2 of the bill is a technical correction to Section 59-1352, Idaho Code. Sections 3 and 4 of the bill clarify what constitutes a separation from service or employment consistent with recent guidance from the IRS. Fiscal impact of this legislation would be negligible, if any.

**Mr. Winkle** responded to questions from **Senator Stegner** regarding accrual of monthly calculations, USERRA requirements and PERSI policies. **Senator Davis** requested that **Mr. Winkle** provide clarification of lines 12-15 on page 7 of the legislation prior to the Committee hearing of this Senate Bill.

**MOTION:** **Senator Stegner** made a motion, and **Senator Broadsword** seconded, that **RS16456C1** be sent to print. The motion carried with a **Voice Vote**.

**RS16457**

**Public Employee Retirement System; To Provide that Certain Contributions be Held in Trust**

This legislation makes similar amendments to Section 67-5333, Idaho Code, governing unused sick leave funds for state employees and to Section 33-1228, Idaho Code, governing unused sick leave funds for school district employees. These contributions are collected by PERSI and managed to pay benefits provided by those Sections. In order to protect those funds so they can be used for their intended purpose, this bill clarifies that the funds are held in trust and not subject to claims of creditors. It also designates the Retirement Board, who currently manages the funds, as trustees of the trust and indemnifies them. Finally, it clarifies that assets in the trust may be comingled for investment purposes with other assets managed by the Retirement Board. There is no fiscal impact.

**Senator Davis** questioned the reason for this legislation. **Mr. Winkle** responded that it is necessary to comply with the rules of law for the PERSI benefit program and is primarily to protect these funds from the creditors of a school district.

**MOTION:**

With no further questions, **Senator Broadsword** made a motion and **Senator Davis** seconded that **RS16457** be sent to print. The motion carried with a **Voice Vote**.

**RS16458**

**Public Employee Retirement System: Contribution and Payment Provisions for Failure to Report Employment of a Retired Member**

This legislation would place the burden of incorrect reporting on the employer who fails to correctly report re-employed retirees. This amendment puts the burden of repayment of any benefits that should have been suspended upon the employer who has the statutory obligation to correctly report eligible employees and failed to do so. It does not prevent the employer from seeking repayment from the employee, but it assures that PERSI trust funds are quickly repaid without a substantial burden on the employee.

Questions were posed by **Senators Davis, Broadsword and Stegner** and **Mr. Winkle** responded with clarifications of the PERSI Board's responsibilities and employer responsibilities regarding the re-employment of retired members. **Mr. Winkle** advised that this type of problem does not occur frequently; however, the clarifications are needed to insure that the employer, who is the only source of this information to PERSI, is aware of their responsibility and report this information to PERSI in a timely manner. The PERSI Board has not received any opposition to this legislation; and **Mr. Winkle** assured that PERSI will continue, and expand, its educational efforts to inform employers of their responsibility for accurate reporting.

**MOTION:**

**Senator Davis** made a motion, and **Senator Stegner** seconded, that **RS16458** be sent to print. The motion carried with a **Voice Vote**.

**Vice Chairman Coiner** then asked for introductions for Rules for the Public Employee Retirement System of Idaho (PERSI). **Alan Winkle** spoke to the committee regarding Temporary Rule Docket No. 59-0103-0701.

**DOCKET NO.  
59-0103-0701**

**Contribution Rules for the Public Employee Retirement System of Idaho (PERSI) - Temporary Rule**

This rule change will confer a benefit on PERSI employees and employers by postponing two additional increases in contributions from July 1, 2007 and July 1, 2008 until July 1, 2008 and July 1, 2009. New rates will apply to the first pay period beginning on or after the applicable date. This is possible due to favorable market conditions; and the Board will continue to monitor funding and market conditions and will take additional action if appropriate.

**Senator Broadsword** was curious about the need to re-issue a temporary rule every year for the purpose of a date change only, and wanted to know the economic cost charged to the agency for publishing a rule. **Vice Chairman Coiner** recognized **Dennis Stevenson**, Administrative Rules Coordinator for the Department of Administration, who responded that each agency is charged a cost of \$56 per page for publishing their pending, temporary, and fee rules.

**MOTION:**

**Senator Stegner** made a motion, and **Senator Werk** seconded, to approve **Temporary Rule Docket No. 59-0103-0701**. The motion carried by **Voice Vote**.

**Vice Chairman Coiner** then recognized **Barbara Porter, Executive Director of the Idaho Board of Accountancy**, to present Pending Rule Docket No. 01-0101-0601. A written copy of **Ms. Porter's** testimony is included in these Minutes as Attachment 1.

**DOCKET NO.  
01-0101-0601**

**Idaho Board of Accountancy - Pending Rule**

This Rule Docket contains four minor changes: (1) to update the referenced national standards to reflect the current 2007 edition of the AICPA Professional Standards and the professional standards issued by the Public Company Accountability Oversight Board (PCAOB); (2) reflect a name change in the regional accreditation association accepted by the Board of Accountancy; (3) remove a reference to an entity, The National Society of Accountants, as an Administering Organization for Peer Reviews; and (4) to bring consistency to the use of the words "fees" versus "fines."

**MOTION:**

**Senator Broadsword** made a motion, and **Senator Stegner** seconded, to approve **Pending Rule Docket No. 01-0101-0601**. The motion carried by **Voice Vote**.

**Vice Chairman Coiner** then recognized **Michael Larsen, Consumer Finance Bureau Chief for the Department of Finance**, to present Pending Rule 12-0110-0601.

**DOCKET NO.  
12-0110-0601**

**Rules Pursuant to the Idaho Residential Mortgage Practices Act - Pending Rule**

This rule amends agency access information and appropriately changes existing Rules to address amendments to federal law and regulation, incorporated by reference within the Rules.

**MOTION:**

**Senator Davis** made a motion, and **Senator Werk** seconded, to approve **Pending Rule Docket No. 12-0110-0601**. The motion carried by a **Voice Vote**.

**Vice Chairman Coiner** recognized **Jeane Jackson-Heim, Executive Director for the Idaho Real Estate Commission**, to present Pending Rule Dockets No. 33-0101-0602, 33-0101-0603, and 33-0101-0601. A written copy of **Ms. Jackson-Heim's** testimony is included in these Minutes as Attachment 2.

**DOCKET NO.  
33-0101-0602**

**Rules of the Idaho Real Estate Commission - Pending Rule**

This new Rule 305 allows the Commission to establish a mechanism by which a designated broker can access and review the electronically-kept continuing education records of the sales associates currently licensed with that broker. Such records are otherwise exempt from the disclosure requirements of the Public Records Act, Chapter 3, Title 9, Idaho Code.

**Senators Stegner and Werk** posed questions regarding the information contained in these records and how the broker would contact the bureau. **Ms. Jackson-Heim** responded that the only information kept on file is the course name and number, completion date of the course, and number of hours completed for the course. No grade data or other personal information is included. The Commission makes this information available to brokers online through the website, or they can contact the Commission office by telephone.

In response to a question from **Senator Broadword**, **Ms. Jackson-Heim** walked through the process of license renewals for real estate agents and how the course completion information is submitted to the Commission and the process for issuing renewal notices to the agents.

**Senator Davis** discussed the authorization of Section 9-340C, Idaho Code, which is referenced in the Rule. Discussion followed regarding the language of this code section and its application to this Rule. **Senator Davis** said he would prefer to see a procedure put before the Committee as a Rule, rather than a Rule which states that the agency has the right to establish a procedure.

**Senator Cameron** stated that he believed the process explained by **Ms. Jackson-Heim** for accessing this information has been the current practice for some time. He believes that the rejection of this Rule would be harmful to the Commission, but perhaps a letter to the Commission addressing this issue would be helpful.

**Senator Davis** said that he could not support this rule, as the statute already gives them the authority to provide this information. He feels that a Rule outlining the procedure should be presented to the Committee for approval. **Senator Werk** agreed, commenting that some agencies appear to be quite "loose" in their rulemaking and should examine the Rules they provide to the legislature to insure that adequate information is provided.

**Ms. Jackson-Heim** explained that this Rule merely allows brokers to

access whether or not their licensees are in compliance with the continuing education requirements for their licenses; and this was brought to the Commission at the request of brokers who felt they were able to obtain this information to insure their licensees were in compliance. This is an effort on behalf of the Real Estate Commission to make it easier for their licensees to stay in compliance with licensing requirements.

In response to questions from **Senator Cameron, Ms. Jackson-Heim** advised that notification of license renewals are issued to the agent only, and not the broker. This notice will list the continuing education courses that are required for license renewal. She concurred with **Senator Cameron** that this Rule is merely a method for the broker to “look after” his agents to insure licensing compliance.

**Senator Bilyeu** asked if there was anything that would preclude the agency, at this time, from notifying the brokers of this licensee information. **Ms. Jackson-Heim** advised that the Commission’s legal council has advised that without the protection of this Rule, which allows them to specifically do this, they would not be able to provide this information. Section 9-340C Idaho Code specifically states, “upon implementation of an agency rule” that such records could be accessed.

**MOTION:**

**Senator Cameron** made a motion, and **Senator Broadsword** seconded, that **Pending Rule Docket No. 33-0101-0602** be approved. The motion carried by **Voice Vote**, with **Senators Davis and Werk** dissenting.

**DOCKET NO.  
33-0101-0603**

**Rules of the Idaho Real Estate Commission - Pending Rule**

This Rule expands the list of topic areas that can be approved for continuing education credit for real estate licensees. The Commission wants to be responsive to changes in the industry, including the vast increase in the use of technology in the real estate profession and provide more options for licensees to select courses to meet their specific needs. No written comments were received and, if approved, the Rule will become effective September 1, 2006.

In response to questions from **Senator Goedde** and **Senator Davis** regarding specific courses, **Ms. Jackson-Heim** stated that all of the courses must be approved for validity by the Education Council prior to being included on the list for continuing education credit.

**MOTION:**

**Senator Cameron** made a motion, and **Senator Goedde** seconded, that **Pending Rule Docket No. 33-0101-0603** be approved. The motion carried by **Voice Vote**.

**DOCKET NO.  
33-0101-0601**

**Rules of the Idaho Real Estate Commission - Pending Fee Rule**

This Rule provides a \$20 reduction in the license fee. As the Commission is a self-governing and self-funded agency, and the real estate industry in Idaho has doubled since 2002, the Commission has been able to accommodate the increase in licensee base without a significant increase in operating budget. As fees being collected exceed what is needed to support the agency, the Commission has determined that a \$20 reduction in

the license fee would be appropriate. Because real estate licenses are issued for a two-year period, this would make the cost of a license only \$80 a year. This is the third time in the last two years that the Commission has been able to reduce license fees. There were no objections or comments received regarding this rule, and the effective date is July 1, 2006.

**MOTION:**

**Senator Broadsword** made a motion, and **Senator Bilyeu** seconded, to approve **Pending Fee Rule Docket No. 33-0101-0601**. The motion carried by **Voice Vote**.

**Vice Chairman Coiner** recognized **David Curtis, Executive Director of the Board of Professional Engineers and Professional Land Surveyors**, to present Pending Rule Docket No. 10-0101-0601.

**DOCKET NO.  
10-0101-0601**

**Rules of Procedure - Pending Rule**

In 2002 the Legislature passed House Bill No. 589 which, effective July 1, 2010, requires that applicants for assignment to the examination for certification as a Land Surveyor-in-Training or licensure as a professional land surveyor either have graduated from an approved four-year program in surveying or have graduated from a four-year related science program.

This rule defines what the Board considers as evidence that an applicant possesses knowledge and skill approximating that attained through graduation from a four-year surveying program, and would parallel a rule relating to licensing of engineers which has been in effect since 1992. This rule also clarifies that engineers seeking licensure by comity who were originally licensed after June 30, 1996 would have to present evidence of having completed certain prescriptive courses. There has been no opposition received to this Rule.

**MOTION:**

**Senator Stegner** made a motion, and **Senator Goedde** seconded, to approve **Pending Rule Docket No. 10-0101-0601**. The motion carried by **Voice Vote**.

**ADJOURNMENT:**

**Vice Chairman Coiner** adjourned the meeting at 2:40 p.m.

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Senator Charles Coiner  
Vice Chairman

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Olga Copley  
Secretary

**NOTE:** Any sign-in sheets, guests lists, and/or testimony, booklets, charts and graphs, will be retained in the Committee Secretary's Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** Tuesday, January 16, 2007

**TIME:** 1:30 p.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Broadsword, Werk, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** Senator Goedde

**GUESTS:** See attached sign-in sheet.

**MINUTES:** The meeting was called to order by **Chairman Andreason** at 1:30 p.m. Chairman Andreason introduced **Woody Richards, representing the Idaho Insurance Guaranty Association and the Surplus Line Association**, to present RS 16588 and RS 16606 to the Committee for print.

**RS 16588** **Relating to Idaho Insurance Guaranty Association Act; to clarify the obligation of an Association to pay claims**

The purpose of this legislation is to clarify that for purposes of lawsuits against the Idaho Insurance Guaranty Association with regard to Section 41-3608(1)(a)(iii), Idaho Code, all claims of any kind arising out of, or related to bodily injury or death to any one person shall constitute a single claim, regardless of the number of insurance policies issued by the insolvent insurer, the number of claims made, or the number of dependents.

**Mr. Richards** explained that the Idaho Insurance Guaranty Association is a statutorily created entity comprised of all the property and casualty insurers authorized to do business in Idaho. It includes, but is not limited to, Worker's Compensation insurers, auto and home insurers. When a property and casualty insurance company becomes insolvent, the Guaranty Association backs-up certain specified obligations of the insolvent insurance company. Under the law, the Association pays for covered claims within policy limits up to \$300,000.00, except for Worker's Compensation claims which are covered at 100% of the liability.

The Association was created in 1970, and since that date has paid claims relating to 53 insolvent insurance companies doing business in Idaho. During that same time period the Association has paid approximately \$30 million for losses, unearned premium and adjusting expenses.

This legislation was developed by the National Conference of Insurance Guarantee Funds (NCIF), which is the national umbrella organization for the 50-state property casualty insurance guarantee funds, and deals with



the issue of "multiple caps." **Mr. Richards** provided the following example: An individual dies as a result of an auto accident and the decedent has a spouse and three children, and an insurance policy with a \$300,000.00 limit that was issued by a company that is now insolvent. Instead of the Guaranty Association's liability being capped at \$300,000.00 as originally intended by this type of event, a guaranty fund might find itself defending claims for wrongful death, a survivorship action, and consortium claims for each of the dependents for \$300,000.00 each. Rather than waiting for this issue to be clarified in the courts, this legislation is requested to clarify the law now and avoid added potential future liability for Idaho's general fund.

**MOTION:** **Senator Stegner** made a motion, and **Senator Davis** seconded, that RS16588 be sent to print. The motion carried by **Voice Vote**.

**RS 16606** **Relating to Public Records; to provide that Surplus Line Association records shall be except from disclosure**

The purpose of this legislation is to clarify that records of policies, endorsements and affidavits and any records that discuss policies, endorsements and affidavits that may be required to be filed with or by a surplus line association pursuant to Chapter 12, Title 41, Idaho Code, are exempt from disclosure under the Public Records Act, Chapter 3, Title 9, Idaho Code.

**Mr. Richards** advised that this legislation is being requested by the surplus line companies. Authorized admitted insurance companies are subject to regulation by the Idaho Department of Insurance; however, there are approximately 160 surplus line companies that do not have the same regulatory requirements as admitted insurance companies. Surplus line companies transact certain insurance business in certain insurance lines, because the admitted insurance companies do not sell the coverage needed for those specific risks. Sometimes it is the unusual nature of the risk, such as a singer's voice or a quarterback's throwing arm, or the high-risk nature of the business, such as a ski resort.

The Idaho Surplus Line Association is responsible for keeping all records of all transactions concerning surplus lines to insure that the proper premium taxes are paid, and that the admitted market was checked prior to the use of a surplus line market, and that the proper reports are being filed. One of the differences between the surplus line insurance and the usual insurance that people buy every day, is whether the terms of their policy is open to public inspection. A policy written by an admitted company with a private party is not open to public review. Until recently this would also be true of surplus line policies; however, two years ago an attorney requested a copy of a surplus line insurance policy from the association. Because the law does not clearly exempt disclosure of these policies, the Surplus Line Association released this information to the attorney. From a public policy perspective, however, the association does not believe that the terms of a persons private insurance policy should be public information just because it is purchased from a surplus line carrier rather than an admitted carrier. A person should be able to keep such things such as how much insurance they purchase, what they insure, how

much they pay and the type of coverage private. The association also feels that his information should be kept confidential in order to keep competitor brokers from looking at or requesting copies of policies and obtain customer names, addresses and renewal dates for purposes of "stealing" the business from their competitors.

**MOTION:** **Senator Cameron** made a motion, and **Senator Werk** seconded, to send **RS 16606** to print. The motion carried by **Voice Vote**.

**Chairman Andreason** then turned the meeting over to **Vice Chairman Coiner** for Rules Review.

**Vice Chairman Coiner** recognized **Stephen Keys, Director of the Division of Building Safety**, to present Pending Rule Dockets No. 07-0104-0601; 07-0206-0502; 07-0301-0601; 07-0501-0601; 07-0501-0603; 07-0701-0601; and Pending Fee Docket No. 07-0501-0602.

**DOCKET NO.**  
**07-0104-0601**

### **Rules Governing Electrical Specialty Licensing - Pending Rule**

This proposed rule restricts the applicability of the existing electrical specialty license for the manufacturing or assembling equipment electrician. This proposal specifies that manufacturers of modular structures may not use specialty licensees in this category to install electrical wiring and apparatus in those structures. This action was taken by the Electrical Board as the board feels these installations should be performed by journeymen electricians and apprentices. Subsequent to the promulgation of this rule, the modular industry has voiced opposition to its imposition.

**Senator Cameron** asked for clarification of the nature of the opposition against this rule, and the difference between a regular electrical license and a specialty electrical license. **Mr. Keys** advised that the specialty categories are closely defined and allow individuals to perform wiring in a very specific circumstance, whereas the general journeyman can perform any type of wiring. The Board's expectation for this category was to allow manufacturers to assemble electrical panels, and similar apparatus, as opposed to an entire structure.

**Vice Chairman Coiner** recognized **Ron Cooper, co-owner of North West Building Systems (NWBS)**, to address the Committee. **Mr. Cooper** represents a group of four modular manufacturers in Idaho, and he explained that "modular" construction is regulated entirely by the state, whereas "mobile home" structures are regulated by the federal government. He stated that none of the modular manufacturers received any notice of this pending rule, nor were they included in any negotiated rulemaking. They would like the opportunity to provide input into any rule prior to implementation, and requested that the Committee take no action on this rule at this time.

**Vice Chairman Coiner** then recognized **Tom Brown, Chairman, Idaho State Electrical Board**, to respond to questions from the Committee.

**Mr. Brown** stated that the issue was presented to the Board by the Deputy Attorney General, who stated that the modular manufacturers

have the possibility of concern with this rule. The Board advised that they did not want the modular manufacturers to fall under the specialty licenses, as this category is for the manufacture of pump panels or specific equipment gear. It is not for modular facilities that would be used for schools, housing, or medical facilities. Those types of facilities should be required to have journeymen electricians and a contractor's license, or hire a contractor to obtain the permit. Mr. Brown believes there are two separate issues to be considered: (1) It is the Board's desire to restrict the "manufacturing or assembly of equipment" to not include modular structures; and (2) what appears to be the modular industry's wish to have a separate specialty license, which is not addressed in this pending rule. The Board would entertain a speciality license requirement for modular construction, if the industry is requesting that.

**Senator Andreason** asked whether the matter was really a safety issue. **Mr. Brown** stated yes, the licensing requirement is to insure the safety of the citizens of Idaho. As modular facilities can be used for homes, medical offices, etc., the construction must be safe and completed with appropriately licensed personnel.

**Vice Chairman Coiner** requested unanimous consent to postpone Committee consideration of Pending Rule Docket No. 07-0104-0601 to the call of the Chair. Without objection, the rule docket will be continued to a future date.

Due to the brief lack of a quorum, **Vice Chairman Coiner** called the Committee at ease. During this time he directed the Committee's attention to the discussion of electrical/plumbing/HVAC apprenticeship-related issues and a summary briefing prepared by **Mr. Keys** at **Vice Chairman Coiner's** request. It is the Division's desire to encourage all apprentices to increase their education and improve their status to the journeyman level. However, they do acknowledge that the circumstances of some individuals may require additional options, and they will continue to explore possible ways to accommodate such situations.

**DOCKET NO.  
07-0206-0502**

**Rules Concerning Uniform Plumbing Code - Pending Rule**

This rule change addresses problems that installers of water conditioning equipment encounter in the field. This change involves little additional cost at the time of installation and avoids expensive modifications by the owner in order to accommodate many of the water conditioners being installed after construction is complete. The Division is not aware of any opposition to this proposal.

**MOTION:**

**Senator Broadsword** made a motion, and **Senator Cameron** seconded, that **Pending Rule Docket No. 07-0206-0502** be approved. The motion carried by **Voice Vote**.

**DOCKET NO.  
07-0301-0601**

**Rules of Building Safety - Pending Rule**

**Mr. Keys** introduced **Jack Rayne, Building Bureau Chief**, to address

the Committee regarding this rule docket. As proposed, this rule would adopt and incorporate by reference the 2006 editions of the International Building Code, International Residential Code, and International Energy Conservation Code. The Division of Building Safety respectfully requested that the Committee reject the proposed rule. The request for rejection of the rule is the result of efforts between the Division of Building Safety and a coalition of parties interested in these codes. The coalition is preparing to introduce legislation which incorporates adoption of these codes, along with an amendment to the International Building Code deleting the requirement for fire sprinklers within three and four unit residential occupancies.

**MOTION:** **Senator Andreason** made a motion, and **Senator Cameron** seconded, that **Pending Rule Docket No. 07-0301-0601** be rejected. The motion carried by **Voice Vote**.

**DOCKER NO.** **07-0501-0601** **Rules of the Public Works Contractors Licensing Board - Pending Rule**

This proposed rule clarifies the underlying licensure requirements for electrical contractors and electrical specialty contractors to be licensed through the electrical bureau before obtaining Public Works Contractors Licenses. There were no comments received on this pending rule.

**MOTION:** **Senator Cameron** made a motion, and **Senator Werk** seconded, that **Pending Rule Docket No. 07-0501-0601** be approved. The motion carried with a **Voice Vote**.

**DOCKET NO.** **07-0501-0603** **Rules of the Public Contractors Licensing Board - Pending Rule**

This temporary and proposed rule was formulated to replace the former "indemnification" provisions contained in the Public Works Contractors Board rules. Emerging businesses whose financial statements don't reflect the financial wherewithal required for licensure may utilize these "guarantor" provisions and the former "indemnification" provisions are that the "guarantor's" obligations are formally tied to the obligations of the licenses, and the "guarantor" must submit supporting financial data meeting the same requirements imposed on the licensee. The Public Works Contractors Licensing Board and the Division of Building Safety believe the "guarantor" provisions offer better protection to Idaho citizens without imposing an undue hardship on emerging businesses. The "guarantor" provisions seem to be working effectively since the temporary rule became effective, and there has been no opposition to this proposal.

**MOTION:** **Senator Broadsword** made a motion, and **Senator Andreason** seconded, that **Pending Rule Docket No. 07-0501-0603** be approved. The motion carried by a **Voice Vote**.

**DOCKET NO.** **07-0701-0601** **Rules Governing Installation of Heating, Ventilation, and Air Conditioning (HVAC) Systems, Division of Building Safety - Pending Rule**

This change specified the civil penalties that may be imposed by the Administrator of the Division of Building Safety for violations of the HVAC

Act. The imposition of civil penalties was approved by the Legislature last year and is reflected in Section 54-5005(3), Idaho Code. There have been no comments received on this rule docket.

**Senator Cameron** asked if this rule docket had been disseminated to those in the HVAC industry. **Mr. Keys** responded yes, and advised that no objections have been received from the HVAC industry, and their Board has endorsed this rule.

**MOTION:** **Senator Cameron** made a motion, and **Senator Broadsword** seconded, that **Pending Rule Docket No. 07-0701-0601** be approved. The motion carried by **Voice Vote**.

**DOCKET NO.**  
**07-0501-0602**

**Rules of the Public Contractors Licensing Board - Pending Fee Rule**

This rule sets the fees for the licensure of Public Works Contractors; it is a follow-up on legislation approved last year that raised the ceilings on fees for most categories. The sole exception is the "D" classification for small contractors, which decreased from \$75.00 to \$50.00. The fees reflected in this rule for higher classifications are somewhat less than the upper limits contained in the statute, while the "B" category and lower are at the statutory maximums. The construction industry has expressed broad support for the legislative change last year and the Division of Building Safety has received no negative comments regarding this rule.

**MOTION:** **Senator Cameron** made a motion, and **Senator Andreason** seconded, that **Pending Fee Rule Docket No. 07-0501-0602** be approved. The motion carried by **Voice Vote**.

With Rules Review completed, **Vice Chairman Coiner** then returned the meeting to **Chairman Andreason**.

**Senator Werk** asked about the possibility of including technology issues under the purview of the Commerce & Human Resources Committee. **Chairman Andreason** advised that the issue was discussed with him last year, however, no further action had been taken.

**Senator Cameron** commented that including this area within the Committee's purview would require a change in the Senate Rules; and he said he remembered some discussion this past year of placing technology under State Affairs.

**Senator Werk** requested that discussions be pursued with Senate Leadership to consider including technology within the purview of the Commerce & Human Resources Committee. **Chairman Andreason** advised that he would discuss this matter with leadership.

**ADJOURNMENT:** **Chairman Andreason** adjourned the meeting at 2:38 p.m.

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Senator John Andreason  
Chairman

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Olga Copley  
Secretary

**NOTE:** Any sign-in sheets, guests lists, and/or testimony, booklets, charts and graphs, will be retained in the Committee Secretary's Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** Thursday, January 18, 2007

**TIME:** 1:30 p.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Broadsword, Werk, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** Senator Goedde

**GUESTS:** See attached sign-in sheet.

**CONVENED:** The meeting was called to order by **Chairman Andreason** at 1:31 p.m.

**GUBERNATORIAL APPOINTMENT:** **Chairman Andreason** introduced **Roger Madsen, Director of the Idaho Department of Commerce & Labor**. **Mr. Madsen** was appearing before the Committee for approval of his re-appointment to the position of Director by **Governor C.L. "Butch" Otter**.

**Mr. Madsen** provided the committee with an update for the Department of Commerce & Labor and distributed the 2007 Action Plans for the Idaho Department of Labor (Attachment 1) and the Idaho Department of Commerce (Attachment 2).

**Mr. Madsen** answered questions from the committee regarding employment in Idaho and the needs of employers for qualified workers, and the state's investment in delivering broadband service for economic development. **Senator Davis** and **Senator Werk** inquired if the department had specific records of what the state received for their broadband investment. **Mr. Madsen** advised that only one of the projects have been completed to date, and they will be able to obtain additional information as each part of the project is completed.

**Senator Werk** asked **Mr. Madsen** to elaborate on his philosophy of appropriate jobs for Idaho and what his department is doing in this regard. **Mr. Madsen** said that his philosophy is demonstrated by the projects announced for the last three years, to include: Senior Mechanics for Umpire Airlines in the Hayden area, and the announcement of 200 jobs as a result of the expansion of Hoku Scientific in Pocatello with an average wage of \$60,000.00. **Mr. Madsen** affirmed that his focus is on obtaining "good paying jobs with benefits" for the people of Idaho.

**Senator Cameron** thanked **Mr. Madsen** and praised his work as the Director of Commerce & Labor, stating for the record that "he has done a tremendous job" and further citing the efforts put forth under Governor Kempthorne to expand international trade for Idaho businesses.

**Chairman Andreason** thanked **Mr. Madsen** for his presentation to the committee, and then recognized **Mr. Bob Fick, Communications Manager for the Department of Commerce & Labor**, to present RS 16535C1.

**RS 16535C1**

**Employment Security Law; Civil Penalty Structure for Willful Failure to File Employers Quarterly Report**

This legislation will amend the civil penalty imposed on employers who fail to file tax reports when due, and reduce the civil penalty for the first and second offenses. It also ties the amount of the penalty to the number of recent offenses.

**MOTION:**

**Senator Cameron** made a motion, and **Senator Stegner** seconded, that **RS 16535C1** be sent to print. The motion carried with a **Voice Vote**.

**Chairman Andreason** then turned the meeting over to **Vice Chairman Coiner** for Rules Review.

**Vice Chairman Coiner** recognized **Bob Fick, Communications Manager for Idaho Department of Commerce & Labor**, to present Pending Rule Dockets No. 09-0130-0601; 09-0135-0601; 09-0201-0601; 09-0203-0601; 09-0301-0601; and 09-0304-0601.

**DOCKET NO.  
09-0130-0601**

**Unemployment Insurance Benefits Administration Rules - Pending Rule**

This rule amends Idaho Code to provide that if a claimant is ill for more than one week, the claimant will be ineligible for benefits effective the week his accumulated missed wages (because of illness) exceeds one-half of his weekly benefit amount. The rule also recognizes current procedures for employers to report separation information to the department, and addresses a new rule for calculation of base period wages for athletes.

**Senator Broadsword** requested clarification of the employers separation notification, and **Senator Werk** requested clarification of the benefit ineligibility due to illness issue. **Mr. Fick** deferred to **Roger Holmes, Unemployment Benefits Administration Bureau Chief**, to address these issues. **Mr. Holmes** stated that the employer is contacted regarding separation for any other reason except lack of available work. As unemployment insurance is not a benefit program but is paid for by the employers, benefits would be discontinued for a claimant whose illness prevents him from working. There has been no change in policy.

**MOTION:**

**Senator Cameron** made a motion, and **Senator Andreason** seconded, to approve Pending Rule Docket No. 09-0130-0601. The motion carried by **Voice Vote**, with **Senators Werk and Broadsword** dissenting.

**DOCKET NO.  
09-0135-0601**

**Unemployment Insurance Tax Administration Rules - Pending Rule**



This rule expressly requires employers who pay no wages in a quarter to file a quarterly report for the quarter with zero wages reported. It further clarifies that each covered employer's unemployment insurance tax report shall be reported under the covered employer's account number, even if reported by a payroll service. The rule also adds the definition of "willfully" and provides additional clarifications of language.

In response to questions from **Senators Broadsword and Davis, Mr. Don Arnold, Unemployment Insurance Compliance Bureau Chief**, responded with clarifications of the rule language, the application of the civil penalty to employers who demonstrate "a pattern of behavior" with regard to report compliance, and the reporting status of various employers (i.e., subsidiary, dba, etc.).

With regard to Section 112, Determining Status of Worker, discussion focused on the changes at 112.03. **Mr. Arnold** addressed questions posed by **Senators Davis and Cameron** to explain the language of the rule and reasons for the department's desire to include these changes.

**Senator Cameron** questioned why these provisions were "being tied to a persons license" and discussion followed regarding the status of workers who are contracted to provide services under an employer's license. **Senator Cameron** questioned the status of licensed workers who may provide services to several employers. **Mr. Arnold** cited specific examples to explain the intention of the rule language to help employers identify critical factors to help them determine the actual status of contract employees.

**MOTION:** **Senator Cameron** made a motion, and **Senator Davis** seconded, to hold Pending Rule Docket No. 09-0135-0601 for further review at a future meeting. The motion carried with a **Voice Vote**.

**DOCKET NO.** **Idaho Community Development Block Grant Program (ICDBG) -**  
**09-0201-0601** **Pending Rule**

This rule is intended to clarify or change inaccurate terminology and grant application requirements and delete references that do not comply with federal Housing & Urban Development (HUD) program regulations; also, to comply with changes to federal HUD program regulations, legislative committee requests, and to clarify and make rules consistent with other program requirements.

**MOTION:** **Senator Broadsword** made a motion, and **Senator Werk** seconded, to approve Pending Rule Docket No. 09-0201-0601. The motion carried with a **Voice Vote**.

Due to time constraints, **Vice Chairman Coiner** continued all remaining agenda items to be heard before the Committee on Tuesday, January 30, 2007, and returned the meeting to **Chairman Andreason**.

**ADJOURNMENT:** **Chairman Andreason** adjourned the meeting at 3:00 p.m.

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Senator John Andreason  
Chairman

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Olga Copley  
Secretary

**NOTE:** Any sign-in sheets, guests lists, and/or testimony, booklets, charts and graphs, will be retained in the Committee Secretary's Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).

MINUTES

**SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE**

**DATE:** January 23, 2007

**TIME:** 1:30 p.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** None

**GUESTS:** See attached Sign-In Sheet.

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:32 p.m.

**GUBERNATORIAL APPOINTMENT:** **Chairman Andreason** announced that the committee was ready to take action on the re-appointment of **Roger Madsen** as Director of the Idaho Department of Commerce & Labor. **Mr. Madsen** had appeared at a previous committee meeting and had been re-appointed to serve a term commencing January 2, 2007 and continuing at the pleasure of the Governor.

**MOTION:** **Senator Broadsword** moved to send the re-appointment of **Roger Madsen** as Director of the Idaho Department of Commerce & Labor to the Senate floor with the recommendation that the re-appointment be approved. The motion was seconded by **Senator Bilyeu** and carried by a **Voice Vote**.

**Chairman Andreason** then turned the meeting over to **Vice Chairman Coiner** for continuation of Rules Review. Vice Chairman Coiner recognized **Shad Priest, Idaho Department of Insurance**, to present Pending Rule Dockets No. 18-0124-0601; 18-0134-0601; 18-0156-0601; 18-0160-0601; 18-0168-0601; 18-0174-0601; 18-0176-0601; 18-0177-0601; and 18-0144-0601.

**DOCKET NO. 18-0124-0601** **Advertisement of Disability (Accident and Sickness) Insurance - Pending Rule**

This rule regulates the advertisement of disability insurance. The changes update the existing rule to cover internet advertising, clarify that long term care insurance is covered by the rule, specifically prohibit advertisements that do not clearly state the type of insurance being offered or that are designed to create undue fear in the minds of those to whom they are directed, eliminate an unnecessary paper filing requirement for insurers, and bring the rule into conformance with Department of Administration style requirements.

This rule is based upon a "model rule" from the National Association of Insurance Commissioners (NAIC) which is an organization comprised of

all the insurance regulators in the nation, with the primary goal of developing model legislation and model rules to maintain consistency throughout the nation.

**MOTION:** **Senator Broadsword** made a motion, and **Senator Werk** seconded, to approve Pending Rule Docket No. 18-0124-0601. The motion carried by **Voice Vote**.

**DOCKET NO.**  
**18-0134-0601**

**Certificate of Liability Insurance for Motor Vehicles - Pending Rule**

This rule is to implement House Bill 653, which requires that the Director of the Department of Insurance prescribe a form for proof of liability insurance to be used by motor vehicle dealers. The purpose of this rulemaking is to comply with that requirement. Additional changes to the rule have been made to bring it into conformance with Office of the Administrative Rules Coordinator format and style requirements for rules. Negotiated rulemaking was not conducted, because the change is needed to comply with a newly enacted law.

**MOTION:** **Senator Werk** made a motion, and **Senator Broadsword** seconded, to approve Pending Rule Docket No. 18-0134-0601. The motion carried by **Voice Vote**.

**DOCKET NO.**  
**18-0156-0601**

**Rebates and Illegal Inducements to Obtaining Title Insurance Business - Pending Rule**

This rule decreases the dollar limitations for expenditures by title insurance industry members on donations, promotional advertising, and business entertainment involving producers of title insurance business. The adjustments reflect changes in prices in the more than 12 years since the amounts were last set. Additional changes to the rule are made to clarify participation in trade association events and to conform to the Office of Administrative Rules style and formatting rules. Negotiated rulemaking was not conducted, because the changes were made in consultation with representatives of the affected industry.

**MOTION:** **Senator Werk** made a motion, and **Senator Andreason** seconded, to approve Pending Rule Docket No. 18-0156-0601. The motion carried by **Voice Vote**.

**DOCKET NO.**  
**18-0160-0601**

**Long-Term Care Insurance Minimum Standards - Pending Rule**

This rule is to implement the Long Term Care Partnership Program provided at Chapter 13, Title 56, Idaho Code. Chapter 13 became effective upon repeal of restrictions to asset protection contained in the omnibus budget reconciliation act of 1993. The restrictions were repealed by the passage of the federal Deficit Reduction Act of 2005. The proposed changes incorporate the latest changes to the model Long Term Care Minimum Standards Rule adopted by the National Association of Insurance Commissioners and are intended to make Idaho's rule consistent with the standards most likely to be adopted by other states. Negotiated rulemaking was not conducted, because the changes were needed to implement the Long Term Care Partnership

Program, Chapter 13, Title 56, Idaho Code.

**MOTION:** **Senator Broadword** made a motion, and **Senator Goedde** seconded, to approve Pending Rule Docket No. 18-0160-0601. The motion carried by **Voice Vote**.

**DOCKET NO.** **Minimum Reserve Standards for Individual and Group Health Insurance - Pending Rule**  
**18-0168-0601**

This rule repeals sections setting forth minimum reserve standards for individual and group health insurance and replaces them with the standards set forth in the National Association of Insurance Commissioners Accounting Manual, as adopted by the Director pursuant to Section 41-335, Idaho Code. Other sections are added to conform with Office of Administrative Rules standards. Negotiated rulemaking was not conducted, because the rule implements national standards adopted by NAIC as part of the Accounting Practices and Procedures Manual adopted by the Director pursuant to Section 41-335, Idaho Code.

Discussion followed regarding reference to the specific version of the manual to be used, how that is currently handled through bulletin and/or pending and temporary rules. **Martha Hopper-Smith, Senior Financial Officer for Department of Insurance**, provided an explanation of the codified manual which is used by all insurance agencies across the United States and the manner in which its use is addressed in the administrative rules. **Senator Stegner** encouraged the department to examine their rules process to make sure they are providing this direction in the most efficient manner.

**MOTION:** **Senator Werk** made a motion, and **Senator Andreason** seconded, to approve Pending Rule Docket No. 18-0168-0601. The motion carried with a **Voice Vote**.

**DOCKET NO.** **Coordination of Benefits - Pending Rule**  
**18-0174-0601**

These rules coordinate benefit payments when a person is covered by more than one health plan to avoid confusion and unnecessary delays in payments. The changes made by this proposed rulemaking will make the Idaho rule consistent with the current version of the NAIC model regulation. The changes clarify which types of plans are allowed to coordinate benefit payments and how coordination is to be applied among plans. Negotiated rulemaking was not conducted, because the changes are made to comply with the law requiring that the rule be in accordance with the NAIC model regulation.

**MOTION:** **Senator Cameron** made a motion, and **Senator Goedde** seconded, to approve Pending Rule Docket No. 18-0174-0601. The motion carried with a **Voice Vote**.

**DOCKET NO.** **Property Casualty Actuarial Opinion Rule (New Chapter) - Pending Rule**  
**18-0176-0601**

This rule, which follows the NAIC model, was created to require insurers to annually submit to regulators an "Actuarial Opinion Summary" of the Actuarial Report. The summary must provide information on the opining actuary's best estimate or a range of reasonable estimates, and include additional information as required by the NAIC Annual Statement Instructions. The summary is due shortly after the time the Actuarial Opinion and Financial Statement are filed so regulators can detect companies in need of further investigation in a timely manner. The rule will apply to the 2007 Annual Statement filing. Negotiated rulemaking was not conducted, because the rule is based on a model developed by the NAIC.

**MOTION:**

**Senator Stegner** made a motion, and **Senator Broadsword** seconded, to approve Pending Rule Docket No. 18-0176-0601. The motion carried by **Voice Vote**.

**DOCKET NO.  
18-0177-0601**

**Actuarial Opinion and Memorandum Rule - Pending Rule**

This amends an existing rule that sets forth standards for actuarial opinions and memoranda used by life insurers doing business in Idaho. The amendments conform the rule to standards developed and adopted by the NAIC and also add sections to conform to the Office of Administrative Rules format and standards. Negotiated rulemaking was not conducted because the changes are intended to bring the existing rule into conformity with national standards.

Mr. Priest informed the committee that the rule, as published on the internet and provided to legislative committees, includes an error. Section 021.05.c was deleted, but sub-subsections i and ii were not deleted. Mr. Priest requested that the committee accept Pending Rule Docket No. 18-0177-0601 with the exception of Section 021.05.c.i and 021.05.c.ii.

**Senator Cameron** requested that **Dennis Stevenson, Administrative Rules Coordinator**, address the committee regarding this error and advise of the appropriate action to be taken. Mr. Stevenson advised that the original rule, as published in the Administrative Bulletin did not include the deletion of the two subsections; therefore, it was not a typographical error. He said that a Notice of Correction of Pending Rule could be included in the Administrative Bulletin to be issued February 7, 2007, removing those two subsections, and the committee could accept the docket accordingly. Mr. Stevenson advised that the correction notice would be provided to the committee within one day.

**MOTION:**

**Senator Cameron** made a motion, and **Senator Andreason** seconded, to approve Pending Rule Docket No. 18-0177-0601, as corrected in the February 7, 2007, issue of the Administrative Bulletin with the deletion of Sections 021.05.c.i and Section 021.05.c.ii. The motion carried by **Voice Vote**.

*(NOTE: The corrected Notice of Rulemaking - Correction to Pending Rule, 18.01.77 - Actuarial Opinion and Memorandum Rule, Docket No. 18-0177-0601, as provided to the Chairman of the Senate Commerce &*

*Human Resources Committee on January 24, 2007, is included in these minutes as Attachment 1.)*

**DOCKET NO.  
18-0144-0601**

**Schedule of Fees, Licenses and Miscellaneous Charges - Pending Fee Rule**

This rule changes the fee for renewal for insurance administrator licensing to reflect the requirement of House Bill 586 to change the licensing requirement for third party administrators from annual renewals to biennial renewals. Under this rule change the same renewal fee will be charged, but will only be collected every other year to correspond with the biennial renewal requirement. This will reduce by one-half the fee revenue collected from insurance administrators. Negotiated rulemaking was not conducted because the change is needed to conform to changes in existing law and the rule reduces fees paid by interested parties.

**MOTION:**

**Senator Broadsword** made a motion, and **Senator Bilyeu** seconded, to approve Pending Fee Rule Docket No. 18-0144-0601. The motion carried by **Voice Vote**.

**Vice Chairman Coiner** then recognized **Mr. Bob Oberholzer, Human Resources Integration Manager for Division of Human Resources**, to present Temporary Rule Docket No. 15-0401-0601.

**DOCKET NO.  
15-0401-0601**

**Rules of The Division of Human Resources and Personnel Commission - Temporary Rule**

This rule implements changes to Idaho Code promulgated by Senate Bill 1363. The rule includes changes to definitions, veterans preference, compensation of employees, moving expense reimbursement, probationary period for acting and temporaries, performance evaluation, military leave, overtime for executives and leave for bone marrow and organ donors, to comply with new code provisions.

**Mr. Oberholzer** advised that this is a temporary rule, and will need to be re-issued at the conclusion of this legislative period; therefore, any concerns that the committee may have with the rule can be incorporated at that time. Additional consideration may be given to the pending legislation to devolve the Division of Human Resources which would significantly change the rule.

It was the consensus of the committee that the temporary rule should be reviewed in entirety, as there have been no changes to the Division of Human Resources at this time. **Mr. Oberholzer** then proceeded to address each of the changes included in the temporary rule.

Various questions from the committee were received with regard to determination of geographic pay, performance and suggestion bonuses, and recruitment and retention awards, as well as the eligibility criteria for such awards. **Senator Stegner** asked whether all of the changes included in the temporary rule were truly within the statutory authority of the Division of Human Resources, and directed his questions to **Dan Steckel, Deputy Attorney General for Division of Human Resources**. In view of meeting time constraints, **Senator Stegner**

requested that **Mr. Steckel** review the issues he had presented and meet with him later for further discussion.

**Senators Stegner** requested additional time to meet with Division of Human Resources staff for clarification of questions.

**MOTION:**

**Vice Chairman Coiner** requested **Unanimous Consent** to hold Temporary Rule Docket No. 15-0401-0601 to the call of the Chair, pending the receipt of additional information to be provided by the Division of Human Resources. The **Unanimous Consent** request carried without objection.

Due to time constraints, **Vice Chairman Coiner** continued the remaining agenda items to be heard before the Committee on Tuesday, January 30, 2007, and returned the meeting to **Chairman Andreason**.

**ADJOURNMENT:** **Chairman Andreason** adjourned the meeting at 3:00 p.m.

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Senator John Andreason  
Chairman

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Olga Copley  
Secretary

**NOTE:** Any sign-in sheets, guests lists, and/or testimony, booklets, charts and graphs, will be retained in the Committee Secretary's Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).



## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** January 25, 2007

**TIME:** 1:30 p.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Chairman Andreason, Senators Cameron, Stegner, Davis, Goedde, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** Vice Chairman Coiner, Senators Broadsword and Werk

**GUESTS:** See attached Sign-in Sheet.

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:45 p.m.

**GUBERNATORIAL APPOINTMENTS:** **Chairman Andreason** introduced **J. Kirk Sullivan** who was appearing before the Committee for approval of his re-appointment to the Public Employee Retirement System (PERSI) Board for a term commencing July 1, 2006 and expiring July 1, 2011.

**Senator Cameron** expressed his appreciation to **Mr. Sullivan** for accepting this appointment to his third term on the PERSI Board. **Senator Stegner** agreed with **Senator Cameron**, further stating that the State of Idaho has been very honored to have individuals such as **Mr. Sullivan**, who are dedicated and well-qualified, to serve on boards and commissions. He thanked **Mr. Sullivan** for his willingness to continue serving on the PERSI Board.

**Mr. Sullivan** remarked on his recent attendance at a conference in Arizona where 40 other states were represented. He stated, "Everyone wanted to talk to the people from Idaho to find out about our system. Our system is very good, and I think there are a lot of people who deserve credit for that, first of all **Mr. Winkle, Bob Maynard**, and the entire PERSI staff who do a wonderful job; but also, the legislature understands what the Board is there for. I would like to say thank you for the support we have received from the legislature."

**Chairman Andreason** thanked **Mr. Sullivan** for his attendance, and advised that the committee would take action on his appointment at the next meeting.

**Chairman Andreason** introduced **William "Bill" Deal, Director of the Idaho Department of Insurance**. **Mr. Deal** was appearing before the Committee for approval of his appointment to the position of Director by **Governor C.L. "Butch" Otter**.

**Mr. Deal** advised that he has been involved in the insurance business

for all of his adult life, having been an independent agent for the last 27 years. This has given him a strong background in the industry. He served the last 16 years in the State Legislature, and views this appointment as “a new chapter” in his life. He announced that he placed his insurance agency into a trust upon accepting the appointment as Director of the Department of Insurance, where it will remain until it is finally sold sometime before July of this year.

**Mr. Deal** also served with **Senator Cameron** and **Senator Stegner** on the Health Care Task Force, which resulted in some very important and needed legislation. He said he was honored when **Governor Otter** appointed him to the position of Director of the Department of Insurance. He praised the staff, and he has met with every individual worker and is very pleased that he has an extremely good “team” to work with. The employees have a big job to do for the state and they take pride in the work that they do, which includes providing services for approximately 50,000 licensed agents (8,800 resident agents), and the regulation of about 2,000 companies (1,300 are admitted carriers and the remainder are surplus lines). The Investigative Unit is comprised of six investigators and one attorney, with an average ongoing caseload of about 100-180 fraud cases; and, about 8% of those cases coming directly from insurance companies.

**Chairman Andreason** said he is pleased to have such a talented and experienced Director for the Department of Insurance, and asked **Mr. Deal** to discuss the “three Mr. Deals” that have served Idaho state government. The “first Mr. Deal” was his “Uncle Edson” (Edson H. Deal) who was a State Senator from Canyon County for many years, and served as Lt. Governor under Governor Len B. Jordan prior to his winning the election for Secretary of State in 1965. The “second Mr. Deal” was his father, who was a lobbyist for Farmer’s Insurance and the Farm Bureau for 35 years.

**Senator Cameron** expressed his pleasure in the appointment of **Mr. Deal** to the position of Director of the Department of Insurance, stating that he always found **Mr. Deal** to be easy to work with and very capable, and he looks forward to his service in this position.

**Chairman Andreason** thanked **Mr. Deal** for his attendance, and advised that the committee would take action on his appointment at the next meeting.

**Chairman Andreason** then introduced **Tana Cory, Chief of the Bureau of Occupational Licenses**. **Ms. Cory** was appointed to the position for a term commencing January 2, 2007, by Governor C.L. “Butch” Otter.

**Ms. Cory** introduced staff from the Bureau of Occupational Licenses: **Bud Hetrick**, Business Operations Specialist; **Cherie Simpson**, Management Assistant; and **Roger Hales**, legislative consultant for various boards and commissions.

**Ms. Cory** provided some background information and a brief outline of her qualifications in both the public and private sectors. She hopes to

continue the excellent service that the Bureau has provided to its boards and commissions.

**Chairman Andreason** stated that he is looking forward to working with **Ms. Cory** in the position of Chief for the Bureau of Occupational Licenses, and advised that the committee would take action on her appointment at the next meeting.

**Chairman Andreason** introduced **Gavin Gee, Director of the Idaho Department of Finance**. **Mr. Gee** was appearing before the Committee for approval of his re-appointment to the position of Director by **Governor C.L. "Butch" Otter**.

**Mr. Gee** has been with the Department of Finance for his entire adult career (nearly 30 years) in a variety of positions; the last 12 years he has served as Director or Acting Director. He is an Idaho native, born and raised in Pocatello, and attended Idaho State University, Brigham Young University, and received his law degree from University of Idaho. He stated that the Department of Finance is a regulatory agency administering 22 different laws, most of which are in the financial services industry. The department currently licenses and regulates 146,000 business and individuals conducting business in Idaho, and approximately 93% of these business are out of state. These numbers are continuing to grow as Idaho's economy flourishes. Existing businesses within Idaho want to expand, and businesses from outside Idaho want to come here to do business with our citizens.

**Mr. Gee** stated that he is honored to be re-appointed to the position of Director for the Department of Finance by **Governor Otter**, and he appreciates the support that the Legislature has provided to his department over the years.

**Chairman Andreason** thanked **Mr. Gee** for his appearance, and advised that the committee would take action on his appointment at the next meeting.

**ADJOURNMENT:** **Chairman Andreason** adjourned the meeting at 2:08 p.m.

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Senator John Andreason  
Chairman

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Olga Coply  
Secretary

**NOTE:** Any sign-in sheets, guests lists, and/or testimony, booklets, charts and graphs, will be retained in the Committee Secretary's Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** January 30, 2007

**TIME:** 1:30 p.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** None

**GUESTS:** See attached Sign-In Sheets.

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:33 p.m.

**GUBERNATORIAL APPOINTMENT:** **Chairman Andreason** announced that the committee was ready to take action on the re-appointment of **J. Kirk Sullivan** to the Public Employee Retirement System of Idaho (PERSI) Board. **Mr. Sullivan** had appeared at a previous committee meeting and had been re-appointed to serve a term commencing July 1, 2006 and expiring July 1, 2011.

**MOTION:** **Senator Broadsword** moved to send the re-appointment of **J. Kirk Sullivan** to the PERSI Board to the Senate floor with the recommendation that the re-appointment be approved. The motion was seconded by **Senator Goedde** and carried by a **Voice Vote**.

**GUBERNATORIAL APPOINTMENT:** **Chairman Andreason** announced that the committee was ready to take action on the appointment of **William "Bill" Deal** as Director of the Idaho Department of Insurance. **Mr. Deal** had appeared at a previous committee meeting and had been appointed to serve a term commencing January 2, 2007 and continuing at the pleasure of the Governor.

**MOTION:** **Senator Goedde** moved to send the appointment of **William "Bill" Deal** as Director of the Idaho Department of Insurance to the Senate floor with the recommendation that the appointment be approved. The motion was seconded by **Senator Werk** and carried by a **Voice Vote**.

**GUBERNATORIAL APPOINTMENT:** **Chairman Andreason** announced that the committee was ready to take action on the appointment of **Tana Cory** as Chief of the Bureau of Occupational Licenses. **Ms. Cory** had appeared at a previous committee meeting and had been appointed to serve a term commencing January 2, 2007 and continuing at the pleasure of the Governor.

**MOTION:** **Senator Bilyeu** moved to send the appointment of **Tana Cory** as Chief of the Bureau of Occupational Licenses to the Senate floor with

the recommendation that the appointment be approved. The motion was seconded by **Senator Broadsword** and carried by a **Voice Vote**.

**GUBERNATORIAL  
APPOINTMENT:**

**Chairman Andreason** announced that the committee was ready to take action on the re-appointment of **Gavin Gee** as Director of the Idaho Department of Finance. **Mr. Gee** had appeared at a previous committee meeting and had been re-appointed to serve a term commencing January 2, 2007 and continuing at the pleasure of the Governor.

**MOTION:**

**Vice Chairman Coiner** moved to send the re-appointment of **Gavin Gee** as Director of the Idaho Department of Finance to the Senate floor with the recommendation that the re-appointment be approved. The motion was seconded by **Senator Goedde** and carried by a **Voice Vote**.

Chairman Andreason **then turned the meeting over to** Vice Chairman **Coiner** for continuation of Rules Review.

**Vice Chairman Coiner** recognized **Roger Hales** to present Pending Rule Dockets No. 24-1801-0601, 24-0401-0601 and 24-0701-0601 for the **Bureau of Occupational Licenses**.

**DOCKET NO.  
24-1801-0601**

**Rules of the Real Estate Appraiser Board - Pending Rule**

This rule clarifies the education required to include courses approved by the Appraiser Qualifications Board (AQB), and changes the education effective dates from January 1, 2007 to January 1, 2008 for Licensed Residential Appraiser, Certified Residential Appraiser, and Certified General Appraiser. This rule also allows credit for time spent attending board meetings to be used toward continuing education requirements.

Discussion followed, with several questions posed by Committee members, regarding the allowance of education credit for attending board meetings. **Mr. Hales** advised that the board meetings are usually scheduled for four to six hours in a single day; and, during the meetings participants review various disciplinary matters, laws, rule dockets and new rules. Therefore, the Board believes that it is appropriate to allow this credit in order to encourage licensees to participate in these meetings. **Mr. Hales** confirmed for the Committee, however, that board meeting attendance hours alone would not be considered sufficient to complete the full amount of continued education requirements.

**Senator Goedde** further questioned the application of board meeting hours to the continued education requirements. **Senator Stegner** suggested to **Mr. Hales** that the Board "tighten" their rules to specify exactly how many hours of board meeting attendance could be applied to the requirement of 15 hours of continued education.

**MOTION:**

**Senator Broadsword** made a motion, and **Senator Stegner** seconded, to approve Pending Rule Docket No. 24-1801-0601. **Senator Goedde** then made a substitute motion to approve Pending Rule Docket No. 24-

1801-0601 with the exception of Subsection 401.04 on page 308. The substitute motion was seconded by **Senator Werk**.

In a **Roll Call Vote**, the substitute motion failed, receiving **five Nays (Andreason, Coiner, Stegner, Davis and Broadsword)** and **three Ayes (Goedde, Werk and Bilyeu)**. The original motion to approve the rule docket carried with a **Voice Vote (Bilyeu and Werk dissenting)**. **Senator Cameron** was temporarily absent from the room and did not vote on either motion.

**DOCKET NO.  
24-0401-0601**

**Rules of the Idaho Board of Cosmetology - Pending Fee Rule**

This rule was promulgated by last year's legislation which provides for the licensing of hair cutters by the Board of Cosmetology. Based upon the concerns voiced throughout the state, the Board now utilizes an independent examiner to conduct examinations not only in Boise, but in northern and southeast Idaho as well; and the rules were adjusted to accommodate the use of the independent exam entity. The rule also implements the fee of \$25.00 for the new hair cutter license, as well as examination fees.

**MOTION:**

**Senator Stegner** made a motion, and **Senator Werk** seconded, to approve Pending Fee Rule Docket No. 24-0401-0601. The motion carried with a **Voice Vote**.

**DOCKET NO.  
24-0701-0601**

**Rules of the Idaho State Board of Landscape Architects - Pending Fee Rule**

This rule will increase the original license fee and annual renewal fee for Landscape Architects from \$125.00 to \$150.00. This increase is requested by the Board to address a current deficit in operational funding. Currently, there are 216 licensed landscapers and 28 applications pending.

In response to questions from **Senator Andreason** and **Senator Davis** regarding fee increases, **Mr. Hales** reported that the last fee increase was in 2005, due to a decrease in fund balance as a result of litigation expenses relating to legislation in 2003-2004. This balance has continued to decrease steadily each year. Although the Board's administrative expenses have declined considerably, the investigative payroll has increased along with the costs for membership in the national organization, which is responsible for the national examination. The Board believes that this increase will be sufficient to help them rebuild and maintain their account balance as required.

**MOTION:**

**Senator Stegner** made a motion, and **Senator Andreason** seconded, to approve Pending Fee Rule Docket No. 24-0701-0601. The motion carried with a **Voice Vote**.

**Vice Chairman Coiner** then recognized **Jeff Fitzloff**, Electrical Bureau Chief, to present Pending Rule Docket No. 07-0104-0601 for the

**Division of Building Safety.**

**DOCKET NO.  
07-0104-0601**

**Rules Governing Electrical Specialty Licensing - Pending Rule**

This proposed rule restricts the applicability of the existing electrical specialty license for the manufacturing or assembling equipment electrician. This proposal specifies that manufacturers of modular structures may not use specialty licensees in this category to install electrical wiring and apparatus in those structures. This action was taken by the Electrical Board as the board feels these installations should be performed by journeymen electricians and apprentices. Subsequent to the promulgation of this rule, the modular industry has voiced opposition to its imposition.

This rule was first presented to the Committee on January 16, 2007. At that time there was concern expressed by builders of modular facilities and the Committee requested that the Division of Building Safety meet with the concerned parties and report back to the Committee with this Rule Docket when all issues had been resolved. Mr. Fitzloff reported that the Division of Building Safety had meet with the builders to address their concerns, and that additional legislation is pending which will finally address all issues presented by the modular construction industry. There are no concerns remaining at this time.

**MOTION:**

**Senator Davis** made a motion, and **Senator Andreason** seconded, to approve Pending Rule Docket No. 07-0104-0601. The motion carried with a **Voice Vote**.

**Vice Chairman Coiner** then recognized **Bob Fick** to present Pending Rule Dockets No. 09-0135-0601, 09-0203-0601, 09-0301-0601 and 09-0304-0601 for the **Idaho Department of Commerce & Labor**.

**DOCKET NO.  
09-0135-0601**

**Unemployment Insurance Tax Administration Rules - Pending Rule**

This rule expressly requires employers who pay no wages in a quarter to file a quarterly report for the quarter with zero wages reported. It further clarifies that each covered employer's unemployment insurance tax report shall be reported under the covered employer's account number, even if reported by a payroll service. The rule also adds the definition of "willfully" and provides additional clarifications of language.

This rule was previously presented to the Committee on January 18, 2007. At that time the Committee voted to hold the Docket without action until additional clarifications could be provided to **Senators Cameron and Davis**. **Senator Cameron** reported that a meeting with Department of Commerce & Labor staff was pending, and requested that the Chairman continue this docket to a later date.

**Vice Chairman Coiner** asked unanimous consent to continue Rule Docket No. 09-0135-0601 to the agenda for February 6, 2007. Without objection, the review of Rule Docket No. 09-0135-0601 was continued to February 6, 2007.

**DOCKET NO.  
09-0203-0601**

**Rules of the Idaho Regional Travel & Convention Grant Program -  
Pending Rule**

This rule will standardize and clarify the documentation of grant costs for Familiarization Tours (FAMS); eliminate fulfillment documentation requirements by allowing ten percent of the total grant award to be used for fulfillment costs; raises the amount of total project costs to \$20,000.00 before grantees must utilize a formal bid process for purchases or services or to secure a vendor; and eliminates the requirement of an in-kind match as part of the grant process. The rule also makes housekeeping changes.

**MOTION:**

**Senator Andreason** made a motion, and **Senator Goedde** seconded, to approve Pending Rule Docket No. 09-0203-0601. The motion carried with a **Voice Vote**.

**DOCKET NO.  
09-0301-0601**

**Rules of the Broadband Development Matching Fund Program  
(New Chapter) - Pending Rule**

This is a new chapter which was developed last year to implement the broadband expansion program. The rule establishes a Broadband Development Matching Fund program that benefits rural Idaho communities, as established during the 2006 legislative session in Senate Bill 1498.

In response to **Senator Davis'** questions about the scoring criteria and why it was not included in the rule, **Mr. Fick** responded that all projects are evaluated with the same criteria. However, in order to quickly develop the rule needed to implement this program, the department "left it to the experts" to evaluate the technical requirements of the industry and determine the appropriate project criteria.

**Senator Werk** asked for clarification of the descriptive summary of the rule. **Mr. Fick** agreed that the rule's summary is not very descriptive; however, this information is not what is published to provide public notification, and copies of the public notices could be provided to the Committee upon request.

**Senator Werk** expressed concern with the accountability of the program, and the understanding of the legislature that the program would "hook up people to services." He could not see anything in the rule which would require participants to report back to the state with data specifying who is receiving services. He then asked **Mr. Fick** if the department has any plans to collect this type of data, verify the accuracy of the data, and report back to the legislature "how much bang for the buck" they received from this program.

**Mr. Fick** stated that it is the department's intention to determine how many people are actually "hooked up" through the extension of broadband services through this program. To date, the reimbursement reports from accounting staff indicate that only one project, in Craigmont, Idaho, has been completed through this program. As the projects are completed, the data can be collected, verified and reported back to the legislature. No data has been collected from the Craigmont



project at this time.

**Senator Cameron** discussed complaints received from some of the small companies and cable providers who feel that the grant process appears to favor one particular company. Additionally, in many cases the smaller companies had already laid broadband lines. Therefore, the appearance is that the broadband program resulted in allowing the larger company, using state funds, to come into those areas and overlay their own broadband lines to compete with the smaller companies. **Mr. Fick** stated that the approved projects, to a large extent, were “scored” based upon the cost of the project per potential customer; and this was a major criteria of the project. The intention was to take the lines already in existence and expand them into the more rural areas. He also discussed the problem that “nobody wants to tell anybody where their lines are” for proprietary and business reasons. There is no map available to the state which designates all of the existing broadband lines; therefore, this knowledge is not available for consideration in the project evaluation process. **Mr. Fick** further discussed some of the complaints received by his department and how the consideration of satellite services, which required a change to the project scope, may have caused some confusion with regard to the purpose of the program and the application process.

**MOTION:**

**Senator Broadsword** made a motion, and **Senator Andreason** seconded, to approve Pending Rule Docket No. 09-0301-0601. The motion carried with a **Voice Vote**, with **Senators Werk and Cameron** dissenting.

**DOCKET NO.  
09-0304-0601**

**Rules of the Business and Job Development Grant Fund (New Chapter) - Pending Rule**

This is a new chapter to the rules to implement the department’s procedures for awarding grant funds for public costs associated with the recruitment of new businesses to Idaho for business and jobs development. This rule is the result of Senate Bill 1499 which was enacted by the Legislature in 2006. This fund can be used at the Director’s discretion, but is limited to use only for “public costs.”

**Mr. Fick** responded to questions from **Senator Broadsword**, advising that no more than \$200,000.00 can be used for any single project. Funds have been formally committed to Dutchman Recreational Vehicles, and there are four other business relocations and/or expansions for which funds have been tentatively committed. The funds must be used for public infrastructure and public costs which would be incurred by the business in their relocation to Idaho.

**MOTION:**

**Senator Andreason** made a motion, and **Senator Bilyeu** seconded, to approve Pending Rule Docket No. 09-0304-0601. The motion carried with a **Voice Vote**.

With Rules Review completed for this meeting, **Vice Chairman Coiner** returned the meeting to **Chairman Andreason**.

**ADJOURNMENT:** Chairman Andreason adjourned the meeting at 2:40 p.m.

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Senator John Andreason  
Chairman

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Olga Coply  
Secretary

**NOTE:** Any sign-in sheets, guests lists, and/or testimony, booklets, charts and graphs, will be retained in the Committee Secretary's Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** February 1, 2007

**TIME:** 1:30 p.m.

**PLACE:** Room 420 (Gold Room) - Joint Meeting with the House Commerce & Human Resources Committee

**MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Davis, Goedde, Broadsword, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** Senators Cameron and Werk

**GUESTS:** See attached Sign-In Sheets.

**CONVENED:** **Senator Andreason**, Chairman of the Senate Commerce & Human Resources Committee, chaired the Joint Meeting, calling it to order at 1:36 p.m.

**Chairman Andreason** welcomed the audience and Joint Committee members, then introduced **Roger Madsen**, Director of Idaho Department of Commerce & Labor, who discussed Idaho's international trade efforts. The handout provided to the committee, *State of Idaho International Program 2007 Activity Report*, is included with these minutes as Attachment 1.

**PRESENTATION:** **Mr. Madsen** introduced the six international trade representatives for Idaho: Mr. Eddie Yen, Director of the Idaho-Asia trade office; Mr. Armando Orellana, Director of the Idaho-Mexico trade office; Dr. Cao Guoli, Director of the Idaho- Shanghai trade office; Mr. Prem Behl, Director of the Idaho-India trade office; Ms. Akemi Harima, Director of the Idaho-Japan trade office; and General Woo-Joo Chang, Official Representative, and his business associate, John Sook, from the Idaho-Korea trade office.

**Mr. Madsen** advised that Idaho currently has more than 1,300 companies involved in worldwide international trade. This is an increase from 1,100 companies just a few years ago. In 2002, approximately \$1.8 billion was conducted in international trade; however, we have now approached \$4 billion. China is now our number one trading partner, with a total of \$800 million in 2006, and seven of our top ten trading partners are Asian countries, including China, Korea, Japan, Taiwan, Phillipines, Singapore, and Malasia. Products range from high-tech services to personal, industrial, and medical products and equipment. More than 75 commodities are exported to 135 countries. The department focuses on those countries where we have representatives, and sees India as the next "great" market, and is anticipated to grow from \$20 million annually, to eventually surpass China within the next few years.

**Chairman Andreason** then recognized **Eddie Yen**, Director of the Idaho-Asia trade office in Taipei, which opened in 1990.

**Mr. Yen** stated that since 1990, Idaho exports to Asia reached \$1.8 billion in 2005, accounting for 54% of total state exports. Taiwan continues to rank among Idaho's top 10 trading partners, with 2005 exports reaching \$445.4 million. In 2007, seminars in China and Taiwan will encourage foreign direct investment in Idaho. These seminars will spotlight Idaho's investment potential, and the Asia office will continue to provide individual technical assistance and market research to Idaho exporters and Taiwan importers interested in Idaho products.

**Representative Trail** asked about the volume of computer chips purchased from Taiwan by United States companies. **Mr. Yen** said that Taiwan is the third largest manufacturer of computer chips in the world, with their focus and strength in the area of personal computer chips, rather than the types of chips used in digital cameras, as produced by Micron, an Idaho-based manufacturer. Therefore, the relationship is not competitive but, rather, complimentary to the Idaho company.

**Chairman Andreason** then recognized **Armando Orellana**, Director of the Idaho-Mexico trade office in Guadalajara.

**Mr. Orellana** reported that exports from Idaho to Mexico exceeded \$100 million in 2005 for a 9.8% annual increase. He stated that he would focus his report on the political changes in Mexico and plans for 2007. The Mexico office assisted the Idaho Bean Commission with coordinating bean seed test plots in Chihuahua and Zacatecas, and they will continue to work on this area in 2007. They will also be participating in key trade shows for agricultural equipment, and several companies from Idaho will be there to demonstrate their equipment. Another area of growth in Mexico is the mining industry, and Idaho mining companies will participate in a convention this year which will provide opportunities to meet with key players in the Mexico industry. The environmental sector will be emphasized as well, particularly the problem with the disposal of used tires along the Mexico-United States border, and they will be working with an Idaho company on this problem. Emphasis will also be placed on educational opportunities for students from Mexico who want to study abroad, and promoting Idaho tourism opportunities to citizens of Mexico.

**Chairman Andreason** then recognized **Dr. Cao Guoli**, Director of the Idaho-Shanghai trade office in China.

**Dr. Guoli** stated that China is the third largest trading entity in the world, and from 2001 to 2005 the annual growth rate of trade between the United States and China was 27.4% while U.S. imports to China grew at more than 20% annually. In 2006 the Shanghai office was expanded to full-time to better serve the needs of Idaho companies interested in exporting products and services to China. The 2006 promotions included the presentation of BioReaction and other environmental companies at the China Pollutec Show in Shanghai; a reverse buying delegation trip to the northwest where Idaho agricultural companies visited with managers from China's largest supermarket chain and importers; representing Idaho companies at the Guangzhou Cityscape Trade Show, an annual exhibit focusing on building, landscape design, and construction technologies for large scale civil projects; and the promotion of travel to Idaho at the China International Travel Mart, the most prominent travel show in China. In 2007 the office will continue with promotions such as these while

providing technical assistance, translation services and market research and support.

**Chairman Andreason** then recognized **Mr. Prem Brehl**, Director of the Idaho-India trade office in New Delhi, India.

**Mr. Brehl** was appointed as Idaho's trade representative in India in September, 2006. He is also chairman of India's leading exhibitions and conference organizer, Exhibitions India Group, which focuses on international trade shows and events. Idaho exports to India account for nearly \$10 million and India is currently Idaho's 22<sup>nd</sup> largest export destination. Emerging trade opportunities include the following areas:

- India is currently the largest market for U.S. dried peas and lentils and an important market for Idaho.
- Dell Computer, a major customer for Micron Technology, recently opened a fabrication facility in India which will result in increased exports of semiconductors to India.
- Idaho is well-positioned to take advantage of the growing demand for food processing equipment and cold storage technologies.
- Recent passage of the U.S.-India Civil Nuclear Technology Agreement will provide opportunities for Idaho companies to supply nuclear hardware, software, and environmental equipment to India.

**Mr. Brehl** provided an overview of the political and social changes in India, and explained how these changes have resulted in a strong and resurging economy with great potential and emerging trade opportunities.

**Representative Trail** asked about the emerging middle-class in India and increased education of India's citizens. He asked **Mr. Brehl** about the current trend of the U.S. recruiting qualified engineers from India and asked whether he felt this trend would continue.

**Mr. Brehl** advised that we should expect to see recruitment from both sides. As employment opportunities within India continue to increase, there will probably be many citizens from India who will return to that country after coming to the U.S. for initial employment. India is also experiencing a shortfall of candidates in intellectual job areas as well.

**Chairman Andreason** then recognized **Ms. Akemi Harima**, Director of the Idaho-Japan trade office in Kobe, Japan.

**Ms. Harima** was selected as Director of the newly re-opened Idaho-Japan trade office in mid-2006. Japan has consistently ranked among Idaho's top ten trade partners, and was fifth in 2005. Idaho exports through the end of 2006 showed a 7% increase over 2005. **Ms. Harima** proactively represented Idaho interested by participating in key trade shows, including: *BioJapan 2006*, an annual bio technology related expo; *See America Media Market Place* in Tokyo, which promoted Idaho tourism; and *HOSPEX Japan 2006*, also in Tokyo, an international healthcare engineering exhibition.

**Chairman Andreason** inquired about the current situation involving the banning of U.S. beef imports to Japan. **Ms. Harima** advised that Japan requires the inspection of every imported cow for BSE, which the U.S. Government says is not practical or necessary. Discussions are

continuing regarding this, and as of this date Japan is accepting cows that are 20-months old or younger. Since most of the cows in the U.S. are about 30-months old, the importing of beef from the U.S. is still very limited.

**Chairman Andreason** then recognized **General Woo-Joo Chang**, Official Representative of the Idaho-Korea trade office in Seoul, South Korea.

**General Chang** is Idaho's part-time trade manager in South Korea. Since 1998, Idaho exports to South Korea have increased from \$12 million to \$164 million in 2005. In 2006, Idaho exports to Korea reached \$202 million. Currently, electronic and computer equipment, food and agricultural products, wood and building materials, and hides and leather goods comprise Idaho's major exports to South Korea.

In 2007, the City of Boise will be the site for the Korea-Pacific U.S. Economic Council joint conference; and the trade office will continue to work to identify foreign direct investment opportunities in Idaho, as well as increase the promotion of tourism and education.

**Chairman Andreason** then recognized **Damien Bard**, Administrator, Department of Commerce & Labor International Business Division.

**Mr. Bard** thanked the committee for their strong support of Idaho's international trade efforts. The Legislature's strong support has allowed them to expand operations to full-time status in China and re-establish relationships in Japan and India. The department presented a one-half day seminar on international trade in Boise this week which has been the most successful seminar to date. **Mr. Bard** invited all legislators to inform the department of any companies in their districts who might benefit from international trade assistance. **Mr. Bard** then introduced **Roger Madsen** for concluding remarks.

**Mr. Madsen** commended **Mr. Bard** and his staff on the success of their hard work and efforts. He also thanked the Legislature for providing the financial support to make these advancements in international trade possible. Ten percent of the jobs in Idaho are involved with international trade. Idaho currently has six "sister state" arrangements and is actively involved in educational and cultural exchanges.

**ADJOURNMENT:** **Chairman Andreason** adjourned the meeting at 2:44 p.m.

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Senator John Andreason  
Chairman

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Olga Copley  
Secretary

**NOTE:** Any sign-in sheets, guests lists, and/or testimony, booklets, charts and graphs, will be retained in the Committee Secretary's Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).

MINUTES

**SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE**

**DATE:** February 6, 2007  
**TIME:** 1:30 p.m.  
**PLACE:** Room 437  
**MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu  
**MEMBERS ABSENT/ EXCUSED:** None  
**GUESTS:** See attached Sign-In Sheets.  
**CONVENED:** The meeting was called to order by **Chairman Andreason** at 1:32 p.m.  
**Chairman Andreason** then turned the meeting over to **Vice Chairman Coiner** for Rules Review.

**Vice Chairman Coiner** recognized **Shad Priest, Department of Insurance**, to present Pending Rule Dockets No. 18-0127-0601 and 18-0128-0601.

**DOCKET NO.  
18-0127-0601**

**Self-Funded Employee Health Care Plans - Pending Rule**

This rule deletes obsolete wording and implements changes to requirements for employer sponsored self-funded health plans made by House Bill 822. Changes include requirements for submitting information to the Department of Insurance to register the plan and requirements for maintaining and reporting reserves and surplus. Changes have also been made to conform the rule to Office of Administrative Rules standards.

Discussion followed regarding issues of insolvency and the actions that can be taken by the Director to allow the plan to accumulate the required surplus. **Georgia Siehl**, Chief Examiner for the Department of Insurance Bureau of Company Activities, answered questions from **Senator Davis** regarding the investigation of applicants.

**MOTION:** **Senator Cameron** made a motion, and **Senator Andreason** seconded, to approve Pending Rule Docket No. 18-0127-0601. The motion carried with a **Voice Vote**.

**DOCKET NO.  
18-0128-0601**

**Governmental Self-Funded Employee Health Care Plans (New Chapter) - Pending Rule**

This is a new chapter to the rules to implement House Bill 825, which created requirements for registering, funding and operating self-funded health plans offered by public entities and created through joint powers agreements. **Mr. Priest** advised that his department had requested a

change to the rule to correct Subsection 026. The correction involves the deletion of paragraph 01.a instead of paragraph 2. The language in paragraph 01.a set forth benchmarks during the initial three-year period allowed for plans to achieve full funding of actuarial reserves. However, as there is nothing in statute which sets forth these benchmarks, the language was removed. The language stricken at paragraph 02 remains in effect and is not deleted from the rule.

*(NOTE: The Correction to Pending Rule, Docket No. 18-0128-0601, Governmental Self-Funded Employee Health Care Plans, as published in the Idaho Administrative Bulletin, February 7, 2007, Vol.07-2, Page 13, is included in these minutes as Attachment 1.)*

**MOTION:** **Senator Goedde** made a motion, and **Senator Cameron** seconded, to approve Pending Rule Docket No. 18-0128-0601. The motion carried with a **Voice Vote**.

**Vice Chairman Coiner** then recognized **Bob Fick, Communications Manager for Department of Commerce & Labor**, to present Pending Rule Docket No. 09-0135-0601.

**DOCKET NO.**  
**09-0135-0601**

**Unemployment Insurance Tax Administration Rules - Pending Rule**

This rule expressly requires employers who pay no wages in a quarter to file a quarterly report for the quarter with zero wages reported. It further clarifies that each covered employer's unemployment insurance tax report shall be reported under the covered employer's account number, even if reported by a payroll service. The rule also adds the definition of "willfully" and provides additional clarifications of language.

This rule was initially presented before the Committee on January 23, 2007. At that time, the docket was held in Committee until further information and clarifications were provided by the Department of Commerce & Labor with regard to the factors for determining contractor status set forth at Section 112.03.

**Senator Cameron** reported to the Committee that follow-up discussions had been conducted with Department of Commerce & Labor resulting in the Department's concurrence that Subsection 112.03, paragraphs b, c, d and e, be removed from the rule.

**MOTION:** **Senator Cameron** made a motion, and **Senator Goedde** seconded, to approve Pending Rule Docket No. 09-0135-0601 with the exception of Subsection 112.03.b, c, d and e on Page 64. The motion carried with a **Voice Vote**.

**Vice Chairman Coiner** then recognized **Dan Steckel, Deputy Attorney General for Division of Human Resources & Personnel Commission**, to present Temporary Rule Docket No. 15-0401-0601.

**DOCKET NO.**  
**15-0401-0601**

**Office of the Governor, Division of Human Resources & Personnel Commission - Temporary Rule**



This rule implements changes to Idaho Code promulgated by Senate Bill 1363. The rule includes changes to definitions, veterans preference, compensation of employees, moving expense reimbursement, probationary period for acting and temporaries, performance evaluation, military leave, overtime for executives and leave for bone marrow and organ donors, to comply with new code provisions.

This rule had been initially presented to the Committee on January 23, 2007. At that time, **Senator Stegner** presented concerns with several areas of the temporary rule and requested that the Division of Human Resources provide additional information addressing those areas in question.

**Senator Stegner** reported that he had identified a number of sections within the temporary rule which, in his opinion, do not fulfill the intent of the law. He recommended that the Committee approve the deletion of several subsections of the rule. **Senator Davis** asked **Mr. Steckel** to respond with regard to the issue of statutory authority which had been raised by **Senator Stegner**. **Mr. Steckel** stated that he did not believe the statutory authority was as limited as presented by Senator Stegner; however, the Division of Human Resources was not opposed to the removal of the subsections cited. As the changes would not present a significant negative impact, he concurred that the Committee should approve the rule with the exceptions noted by **Senator Stegner**.

**MOTION:**

**Senator Stegner** made a motion, and **Senator Broadsword** seconded, to approve Temporary Rule Docket No. 15-0401-0601 with the exception of Subsection 071.03, Page 13; Subsection 073.05.b, Page 15; Subsection 078, Pages 20-21; and 260.03, Page 36. The motion carried with a **Voice Vote**.

**Vice Chairman Coiner** then recognized **Tom Limbaugh of the Idaho Industrial Commission** to present Rule Dockets No. 17-0206-0601 and 17-0208-0602.

**DOCKET NO.  
17-0206-0601**

**Employers Reports - Pending Rule**

This rule relates to the submission of summaries of payments to the Industrial Commission, and includes the following changes: (1) To reconcile conflicting time periods by changing the second time period to 15 days from ten days; (2) to extend the reporting time period from 60 to 120 days for sureties to submit the Summary of Payments; and (3) to change some language in the rule to provide a sufficient time frame for auditing of total and permanent benefit payments that will provide for useful feedback and corrections to be made.

**MOTION:**

**Senator Werk** made a motion, and **Senator Goedde** seconded, to accept Pending Rule Docket No. 17-0206-0601. The motion carried with a **Voice Vote**.

**DOCKET NO.  
17-0208-0602**

**Miscellaneous Provisions - Pending Rule**

This rule implements the requirements mandated by Section 72-803,

Idaho Code. The passage of House Bill 331 during the 2005 legislative session required the Industrial Commission to change the method of how medical providers are reimbursed under the Idaho worker's compensation system. This pending rule is the result of previous temporary rules, the submission of a proposed rule, and information gathered during the public hearing process.

**Mr. Limbaugh** provided a handout to the Committee which outlined the history of this issue, provided a comparison of Idaho and Nevada workers compensation physician reimbursements, and included a proposed revision to the fee schedule contained in the pending rule. *(This handout is included in these minutes as Attachment 2.)*

**Mr. Limbaugh** advised that the proposed conversion factors included in the pending rule at Subsection 031.02.b, Pages 81-83, are unacceptable to the medical community. Many orthopedic surgeons have advised that they will no longer treat worker's compensation patients; and this, in turn, is beginning to create an access problem for injured workers. In a meeting conducted two weeks ago, a draft conversion table was offered for comment in an effort to bring all sides together. This compromise proposes a 4.14% increase for provider reimbursement. This is not an increase in the entire system, but only the provider reimbursement side. The conversion table in the pending rule suggests an increase of .36%. The net increase between the proposed draft and the conversion table currently included in the pending rule is 3.7%. **Mr. Limbaugh** pointed out that the reimbursement rates being revised are the 2005 values, not the 2007 values. He stated that this compromise has been shared with both employers and doctors. While the doctors are in favor of the draft conversion table, the employers have taken a neutral stance choosing not to agree or disagree with the proposed table.

**Mr. Limbaugh** stated that the rule "continues to be a work in process" and that the Committee now had three options before them: (1) Accept the pending rule as submitted; (2) accept the pending rule with the exception of Subsection 031.02.b, conversion factors, and allow the Commission to adopt a new table by temporary rule; or (3) to reject the pending rule in entirety. **Mr. Limbaugh** advised that the House Commerce & Human Resources Committee had voted to accept the pending rule with the exception of Subsection 031.02.b.

**Senator Davis** asked if **Mr. Limbaugh** was aware of any other objections from industry, other than the conversion table, with regard to this rule. **Mr. Limbaugh** stated, "This rule continues to be a work in progress, and we will continue to work on this," although it was his belief that everything other than the conversion factor table was acceptable at this time. During the last legislative session, the Commission was appropriated funding to bring in an outside consultant to help with this issue. The request for proposal has already been issued. The parameters established by the Commission have set May 30, 2007, as the date of completion for the analysis and recommendation on the conversion factor table, and August 31, 2007 as the date of completion for the analysis on reimbursements for hospitals, surgical centers, pharmaceuticals, and medical durable goods.

**Mr. Limbaugh** then answered questions from **Senator Davis** and **Senator Goedde** on the use of the compromise conversion table through temporary rule implementation and physician reimbursements.

**MOTION:** **Senator Andreason** made a motion, and **Senator Werk** seconded, to approve Pending Rule Docket No. 17-028-0602 with the exception of the medical fee conversion factors set forth in Subsection 031.02.b.

**DISCUSSION:** **Vice Chairman Coiner** then recognized **Mary Morgan**, President of Intermountain Bill Recovery, Inc., who addressed the Committee in opposition to Pending Rule Docket 17-0208-0602. *(A copy of Ms. Morgan's testimony is included in these minutes as Attachment 3.)*

**Ms. Morgan** stated that she represents organizations in Idaho as a consultant, including one of the largest self-insured employers in the state, Idaho Power, as well as Minidoka Memorial Hospital in Rupert, Idaho, and Portman Medical Center in Pocatello, Idaho.

**Ms. Morgan** referred to the nine changes listed in the rule's descriptive summary on Page 132. Specific sections which she opposed include: 031.01, Definitions, and the addition of the term "appropriate" to five separate subsections without a definition of that term; the addition of an "acceptable charge" for surgically implanted hardware; the deletion of the subsection 032.10, Investigation of Claim Compensability; and the change of 30% administrative cost award in the dispute process to exempt hospitals except when payment is delayed after an administrative order. Her request to the Committee was to reject all portions of the rule which reflect changes applicable to several items included in the descriptive summary, specifically: Reject numbers 5 and 8; modify changes to numbers 3 and 9; and make the rule retroactive to afford hospitals the opportunity to recover some of their lost revenue due to payors inappropriately applying the physician fee schedule to their charges for the past ten months, from April 1, 2006 to present.

**Vice Chairman Coiner** asked **Ms. Morgan** if she was a registered lobbyist for the organizations she was representing, specifically Idaho Power. **Ms. Morgan** replied that she is not a registered lobbyist.

**Senator Davis** requested whether **Ms. Morgan** was receiving a fee from Idaho Power and the hospitals for appearing before the Committee. **Ms. Morgan** stated, "I am not lobbying, no, I actually work as a consultant and I try to help both sides in this medical payment system. Follow the rules, play by the rules, interpret the rules, and so forth. I'm not swayed one way or the other, I'm just right in the middle and trying to make sure that both sides are represented, that these rules - how they affect each side - that they are correct and fair."

**Senator Davis** then advised **Ms. Morgan** to report to the Secretary of States Office upon completion of the Committee meeting and "tell them what you have done, and ask them what they think you need to do, so if something needs to be done they can guide you through that process."

**Ms. Morgan** stated that she was concerned that the only issue presented with regard to this rule was the reimbursement to physicians, and no one

has addressed the impact upon hospitals.

**Vice Chairman Coiner** then recognized **Dr. Firch**, representing the Idaho State Chiropractic Association. He affirmed the organization's agreement with the motion currently before the Committee to approve the rule with the exception of the conversion table.

**Senator Broadsword** requested that **Mr. Limbaugh** address the concerns presented by **Ms. Morgan**. **Mr. Limbaugh** advised that the Idaho Hospital Association has been involved in the rulemaking process since the very beginning. Saint Lukes and Saint Alphonsus hospitals were represented at the Boise hearing, and discussion has been ongoing with **Steve Millard** of the Idaho Hospital Association.

With regard to the specific issues presented by **Ms. Morgan**, **Mr. Limbaugh** stated that these issues were presented in the rule to make sure that insurance companies and employers have the right to examine the hospital billings and make sure they are appropriate. That is why the durable goods and hardware are included. The Commission has had this policy in effect for years. The use of the term "appropriate" rather than "acceptable" is not a change in philosophy, it is an additional term; and, as this rulemaking is ongoing, the Commission would rather include the definition for this term as part of the rule instead of reverting to the use of the term "acceptable." **Mr. Limbaugh** confirmed the Commission's willingness to work with all of the parties involved as they continue with this ongoing rulemaking process.

With no further discussion, the Committee then voted on the motion before them to accept Pending Rule Docket No. 17-0208-0602, with the exception of the medical fee conversion factors set forth in Section 031.02.b. The motion carried with a Voice Vote, with **Senator Cameron** dissenting.

With Rules Review completed, **Vice Chairman Coiner** returned the meeting to **Chairman Andreason**.

**ADJOURNMENT:** **Chairman Andreason** adjourned the meeting at 3:04 p.m.

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Senator John Andreason  
Chairman

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Olga Copley  
Secretary

**NOTE:** Any sign-in sheets, guests lists, and/or testimony, booklets, charts and graphs, will be retained in the Committee Secretary's Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).

MINUTES

**SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE**

**DATE:** February 8, 2007

**TIME:** 1:30 p.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Chairman Andreason, Senators Cameron, Stegner, Goedde, Broadsword, Werk, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** Vice Chairman Coiner and Senator Davis

**GUESTS:** See attached Sign-In Sheet.

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:30 p.m.

**GUBERNATORIAL APPOINTMENTS:** After introductions by **Chairman Andreason**, committee members interviewed **Representative Max Black** for appointment to the Idaho Endowment Fund Investment Board to serve a term commencing January 24, 2007 and expiring April 11, 2010.

Committee members then interviewed **Evan Frasure** for appointment to the Idaho Personnel Commission to serve a term commencing December 29, 2006 and expiring July 1, 2012.

**RS 16778** **Relating to Workers Compensation; provide service of notice of hearing by first class mail**

**Chairman Andreason** introduced **Max Sheils**, an attorney who sits on the Worker's Compensation Advisory Board for the Idaho Industrial Commission. **Mr. Sheils** advised that the provisions of RS 16778 will save time, supplies and money in providing notices of hearings according to legal requirements.

**MOTION:** **Senator Goedde** made a motion, and **Senator Stegner** seconded, to send RS 16778 to print. The motion carried with a **Voice Vote**.

**RS 16777** **Relating to disability insurance; revise requirements and define dependent**

This legislation is sponsored by Senator Cameron and raises the age for which a dependant can remain on their parent's health insurance policy to age 21, if not a full-time student, and to age 25, if the dependent is a full-time student. The indirect benefits of this legislation should be a reduction in the number of uninsured, a reduction in the educational costs of attending college, and an improvement in the actuarial demographics of individual and group policies as they retain coverage on an age group which is typically healthy and inexpensive.

**RS 16956 Relating to insurance trade practices, revise terminology and code references**

This legislation is also sponsored by Senator Cameron, and would make technical corrections to define the term “disability insurance.”

**MOTION:** **Senator Stegner** made a motion, and **Senator Werk** seconded, to send RS 16777 and RS 16956 to print. The motion carried with a **Voice Vote**.

**RS 16959 Relating to unemployment insurance trust fund, raise trust fund target to a multiple of 0.9 (90%)**

**Bob Fick** of the Idaho Department of Commerce & Labor addressed the Committee and provided the rationale for raising the multiplier for unemployment insurance trust fund contributions. This would increase the balance of the Unemployment Insurance Trust Fund an average of \$5 million a year over the next five years, and have a minimal impact on employers tax rates between 2008 and 2011.

**MOTION:** **Senator Cameron** made a motion, and **Senator Werk** seconded, to send RS 16959 to print. After a short discussion, the motion carried with a **Voice Vote**.

**RS 16499C4 Relating to Idaho Real Estate Commission, license requirements, fees**

**Jeanne Jackson-Heim**, Executive Director of the Idaho Real Estate Commission, addressed the Committee regarding RS 16499C4, which is the agency’s annual update legislation. Printed materials were made available to Committee members. All the information has been posted on the website and has been made available to Idaho Association of Realtors.

**MOTION:** **Senator Cameron** made a motion, and **Senator Stegner** seconded, to send RS 16499C4 to print. The motion carried with a **Voice Vote**.

**RS 16900 Relating to PERSI, divestment of holdings in Sudan**

**Senator Burkett** addressed the Committee to present the rationale promulgating this legislation, and introduced several proponents of the legislation in attendance at the meeting. Senator Burkett emphasized that significant work and investigation was conducted in the preparation of RS 16900, because they believe the issue at hand is too important to wait until the next session of the legislature. Several other states have passed similar legislation in an effort to curtail financial support to the military factions committing atrocities and genocide in the Sudan.

**Senator Burkett** introduced **John Sullivan**, an attorney and Coordinator for the Idaho Task Force for Divestment in Sudan, to continue the discussion on the importance of RS 16900. **Mr. Sullivan** advised that it has been brought to the attention of PERSI staff and Board members that retirement funds are currently invested in companies doing business in Sudan, and these investments financially support that government.

**Mr. Sullivan** cited other supporters and discussed his research in support of this legislation. He has also met with PERSI staff regarding their investments with these companies. It is perceived that PERSI contributors

and retirees would not want Idaho to be involved with companies that financially support the genocide.

**Senator Cameron** stated that in spite of the atrocities in Sudan, he did not see the connection with PERSI investments. This legislation would be precedent setting, in that the legislature does not direct the PERSI board in their investment policy. This legislation, if passed, would then open the way for other groups to demand divestment because of other egregious situations and social causes that occur throughout the world. **Mr. Sullivan** advised that the legislation does not “open the door” to other social causes and has been carefully tailored to be specific to the genocide in Sudan. Just as the divestment movement ended the Apartheid in South Africa, this bill could also help end the situation in Sudan. Diplomatic efforts are not as strong as economics in addressing these types of situations.

**Senator Cameron** discussed his personal experience, both as a business owner and as a member of the Idaho Endowment Investment Board, in providing investment services to clients. He discussed the difficulty in obtaining such a detailed level of investment information, particularly with regard to mutual funds, to carry out these kind of divestment responsibilities. **Senator Cameron** emphasized that the inability of a person or a board to guarantee non-investment with all companies doing business with Sudan is not an endorsement of the genocide. He did not feel that the current PERSI investment staff would be able to “get at the information” needed for such divestiture.

**Senator Broadsword** asked **Mr. Winkle** to discuss the precedent that would be set by the adoption of this legislation and the affect of the state legislature directing the PERSI Board in their investments. **Mr. Winkle** advised that this is one of the Board's concerns. This legislation would be the first departure from the “prudent person rule” which gives the Board discretion “to invest as they see fit, in the best interest of the beneficiaries of the fund.”

**Chairman Andreason** asked **Mr. Winkle** to explain the position of the PERSI Board with regard to this legislation. **Mr. Winkle** said the Board has several concerns regarding this bill; primarily, with the policy-making nature and that the legislation would begin to interpose other criteria between the investment manager and what stocks they can or cannot purchase. This is of considerable concern to the PERSI Board.

**Senator Broadsword** asked **Mr. Winkle** if the organizations supporting divestiture in Sudan could approach the PERSI Board and request that they consider the divestiture without pursuing legislation to direct that action. **Mr. Winkle** stated that the Legislature “sets the realm in which the Board operates” and directs them to comply with the “prudent person rule” which requires the Board “to always look at the best interests of the beneficiaries of the fund.” The Board’s position is that they cannot depart from this directive and take into consideration additional factors, other than the investment factors, when making investment decisions unless the Legislature specifically directed the Board to do so.

**Senator Goedde** asked if the PERSI Board could voluntarily invest in other options that would bring about the same return on investments. **Mr. Winkle**

said that it would be very difficult for current investment staff to avoid investments in companies that might do business in Sudan, because the companies cited are “such huge players” in the investment market. **Mr. Winkle** stated the Board has investigated this issue closely, and it would be very difficult to make investments in the areas of energy and emerging markets if such restrictions were in place.

**Senator Werk** advised that the investments in question appear to be only one-half of one percent of total PERSI funds invested, and it seems disingenuous to claim that it is not possible to shift those investments. In order to have a more complete discussion of the specific concerns surrounding this issue, **Senator Werk** suggested that the bill be sent to print. This would allow the legislation to be discussed fully in Committee hearing.

**MOTION:**

**Senator Werk** made a motion, and **Senator Stegner** seconded, to send RS 16900 to print. The motion failed with a **Roll Call Vote**, three in favor (**Stegner, Werk, and Bilyeu**) and four opposed (**Andreason, Cameron, Goedde, and Broadsword**).

Due to meeting time constraints, all remaining agenda items (S1001, S1002 and S1003, all relating to PERSI) were continued to the next meeting on February 13, 2007.

**ADJOURNMENT:**

**Chairman Andreason** then adjourned the meeting at 3:00 p.m.

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Senator John Andreason  
Chairman

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Olga Copley  
Secretary

**NOTE:** Any sign-in sheets, guest lists, and/or testimony, booklets, charts and graphs will be retained in the Committee Secretary’s Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).



## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** February 13, 2007

**TIME:** 1:30 p.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** None

**GUESTS:** See attached Sign-In Sheets.

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:32 p.m.

**GUBERNATORIAL APPOINTMENT:** **Chairman Andreason** introduced **William “Bill” Deal** who was appearing before the Committee for approval of his appointment to the Public Employee Retirement System (PERSI) Board for a term commencing January 24, 2007 and expiring July 1, 2008.

**Mr. Deal** advised that he has been appointed to fill the position on the PERSI Board that has been vacated by **Pam Ahrens**. **Mr. Deal** discussed his experience on the Idaho Endowment Investment Fund Board as both a member and Executive Board member. Also, as a member of the legislature, he was involved in “all three phases of PERSI” as it moved through the House of Representatives.

**Chairman Andreason** thanked **Mr. Deal** for his attendance, and advised that the committee would take action on his appointment at the next meeting.

**GUBERNATORIAL APPOINTMENT:** **Chairman Andreason** announced that the committee was ready to take action on the appointment of **Evan Frasure** to the Idaho Personnel Commission. **Mr. Frasure** had appeared at a previous committee meeting and had been appointed to serve a term commencing December 29, 2006 and expiring July 1, 2012.

**MOTION:** **Senator Stegner** moved to send the appointment of **Evan Frasure** to the Idaho Personnel Commission to the Senate floor with the recommendation that the appointment be approved. The motion was seconded by **Senator Goedde** and carried by a **Voice Vote**.

**GUBERNATORIAL APPOINTMENT:** **Chairman Andreason** announced that the committee was ready to take action on the appointment of **Max Black** to the Idaho Endowment Fund Investment Board. **Mr. Black** had appeared at a previous committee meeting and had been appointed to serve a term commencing January 24, 2007 and expiring April 11, 2010.

**MOTION:** **Senator Goedde** moved to send the appointment of **Max Black** to the Idaho Endowment Fund Investment Board to the Senate floor with the recommendation that the appointment be approved. The motion was seconded by **Senator Werk** and carried by a **Voice Vote**.

**Chairman Andreason** then recognized **Alan Winkle, Executive Director of PERSI**, to address the Committee regarding S 1001, S 1002 and S 1003.

**S 1001** **PERSI, Membership, Purchase**

This bill contains technical corrections and federal Internal Revenue Service (IRS) compliance amendments. Sections 1, 5 and 6 of the bill implement changes required by the Uniformed Services Employment and Re-Employment Rights Act of 1994 (USERRA) and final regulations issued by the IRS implementing the provisions of that Act. Section 2 of the bill is a technical correction to Section 59-1352, Idaho Code. Sections 3 and 4 of the bill clarify what constitutes a separation from service or employment consistent with recent guidance from the IRS. Changes in Sections 1, 5 and 6 of the bill implementing USERRA compliance could result in higher employer contributions, but the fiscal impact would be negligible, if any. The remaining sections will have no fiscal impact.

**Mr. Winkle** reviewed each of the changes included in this legislation and answered questions from Committee members for clarification.

**MOTION:** **Senator Davis** made a motion, and **Senator Broadsword** seconded, to send S 1001 to the floor with a do pass recommendation. The motion carried with a **Voice Vote**.

**S 1002** **PERSI, Certain Contributions, Trust**

This bill makes similar amendments to Section 67-5333, Idaho Code, governing unused sick leave funds for state employees, and to Section 33-1228, Idaho Code, governing unused sick leave funds for school district employees. This bill clarifies that these funds are held in trust and not subject to claims of creditors. It also designates the Retirement Board, who currently manages the funds, as trustees of the trust and indemnifies them. Finally, it clarifies that assets in the trust may be commingled for investment purposes with other assets managed by the Retirement Board. There is no fiscal impact as a result of this legislation.

**Mr. Winkle** reviewed each of the changes included in this legislation and answered questions from the Committee members for clarification.

**MOTION:** **Senator Goedde** made a motion, and **Senator Davis** seconded, to send S 1002 to the floor with a do pass recommendation. The motion carried with a Voice Vote.

**S 1003** **PERSI, Retired Member, Employed**

This bill amends Section 59-1356, Idaho Code, to place the burden of incorrect reporting on the employer who fails to correctly report

re-employed retirees. Under Section 59-1356, Idaho Code, a retiree's benefit is suspended when they become re-employed and meet eligibility for PERSI with a PERSI employer. At times employers fail to report the retiree as an eligible employee, and sometimes months go by until PERSI discovers the failure. Because of this delay, the retiree is required to repay the benefits that should have been suspended, plus interest, and pay the employee contributions that should have been withheld and paid by the employer, which creates a substantial burden on the employee. This amendment will put the burden of repayment on the employer who has the statutory obligation to correctly report eligible employees and failed to do so. It does not prevent the employer from seeking repayment from the employee, but it assures that PERSI trust funds are quickly repaid without a substantial burden on the employee. There would be no fiscal impact as a result of this legislation.

**Senator Broadsword** asked if there has been any opposition voiced by the employers or other parties. **Mr. Winkle** advised that he has spoken specifically of this bill with the Idaho School Administrators Association, the director of the Association of Idaho Cities, and the legislative committee for the Idaho Association of Counties. All of them concurred that the responsibility for not reporting this information to PERSI remains with the employer and they do not oppose this legislation.

**MOTION:**

**Senator Coiner** made a motion, and **Senator Broadsword** seconded, to send S 1003 to the floor with a do pass recommendation. The motion carried with a **Voice Vote**.

**S 1023**

**Workers Comp Claim, No Retaliation**

This bill was removed from consideration by the sponsor prior to the commencement of the meeting.

**Chairman Andreason** then recognized **Bob Fick, Communications Manager for the Department of Commerce & Labor**, to present S 1043 before the Committee.

**S 1043**

**Unemployment Report, Certain, Not Filed**

This bill amends Section 72-1372, Idaho Code, which imposes a civil penalty on employers who fail to file tax reports when due. The current penalty is equal to 100% of the amount that would be due if the employer had filed the report on time, or \$250.00, whichever is greater. The Department of Commerce & Labor has received comments from the public that the current penalty is too severe. This amendment would reduce the civil penalty for the first and second offenses, and also ties the amount of the penalty to the number of recent offenses.

**Senator Davis** requested clarification of why this bill did not appear, in his opinion, to conform to the standards of the federal and other state taxing authorities and actually appears to be an increase in penalties. **Mr. Fick** introduced **John Taylor, Operations Manager for the Unemployment Insurance Compliance Bureau**, to address this question.

**Mr. Taylor** advised that the 100% assessment is dealing with “trust fund amounts” that the employer withholds from employees. The civil penalty in this statute is not assessed against a person; it is assessed against the employer, but it is not assessed on the corporate officer personally. **Mr. Taylor** stated that this is a reduction in the civil penalty, and the department believes that a lower non-file rate can be achieved if this penalty is reduced.

**MOTION:** **Senator Davis** made a motion, and **Senator Broadword** seconded, to send S 1043 to the floor with a do pass recommendation. The motion carried with a **Voice Vote**.

**PRESENTATION:** **Chairman Andreason** announced this would be the Committee’s last meeting with **Tyler Barlogi**, Senate Page, and presented him with a letter of appreciation signed by all members of the Committee and a Senate watch in remembrance of his service as a Senate Page.

**Tyler Barlogi** addressed the Committee regarding his experience this legislative session and his future plans. He stated that he has enjoyed his experience with the Senate and found the “behind the scenes” working of the legislature very educational. This experience has also allowed him to develop lifetime friendships with other Pages as well. His plans are to attend Briar Cliff University in Sioux City, Iowa, to major in business and play baseball.

**ADJOURNMENT:** With no further business before the Committee, **Chairman Andreason** adjourned the meeting at 2:13 p.m.

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Senator John Andreason  
Chairman

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Olga Copley  
Secretary

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## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** February 15, 2007

**TIME:** 1:30 p.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** None

**GUESTS:** See attached Sign-In Sheets.

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:30 p.m.

**INTRODUCTIONS:** **Chairman Andreason** introduced **John Tobiasson**, Senate Page, who will be serving the Committee for the second half of this legislative session. He is a Senior at Borah High School in Boise.

**GUBERNATORIAL APPOINTMENT:** **Chairman Andreason** announced that the committee was ready to take action on the appointment of **William "Bill" Deal** to the Public Employee Retirement System of Idaho (PERSI) Board. **Mr. Deal** had appeared at a previous committee meeting and had been appointed to serve a term commencing January 24, 2007 and expiring July 1, 2008.

**MOTION:** **Senator Broadsword** moved to send the appointment of **William "Bill" Deal** to the PERSI Board to the Senate floor with the recommendation that the appointment be approved. The motion was seconded by **Senator Bilyeu** and carried by a **Voice Vote**.

**Chairman Andreason** then introduced **Max Sheils**, an attorney who also serves on the Industrial Commission's Worker's Compensation Advisory Board, to present S 1106 before the Committee.

**S 1106** **Workers Comp, Hearings, Notice**

The purpose of this bill is to provide a more cost effective procedure to allow the Industrial Commission to send notices of hearings by first class mail. First class mail is the service used by all the judicial districts in the state of Idaho and the Idaho Supreme Court to notify parties of trial dates, court orders, and decisions issued by judges. With claimants representing themselves, the Industrial Commission schedules a telephonic conference with the parties as well as a confirming telephone call prior to any hearing. This proposed change would have saved the Industrial Commission in excess of \$3,000.00 in 2005. This legislation may reduce operating costs for the Industrial Commission; however, it will have no affect on the general fund as the Industrial Commission is a dedicated fund agency.

**MOTION:** **Senator Stegner** made a motion, and **Senator Davis** seconded, to send S 1106 to the floor with a do pass recommendation. The motion carried with a **Voice Vote**.

**Chairman Andreason** then introduced **Woody Richards**, representing the Surplus Line Association, to present S 1030 to the Committee.

**S 1030**

**Surplus Lines Association, Records**

**Mr. Richards** advised that the purpose of this legislation is to clarify that records of policies, endorsements and affidavits, and any other records that discuss policies, endorsements and affidavits, that may be required to be filed with or by a surplus line association pursuant to Chapter 12, Title 41, Idaho Code, are exempt from disclosure under the Public Records Act, Chapter 3, Title 9, Idaho Code.

**Mr. Richards** stated that “surplus line” insurance companies do not have the same regulatory requirements as admitted carriers. However, they are allowed to transact business because they provide coverage that is not otherwise provided by the admitted market (i.e., insurance on a singer’s voice, a football quarterback’s throwing arm, etc.) or other high risk industries (i.e., ski resorts and liquor bars).

Approximately 2% to 3% of the sales of commercial and property casualty insurance in Idaho is provided through surplus lines insurance. Idaho law requires all surplus line brokers to be a member of the Surplus Line Association. This is not a policy-making body, nor is it empowered to engage in rulemaking. Pursuant to Idaho Code, the Association is responsible for keeping records of all transactions concerning surplus lines to insure that the proper premium taxes are paid and that sales are in compliance to the law.

Policies written by admitted insurance companies with private parties are not open to public view. This legislation is needed to protect the terms of a private person’s surplus line insurance, and maintain the information as confidential by the association. This will keep competitor brokers from obtaining policy holder names, renewal dates, and other information to steal business from their competitors.

**Mr. Richards** stated that the Surplus Line Association is sponsoring an amendment to this bill, based upon some concerns expressed by the news media in response to this legislation. As a result of discussions with the media groups, they are requesting an amendment to specify that this will apply to “policies that are owned by private persons, and not by a public agency of the state of Idaho.” This language addresses the concerns of the media, and the Idaho Department of Insurance has no objection to this legislation.

**MOTION:** **Senator Goedde** made a motion, and **Senator Davis** seconded, to send S 1030 to the 14<sup>th</sup> Order for amendment. The motion carried by a **Voice Vote**.

**Chairman Andreason** then recognized **Senator Dean Cameron** to present S 1105 before the Committee.

**S 1105**

**Insurance, Dependent, Age**

In the interest of full disclosure, **Senator Cameron** requested that the minutes reflect his declaration of a potential conflict of interest as he is a business owner who sells health insurance. However, this legislation will not provide any monetary gain for him; and, if passed, will result in fewer health insurance policies being sold to college students.

**Senator Cameron** advised that Idaho state law currently provides that children can remain as a dependent on their parent's health insurance plan until age 19 if they are not in school, or until age 23 if they are a full-time student. There has been a movement during the past few years to address this issue and increase the age limit for student coverage. The Idaho Board of Education has also adopted a rule which requires all students attending college in the state of Idaho to obtain health insurance coverage. The result has been that many students have purchased plans provided through the colleges, and many of those plans are inferior in quality and very expensive. Studies have shown that a large portion of the uninsured population is within, and just slightly above, this age group.

The amendment presented in this bill changes the ages for coverage from 19 to 21 if not in school, and from 23 to 25 if currently enrolled in school. This age group is a low risk demographic and will not result in higher premium rates. It will provide better coverage for these individuals and reduce the educational costs to families.

**Senator Stegner** requested that **Senator Cameron**, as Chairman of the Health Care Task Force, provide a presentation to that body dealing with the quality and quantity of the mandated insurance coverage plans currently provided.

**Senator Goedde** advised that he was in receipt of a letter from a constituent stating that the mandated health insurance coverage had increased the cost of his daughter's education by 25%.

**MOTION:**

**Senator Stegner** made a motion, and **Senator Werk** seconded, to send S 1105 to the floor with a do pass recommendation. The motion carried with a **Voice Vote**.

**PRESENTATION:**

**Discussion of State Compensation Plan Audit, Conducted for the Division of Financial Management in September, 2006**

**Chairman Andreason** introduced **Neville Kenning** of the Hay Associates Group to address the Committee with regard to their 2006 audit of the State Compensation Plan. *(A copy of this audit report is included with these minutes as Attachment 1.)*

**Mr. Kenning** stated his presentation would achieve three things: (1) A quick overview of the Hay Group; (2) his role in that organization; and (3) a review of the audit of the State Compensation Plan, which the Hay Group conducted in September, 2006, copies of which were distributed to the Committee.

**Mr. Kenning** advised that the Hay Group was founded in 1943 in

Philadelphia, where it remains today. They operate in 47 countries with 88 offices. **Mr. Kenning** is the National Director of State Government Consulting Practice, and he works with approximately 28 states. He has been with Hay Group for approximately 20 years.

Back in the mid-1970's the State of Idaho adopted what is referred to as "the Hay Plan" which is actually a misnomer. This is actually the Hay methodology of establishing internal equity or internal relativity within the state using the Hay point factor method and also a means to establish a linkage between internal equity (how jobs are paid relative to each other within the state) and the external market.

One of the great myths that exists about Hay is that there is a disconnect between internal and external. The internal is a language by which to compare content-to-content to the external market, rather than title to title.

**Mr. Kenning** advised that he became involved with the State of Idaho in 1992, but there had been no major audits of the state's plan from when it was adopted in 1977 until 1993. In 1993, a major review was conducted of all major components of the plan and 23 recommendations were made and adopted. One of the recommendations adopted at that time was to conduct an audit every five to seven years, rather than every 16 years. Consistent to the plan that was adopted in 1993, an audit was conducted in 1998, but no further audits were conducted after 1998.

**Mr. Kenning** advised that there were two key pieces of legislation passed in 2006, House Bill 844 and Senate Bill 1363. The intent of the legislation was to make changes to the state employee pay plan, and the Division of Human Resources (DHR) was responsible for implementing those changes. As a result of some concerns expressed by various agencies (referred to as "the users") the Department of Financial Management contracted with Hay Group to complete an audit of these changes. The audit was conducted from July through September of 2006, with the objective of conducting an independent review of the changes and independent commentary regarding the changes. Copies of the Hay audit report had been provided to the Committee for review.

**Mr. Kenning** then referred to the areas of analysis on page 17 of the audit report. The review focused on the design changes, which included the following: Definition of the market; market matches (how many jobs were matched with the market); current policy to market ratio (how is the current pay relative to the market); using "market points"; new grade structure and ranges; merit matrix/pay delivery; and the administrative rules that were being drafted for the promulgation of the new plan.

**Mr. Kenning** then referred to the summary of findings on page 10, which sets forth the legislative initiatives directing the Division of Human Resources to "institutionalize" changes to the plan. He then referred to the overall findings on page 12 which state that, "on an overall basis, what was designed by DHR is consistent with the legislation that gave



its direction.” DHR did accomplish the legislative intent and the goal of getting closer to market in aggregate. However, in Hay’s opinion, it was done in an overly complicated and confusing manner.

**Mr. Kenning** stated their concern was with “the messages that were created that caused some of the positives to get lost” and summarized as follows: Messages have been coming to the legislators for years that state employees are behind market. Yet, as a result of the changes in the compensation plan, the pay range for 125 classifications, covering about 1,500 employees, went down. That also created “significant noise” and a contradiction in the minds of people, “How can you say we are behind market? We changed the way that the plan was designed, and 125 classifications went down!”

**Mr. Kenning** stressed the point that, “Unfortunately, you can do 99 things well, but if you do one thing badly, the one thing done badly gets the noise, and that’s what that issue created.” He did not believe it was the legislature’s intent, when attempting to get the plan closer to market, that 125 classifications would be reduced in salary.

**Mr. Kenning** explained that the reason this occurred was “this mix of internal alignment through this thing called ‘Hay factoring’ or ‘job factoring’ or ‘points’ and the external value of the job, which is the market, got mixed.” He explained that in the past, a job would be evaluated in a “statistic” which was expressed in points; and, there might be 50 jobs that were evaluated at the same size. For the vast majority of them, the market value would be around \$50,000.00. So, those jobs would have a salary mid-point of \$50,000.00.

He provided the following example: One of those classifications might be a nursing position; and, “as we know, nurses can name their own price and hours of work.” Therefore, the market value of that position might have been \$60,000.00. The internal value was expressed by points; the external value was expressed by the marketplace; and, if the marketplace was significantly “hot” we would address that through a payline exception or something similar.

The new system now says that we are going to give 60% of the value to the internal points, 40% of value to the external market, and create something called “total points.” Because the new system created internal language and used it for external purposes as well, it caused, and continues to cause, confusion among the agencies.

**Mr. Kenning** cited an example submitted by one agency: There were three Bureau Chiefs within the agency. The jobs have not changed for years, they have all been in the same pay grade, and they are not benchmark jobs when we look at the marketplace. As a result of the new plan, they ended up in three different pay grades; and, next year, they will again end up in three different pay grades.

While the overall structure did get closer to market, **Mr. Kenning** advised that for some “hot” positions (such as nurses, for example) a separate pay structure should be created for those positions, or the pay should be administered at a higher range; but he cautioned, however,

“we don’t want to mix the language by which to do it.” **Mr. Kenning** further stressed a very important point which he felt the legislature should understand, “is that state government as an employer is a very complex employer; you have jobs that are covered by your classified plan that would have nothing to do with each other if they were in the private sector.” State jobs include law enforcement, nurses, social workers, livestock inspectors, fish hatchery workers, etc. In the private sector, these jobs would not be provided under the same employer. Oil and gas companies would only have oil and gas related jobs, human resources (HR) , finance and information technology (IT). If you were a healthcare company you would have nursing, healthcare professionals, HR, finance and IT.

**Mr. Kenning** advised that “one size cannot fit all” and “we cannot expect that every job of the same internal value will have the same value in the external marketplace.” The intention was to address that issue, but it was addressed in a very complicated manner. There is a much simpler way to truly identify the positions deserving a market premium without ending up “betwixt and between” as happened with the nursing classifications (slightly higher pay range, but nowhere near the market range).

**Mr. Kenning** referred to pages 10-16 of the report and discussed Hay’s findings that an inappropriate combination of the internal equity and external market had created confusion over the language; and, that methodology continued to undervalue positions genuinely deserving a market premium. Further, although the intention was to create flexibility among the agencies in the administration of the plan, the rules that were promulgated ended up being tighter than they were previously.

**Mr. Kenning** then referred to pages 24-27 of the report which set forth Hay’s conclusions and recommendations. He emphasized that the new pay plan did achieve the objective of increasing the pay ranges for the majority of positions and brought them closer to market. But the plan is too complex, is not understood, and lacks credibility in the eyes of the users, and using this same methodology will produce a different result if followed again next year.

The recommendations set forth at pages 28-29 of the report suggested that the findings be presented to both executive branch and legislative leadership to determine whether revised legislation is needed or whether appropriate changes can be made through administrative rule. Additional considerations in the recommendations included:

- ❗ That the definition of “external market” be broadened to include large, in-State public sector employers;
- ❗ That a job factoring quality assurance review be conducted of a revised benchmark sample of classifications;
- ❗ The discontinuance of mixing Hay points and market points to create total points;
- ❗ Moving the salary structure by an aggregated amount; and then, consider “genuine” market premium positions, rather than reprice each job each year;
- ❗ Continue the concept of a merit matrix for pay-for-performance

delivery, but develop other guidelines for the delivery of pay for actions such as promotion, reclassification, etc.

**Mr. Kenning** emphasized that he did not recommend “that we go back to what it was before,” but that the legislative intent can be achieved in a much more clarified and understandable manner.

**Chairman Andreason** discussed the work of the Joint Interim Committee on State Employee Compensation in 2005. He said that the Joint Committee utilized a group of agency Human Resources (HR) directors, with many years of combined experience, as a “task force” to assist in the development of the Committee’s final recommendations. He then asked **Mr. Kenning** for suggestions that could make the system work in a more simplified manner.

**Mr. Kenning** advised that he had discussed the same issue with **Judy Wright**, Interim Director of Division of Human Resources (DHR), and it was his feeling that she would be involving those same people (the HR Task Force members) in addressing the changes to simplify the current system.

**Mr. Kenning** stated, “We could rightly raise the question, ‘Hang on a minute, you probably spoke to some of those same people when you did your audit,’ and that is exactly right, we did. And you could rightly raise the question, ‘How did we not get it right?’ But I think we used the Interim Committee to create the language which went into the bill; and, if I could be quite simple about it, where it got lost was in the translation. Because it was some of those same people feeding back to us, when we met with them to talk about the change, saying ‘I don’t believe that’s what was intended.’ So, I think we can look back to where we started; and, I think her (Judy Wright’s) intention would be to get back to some of those same people, hearing some of the directions that we have said in some of those recommendations and say, ‘Okay, how can we make this happen?’”

**Chairman Andreason** asked if the methodology of combining the Hay points with the market points was performed within the DHR itself, without the assistance of the HR Task Force personnel. **Mr. Kenning** confirmed that it was the Compensation Administrator of the Division of Human Resources who developed the “total point methodology.” He said that “the charge to make the changes” which resulted from the legislation brought forth by the Interim Committee, was given to the Division of Human Resources, and delegated to the Compensation Administrator, who was the designer of the plan.

**Chairman Andreason** asked **Mr. Kenning** if the Hay Group would be willing to provide further assistance to the state in implementing the recommendations in the report. **Judy Wright** confirmed that she would like to continue working with the Hay Group, if funds would be made available to contract for further services. **Chairman Andreason** then asked **Mr. Kenning** if he would involve the Interim Committee’s HR Task Force members in this process. **Mr. Kenning** said, yes, to the extent of his involvement, and that of DHR and the HR Task Force Members, that he sees a role for each of the three entities, based upon

what he has “mapped out” already. He said in hindsight, many of the issues in the report could have been minimized if, due to the long-term relationship with the State of Idaho, Hay Group had been asked to provide an opinion on some of the design changes prior to implementation by DHR.

**Chairman Andreason** then asked **Mr. Kenning** to expand on the Hay Group’s recommendation that the Division of Human Resources (DHR) should not be placed under the oversight of the Division of Financial Management (DFM). **Mr. Kenning** advised that this recommendation was not included in the audit of the State Compensation Plan, but in a different report, Enhancing the Delivery of Human Resources.

**Mr. Kenning** advised that in September, 2006, there were two different studies which were conducted concurrently, for two different audiences. The trigger of the report on Enhancing the Delivery of Human Resources was the change in leadership that occurred in DHR at that point in time, and it was focused on identifying “who should be accountable for what.” The recommendation in the report that DHR should not be combined with DFM was made “from the perspective of who should be accountable for what, in terms of the delivery of HR services.”

**Mr. Kenning** advised that Hay Group does not make decisions in terms of where functions are aligned. There are some models where these two functions are close together. The approach taken by Hay Group is “the decision has been made, how can we best work with you to make it work.”

**Senator Stegner** asked **Mr. Kenning** to provide his assessment of the actions of the Joint Interim Committee and their recommendation which was presented in Senate Bill 1363. **Mr. Kenning** advised that he did not see the Interim Committee’s report until two years later; and, at the time, his only concern was with the compensation issues and the extent to which the Interim Committee report, through legislation, was reflected in the administration of that legislation.

**Senator Stegner** asked if, in **Mr. Kenning’s** opinion, the current plan “is fixable.” **Mr. Kenning** stated that the plan is, indeed, fixable and that he has already “mapped out a plan” to deal with the implementation of the recommendations presented. The plan includes the collection of “missing” market data that needs to be considered, and de-coupling the mixing of Hay points and market points; and this can be accomplished through the re-visiting of the internal alignment of positions, which has not been done for nine years. Doing this will establish a ‘much cleaner connect’ with the market data in order to establish a number of appropriate salary policies to reflect the different number of jobs in the marketplace.

**Chairman Andreason** said he wanted to clarify the actions of the Joint Interim Committee and the later actions of the central office of the Division of Human Resources. The Division of Human Resources took the work of the Joint Interim Committee and established the State Compensation Plan. It was an internal DHR decision to mix the Hay

points of each position at 60% value with the market rate at 40% value. **Mr. Kenning** stated that when he asked how they arrived at the values of 60% and 40%, rather than 70-30 or 50-50, the response was “well, that might change next year” which created more confusion. **Mr. Kenning** said he believed the “sad intention” was 0-100, which would be 0% based on Hay Points and 100% based on market value. This is not a workable concept, however, because it is not possible to find a “match” of 1,200 jobs in the marketplace.

**Senator Broadsword** asked for clarification of the term “market value” and if it is a comparison of wages and benefits for the state employee, as well as the open market; or, are they just comparing the cost of wages to hire a person for that position. **Mr. Kenning** replied that for purposes of the State Classified Salary Plan, it is salary to salary, but they also survey benefits.

**Mr. Kenning** advised that the challenge presented in surveying benefits to arrive at an overall “value” of benefits within the state, has been that while salary is managed under one entity, benefits are administered under several entities. Health insurance, retirement, and paid leave time are all administered separately. **Mr. Kenning** stated that in 1998, Hay Group completed a “total remuneration survey” which was both salary and benefits, but for purposes of the discussion of the compensation plan audit, it was salary-to-salary.

**Mr. Kenning** stated that one of the immediate things that is being addressed is the 125 classifications that went down, because of the non-positive perception that has been created. At the very least, those positions should have remained neutral and should not have been reduced.

**Chairman Andreason** asked for clarification of how this was being addressed, and if they were working directly from the legislation to establish what actions would need to be taken.

**Mr. Kenning** advised that since the overall intention of the legislation has been achieved, they would not be going back to the legislation. They will first determine how to simplify and clarify the methodology that was used that produced these results, and then determine what needs to be done differently.

**Chairman Andreason** asked **Judy Wright** for an estimated timeframe for completion of this project. She indicated that previous discussions with **Mr. Kenning** indicated that if they began working now, they could have everything in place by the end of September.

**Senator Coiner** asked **Ms. Wright** to elaborate on the devolvement of the Division of Human Resources. She stated that the bill is currently being drafted and is undergoing DFM review. They hope to present a bill that is as complete as possible, and it will be close to 100 pages in length when completed. They hope to have the bill to the Senate for consideration by next week.

**Senator Broadsword** asked **Ms. Wright** what would happen to this

project if the Governor devolves DHR as of July 1, 2007, and the project will take until September to complete; and who, then, would be responsible for the completion of the project.

**Ms. Wright** stated that if the legislation passes and the devolvement of DHR occurs, then the agencies involved in this project would be the Department of Labor, Division of Financial Management, State Controller's Office, and other agencies to whom the special technical responsibilities are delegated. **Mr. Kenning** advised that regardless of where the functions eventually end up, the issues still need to be addressed regarding the state compensation plan. He sees the devolution of DHR as "boxes on an organization chart" but the work still needs to be completed on the state compensation plan.

**Senator Broadsword** asked **Mr. Kenning** if he thought that salary and benefits should be provided under one office or agency. **Mr. Kenning** advised that he is less concerned about the organizational perspective, but that when decisions are made on employee compensation, the decision-makers (legislators) need to hear all of the information at the same time to enable them to make a "total compensation decision."

**Mr. Kenning** stated that the "key" for legislators, is that "salary is a known value and benefits is a perceived value." Everyone can tell you what their salary is, and that is a known value. But if you tell a group of 23-year old employees that you are going to double the life insurance benefit, they say "so what?" But then again, if you tell 56-year old employees with 30 years of service that you are eliminating their retirement plan, you definitely get a reaction.

**Senator Coiner** asked **Mr. Kenning** what he would suggest to address the issue of professional positions that are so far behind in salary that they cannot even recruit people to fill them. **Mr. Kenning** suggested targeted funding would be appropriate for those positions, and that is where the separate paylines come into play. He cautioned against the "one size fits all" approach to the targeted funding.

**Senator Werk** mentioned his concern with the concept of "ratcheting down benefits while we increase the range for salaries." He was interested in **Mr. Kenning's** thoughts about this.

**Mr. Kenning** said there is a myth that exists, particularly among government entities, that they do not have to pay competitive salaries because the benefits are so good. Generally, when that is stated it is from the perspective of two benefits only: (1) the retirement formula and (2) holiday pay. It is a fact that holidays for the public sector are greater than the private sector. The myth about the retirement plan is that they only look at the retirement benefit formula; they do not look at the fact that the employees have to contribute to that benefit. Most defined benefit plans in the private sector are non-contributory for the employee.

**Mr. Kenning** stated that generally, in times of high unemployment, with fewer jobs available, people will move for benefit reasons. In a tight job market, with low unemployment, people will move for salary reasons.

Demographics are also important. Single parents will take a benefit change into consideration far more than salary. That is why it is important to present the total compensation picture to the legislature. Managing back benefits is not necessarily a bad thing if it is done for the right reasons. That is why it is important to develop a plan which considers all of these factors.

**ADJOURNMENT:** **Chairman Andreason** thanked **Judy Wright** and **Neville Kenning** for their presentation. With no further business before the Committee, **Chairman Andreason** adjourned the meeting at 3:08 p.m.

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Senator John Andreason  
Chairman

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Olga Copley  
Secretary

**NOTE:** Any sign-in sheets, guests lists, and/or testimony, booklets, charts and graphs, will be retained in the Committee Secretary's Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** February 20, 2007

**TIME:** 1:30 p.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** None

**GUESTS:** See attached Sign-In Sheet.

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:33 p.m.

**APPROVAL OF MINUTES:** **Senator Bilyeu** made a motion, and **Senator Coiner** seconded, to approve the Minutes for January 11, 16, 18 and 23, 2007. The motion carried with a **Voice Vote**.

**GUBERNATORIAL APPOINTMENT:** After introductions by **Chairman Andreason**, committee members interviewed **Thomas Limbaugh** for re-appointment to the Idaho Industrial Commission to serve a term commencing January 1, 2007 and expiring January 1, 2013.

**Mr. Limbaugh** answered questions from the Committee and discussed his qualifications and service with the Industrial Commission. **Chairman Andreason** thanked **Mr. Limbaugh** for his attendance, and advised that the committee would take action on his appointment at the next meeting.

**S 1109** **Real Estate Commission, Fees, Education**

**Chairman Andreason** introduced **Jeanne Jackson-Heim, Executive Director for the Idaho Real Estate Commission**, to present S 1109 before the Committee.

**Ms. Jackson-Heim** advised that this legislation is the Commission's "annual housekeeping bill" and covers matters emerging from recent legislation and program development in the continuing education arena. It also responds to changes in the licensing system capabilities and record keeping practices. There is no fiscal impact from this legislation.

**Ms. Jackson-Heim** answered questions from the committee regarding audio-visual classroom conferencing and provided clarification of these classes, as well as discussion of content, attendance tracking and monitoring for educational credit.

**MOTION:** **Senator Cameron** made a motion, and **Senator Werk** seconded, to send S 1109 to the floor with a do pass recommendation. The motion carried with a **Voice Vote**.



S 1155

## Modular Buildings, Inspections

**Chairman Andreason** recognized **Senator Kate Kelly** to present S 1155 before the Committee.

**Senator Kelly** said the legislation presented is designed to correct certain deficiencies related to the law applicable to the growing modular building industry in Idaho. This bill improves communication between the industry and the Division of Building Safety by establishing an Idaho Modular Building Advisory Board, streamlines and consolidates the permitting requirements and fees applicable to the industry, and ensures that out of state manufacturers bringing modular building into Idaho for occupancy are held to the same construction and inspection standards as those manufacturers building structures in Idaho for occupancy in Idaho.

In response to questions from the Committee, **Senator Kelly** introduced **Scott Adamson**, owner of Northwest Building Systems, a commercial modular manufacturer in Boise. **Mr. Adamson** addressed questions from the Committee regarding the performance of building inspections and the fees charged for this. The modular manufacturers will still rely upon the State of Idaho for building inspection services, and the fees remain the same as those currently in place. The difference, however, is that the several small fees currently charged will be combined into one aggregate fee amount.

**Senator Cameron** directed a question to **Stephen Keys, Deputy Administrator for the Division of Building Safety**, regarding the ability of the Division of Building Safety to provide adequate services to the modular manufacturing industry with the fees currently in place. **Senator Cameron** asked whether the fees to be collected from only four manufacturers would be sufficient to carry out the duties required in S 1155.

**Mr. Keys** said that the legislation would not increase the inspection workload, but only changes the permitting process. The manufacturers will now submit one permit form, with a single payment which will cover costs for all of the inspection entities involved. A new charge for out-of-state manufacturers will result in significant payment of funds toward this process, as they are required to purchase an insignia for all out-of-state buildings. There is also a tri-party agreement in place between the states of Oregon, Washington and Idaho, which provides for the State of Idaho to conduct inspections for modular manufacturers in all three states. **Mr. Keys** stated that the Division of Building Safety "is confident that the funding is there" and there will be more than enough fees collected to support the program. An analysis of start-up expenses for the first year did not show any need for additional funding; and, there is nothing in this bill that will adversely impact the finances of any of the other building boards.

**MOTION:**

**Senator Werk** made a motion, and **Senator Coiner** seconded, to send S 1155 to the floor with a do pass recommendation. The motion carried with a **Voice Vote**.

**Film/TV Production Business, Rebate**

**Chairman Andreason** recognized **Tom Williamson from the Idaho Film Advisory Commission** to present S 1156 before the Committee. **Mr. Williamson** deferred to the sponsors of the legislation, **Senator Clint Stennett**, Minority Leader, and **Senator Robert Geddes**, President Pro Tempore, to present this legislation.

**Senator Geddes** said the legislation will establish a fund to be used for reimbursement and incentives for businesses who come to Idaho for the purpose of producing movies, television, commercials or other types of film presentations. The bill establishes a fund, allows procedures to be put into place, and provides an incentive for the film industry to take advantage of the beauty and esthetics that Idaho has to offer. **Senator Geddes** advised this is an opportunity for Idaho to realize an available economic opportunity and become more competitive with our surrounding states with regard to this industry. Without this legislation, Idaho will continue to be at a competitive disadvantage for those who wish to pursue careers or activity within the film industry.

**Senator Stennett** stressed that the requirements of S 1156 for utilization of this fund include the hiring of Idaho residents by the film crews. In fact, 20% of the employees utilized by the film entity must be residents of Idaho, and the money expended for the production must be spent in Idaho, in order to qualify for the 20% rebate provided in the bill. Many of our surrounding states provide similar programs for the film industry, and Idaho needs similar legislation to remain competitive for this industry as well. **Senator Stennett** continued that the 20% expenditure requirement does not include payments to film stars involved in the particular production, but applies only to "on the ground work in Idaho." There are a number of individuals throughout Idaho that are involved in the production of film products, and this would serve as an incentive for further opportunities for involvement and advancement of the film industry in Idaho.

**Senator Goedde** pointed out a typographical error on the Statement of Purpose where the economic multipliers were displayed as percentages rather than specific numbers.

**Senator Davis** discussed the sales tax incentive for film productions that was passed last year. **Mr. Williamson** confirmed that it was a 6% sales tax rebate that would be provided to "media productions." As it takes some time "to get the message out" to the film industry regarding available incentives, and due to the length of time usually involved in the creation and development of film productions, it is too early to accurately determine the effectiveness of the sales tax rebate in bringing additional film business to Idaho.

**Senator Davis** and **Senator Stegner** requested clarification of specific language and definitions included in the bill, as well as the process for verification of the 20% spending requirement for Idaho employees and "on the ground work" in Idaho.

**Mr. Williamson** advised that S 1156 was modeled after international and

national film industry incentives. Countries such as Canada and New Zealand have seen an increased expansion of the industry through economic incentives. Additionally, several states within the U.S., such as Utah, Louisiana and Washington, are also providing economic incentives to attract and expand film industry productions. The “Vancouver model” on which S 1156 was based, brought a significant increase of film productions to Canada and required local employment to qualify for the financial incentives. The employment requirement has now turned the film industry to where 90% of the industry is actually manufactured by Canadians. This is what proponents of S 1156 hope to do in Idaho.

**Mr. Williamson** discussed two specific points of the legislation. Section 3, which provides a rebate of 20%, was modeled after neighboring states and is designed to create a film industry “base” in Idaho. Utah has a 10% rebate, without capitation. The 20% rebate, which includes the expenditure requirement within Idaho, “was a very solid way to help build the Idaho infrastructure for this industry” and allow Idaho residents to build their resumes in film production, thus creating a “base” for the film industry in Idaho. Secondly, all marketing, advertising and other costs are excluded from the rebate; only the dollars spent to hire citizens of Idaho and for purchases within Idaho will qualify for the incentive rebate.

**Senator Stegner** questioned what methods were in place to verify that Idaho residents were, in fact, employed in these productions. **Mr. Williamson** advised that the verification would be handled per administrative rule, and specific details were not included in this legislation. Different states have different criteria for determining residency requirements; some are as simple as requiring that the person have a valid state driver’s license.

**Senator Werk** stated his understanding that the rebate would be provided only to “qualified productions.” This would require the production entity to “apply” with the Department of Commerce & Labor to be recognized as a qualified production; and, at that time the tracking process would begin. This would be prior to the issuance of any rebate payment. **Mr. Williamson** confirmed that this is correct.

Extensive discussion followed regarding specific language in the legislation, statutory authority, verification of expenditures, definition of “base investment,” and use of the terms “rate” and “rebate.” **Mr. Williamson** deferred to **Kathleen Haase, Film Specialist with the Idaho Film Commission**, to address these questions.

With no further testimony to be heard, **Senator Davis** stated that he could not support S 1156. Although he did not want to discourage the idea behind this legislation, the bill as presented appears to be an outline, without any rulemaking authority.

**MOTION:**

**Senator Davis** made a motion, and **Senator Stegner** seconded to hold S 1156 in Committee.

**DISCUSSION:**

**Senator Stegner** stated that he was opposed to the legislation as he prefers economic incentives to be “tax incentives” rather than “slush

funds.” He could not justify providing a fund for the film industry, but not for a host of other industries that might be enticed to come to Idaho. He did not feel that Idaho should do this “just because every other state is doing it.” Further, with the fast growing economy in Idaho, such incentives may not even be justified.

**Senator Broadsword** wished to state, on record, that the film industry is different than most other businesses. Film crews arrive in the state, complete their project, and then go home. They do not come here and “set up shop” like a manufacturing or sales business. The film industry is a segment of business similar to tourism, and we want to entice these people to come to Idaho, spend their money, and then leave. She does feel, however, that there are “enough issues with this legislation” that she will support the motion to hold S 1156 in Committee.

**Senator Werk** also emphasized the similarity of the film industry to tourism, and noted that large investments can be attracted to a community through the film industry without having to provide the infrastructure to support all of that investment. With regard to setting up a “slush fund” specifically for the film industry, **Senator Werk** reminded the Committee that “we do have a \$1 million slush fund that has been used before.” He referenced the fund provided to the Department of Commerce & Labor, which can be used at the Director’s discretion to bring businesses to Idaho. While he feels this is a very worthy effort, he stated that “the bill itself has too many issues to send to the amending order” but he wished another attempt at this legislation could be made this session. He will also support the motion to hold S 1156 in Committee.

**Senator Bilyeu** agreed with **Senators Broadsword and Werk**, stating that the legislation “is a brilliant concept” and it is important legislation. She could not, however, support the motion to hold the bill and said, “to me, that kills the opportunity for them to come back this year with some corrections to the bill.”

**Senator Cameron** agreed with the comments from **Senators Werk and Broadsword** and acknowledged that there are some problems with the bill as presented. He commented that the Legislature provides some different economic incentives for all kinds of industries within the state. The best incentives are those tailored toward “what works with the industry,” and it is obvious that this bill addresses what works in the film industry. **Senator Cameron** advised that had this legislation not been presented, the funds would have likely been located and appropriated to the Department of Commerce & Labor with enabling legislation specifically for this purpose. He believed that “a good bill can always be made better” and submitted a substitute motion for consideration.

**SUBSTITUTE MOTION:**

**Senator Cameron** made a substitute motion, and **Senator Werk** seconded, to send S 1156 to the 14<sup>th</sup> Order for amendment.

**ROLL CALL VOTE:**

**Roll Call Vote** of the Committee on the Substitute Motion resulted in a tie, with four Ayes (**Coiner, Cameron, Werk and Bilyeu**) and four Nays (**Andreason, Stegner, Davis and Broadsword**).

The **Roll Call Vote** on the Original Motion also ended in a tie, with four Ayes (**Andreason, Stegner, Davis, and Broadsword**) and four Nays (**Coiner, Cameron, Werk and Bilyeu**).

**Senator Goedde** had left the meeting early and was not present to vote on either motion.

**ADJOURNMENT:** With no further business, **Chairman Andreason** adjourned the meeting at 3:08 p.m.

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Senator John Andreason  
Chairman

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Olga Copley  
Secretary

**NOTE:** Any sign-in sheets, guest lists, and/or testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** February 22, 2007

**TIME:** 1:30 p.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** Chairman Andreason

**GUESTS:** See attached Sign-In Sheet.

**CONVENED:** **Vice Chairman Coiner** advised that **Chairman Andreason** was excused from today's meeting as he was in Norwalk, Connecticut, attending the meeting of the Government Accounting Standards Board (GASB), and called the meeting to order at 1:30 p.m.

**GUBERNATORIAL APPOINTMENT:** **Vice Chairman Coiner** announced that the committee was ready to take action on the re-appointment of **Thomas Limbaugh** to the Idaho Industrial Commission. **Mr. Limbaugh** had appeared at a previous committee meeting and had been re-appointed to serve a term commencing January 1, 2007 and expiring July 1, 2013.

**MOTION:** **Senator Cameron** moved to send the re-appointment of **Thomas Limbaugh** to the Idaho Industrial Commission to the Senate floor with the recommendation that the re-appointment be approved. The motion was seconded by **Senator Broadsword** and carried by a **Voice Vote**.

**Vice Chairman Coiner** then presented three proposed Senate Concurrent Resolutions for consideration to be sent to a privileged committee for request to print. These three pieces of legislation, RS 17050C1, RS 17052 and RS 17073, will implement the action of the Committee in the review of Administrative Rules for the Industrial Commission, the Department of Commerce & Labor, and the Division of Human Resources/Personnel Commission.

**RS 17050C1** **Senate Concurrent Resolution regarding Administrative Rules of the Industrial Commission, Docket No. 17-0208-0602**

This concurrent resolution would reject a subsection of a pending rule of the Industrial Commission pertaining to Miscellaneous Provisions. The effect of this resolution, if adopted by both houses, would be to prevent the agency rule from going into effect. There is no fiscal impact.

RS 17052

**Senate Concurrent Resolution regarding Administrative Rules of the Department of Commerce & Labor, Docket No. 09-0135-0601**

This concurrent resolution would reject four subsections of a pending rule of the Department of Commerce & Labor pertaining to Unemployment Insurance Tax Administration Rules. The effect of this resolution, if adopted by both houses, would be to prevent these subsections of the agency rule from going into effect. There is no fiscal impact.

RS 17073

**Senate Concurrent Resolution regarding Administrative Rules of the Division of Human Resources/Personnel Commission, Docket No. 15-0401-0301 and renumbered Docket No. 15-0401-0601**

This concurrent resolution would reject a subsection of a final rule of the Division of Human Resources and Personnel Commission. The effect of this resolution, if adopted by both houses, would be to remove the agency rule subsection from the Administrative Code. There is no fiscal impact.

**UNANIMOUS  
CONSENT  
REQUEST:**

On request by **Vice Chairman Coiner**, granted by unanimous consent, RS 17050C1, RS 17052 and RS 17073 were sent to Judiciary and Rules Committee to be sent to the floor to be printed, and then referred to the Tenth Order of the Senate for further action.

**Vice Chairman Coiner** then introduced **Senator Cameron** to present S 1107 before the Committee.

S 1107

**Hospital/Medical Insurance/Discrimination**

**Senator Cameron** opened his presentation with the disclosure, under Rule 39H, that he is a business owner involved in selling medical and disability insurance; however, he will not see any pecuniary gain through this proposed legislation.

The purpose of S 1107 is to make a technical correction to Section 41-1313, Idaho Code, which was created by the passage of Senate Bill 1423 in 2006. As currently defined in Idaho Code, the term "health benefit plan" refers to hospital and medical insurance, and specifically excludes long term care and disability income insurance plans. Senate Bill 1423 used the term "disability insurance," which under Idaho law may be read broadly to include not only insurance for hospital and medical expenses, but also individually purchased financial products such as long term care and income protection insurance.

**Senator Cameron** explained that while the 2006 legislation related to genetic privacy and focused strictly toward health insurance, the Idaho health insurance statutes reside within the disability functions of state law. Inadvertently, language was included in Senate Bill 1423 which affected not only health insurance policies but disability policies as well. Disability insurance providers do not consider genetic testing information, but do review all medical reports and diagnosis. However, the purpose of the disability policy is to provide a monthly income should the person become disabled; therefore, should a person discover through genetic testing that they have a disabling disease (Multiple Sclerosis, Parkinsons, etc.) they would not be required to disclose that information when purchasing a disability policy. This would create a tremendous adverse selection

consequence in the disability insurance market; and, in turn, disability insurance companies would either withdraw from Idaho entirely or the policy costs would substantially increase.

This legislation was drafted to correct the inadvertent broadening of the original intended scope of Senate Bill 1423, while preserving the originally intended application of the bill. There will be no fiscal impact to the State general fund, and the legislation is supported by all of the major insurance companies in Idaho.

**Senator Cameron** then addressed several questions posed by **Senator Werk** regarding the insurance review process and how genetic testing and medical records relate to this process.

**Senator Goedde** requested to disclose for the record that he is presently licensed to sell disability insurance in Idaho; however, he has not done so to date.

**Senator Broadsword** stated that while she would “not stand in the way” of this legislation, she did not approve of the inference that she had “done something unknowingly” with Senate Bill 1423. She affirmed her position that “no insurance company should be able to use your genetic privacy information against you, because it is a private test as specified in Senate Bill 1423.”

**MOTION:**

**Senator Goedde** made a motion, and **Senator Cameron** seconded, that S 1107 be sent to the floor with a do pass recommendation. The motion carried with a **Voice Vote**, with **Senator Broadsword** dissenting.

**Vice Chairman Coiner** then recognized **Senator Brent Hill** to present S 1126 before the Committee.

**S 1126**

**Motor Vehicle, Liability Coverage, Minimum**

**Senator Hill** advised that while he is generally opposed to mandates upon the free market system; however, this legislation is presented to address a current and ongoing injustice with regard to motor vehicle insurance. This bill is one of a series proposed to modernize and streamline judicial and legal proceedings in automobile insurance litigation. These revisions to current law allow insureds to make claims against insurance policy amounts for which premiums have been collected. This protects family members, passengers and authorized users of the insured person’s vehicle.

**Senator Hill** addressed the issue of “family step down” with regard to insurance coverage. Many insurance companies have created a loophole in coverage by providing less coverage for family members, as opposed to other injured parties. Policy holders usually do not realize there is a step down provision pertaining to family members, but believe that the insurance amounts available will apply to family members and non-family members. For example, if a person is driving their own car and causes a wreck, the policy provides liability coverage of \$100,000. However, if the person’s mother, child, or other relative is driving the car and causes a wreck, then the same policy provides liability insurance of only \$25,000. Most consumers are not aware of the “family step down” clause when



they purchase their insurance policies. As more and more people are purchasing insurance on the internet, they do not have an agent to explain their policies to them. This bill will remedy this situation for the consumers of car insurance so they will know that if the insurance is bought, the face value of the policy is truly the amount of insurance that is available, without any dramatic reductions by some obscure clause in the policy.

**Woody Richards** addressed the Committee in opposition to this legislation on behalf of the Property and Casualty Insurers Association (PCI). **Mr. Richards** advised that PCI is a trade association of approximately a thousand insurance companies that write property and casualty insurance policies, and many of them do write automobile insurance in Idaho. He expressed his appreciation to **Senator Hill** for meeting with representatives from the insurance industry to discuss both Senate Bills 1125 and 1126.

**Mr. Richards** advised that S 1126 does two things to Idaho law regarding the issuance of liability insurance policies. First, it provides that no policy shall provide a reduced level of insurance to any insured's family or household members or any other authorized user. As the insurance company prices a product based upon the motor vehicle record of the policy purchaser, it does not contemplate the risk undertaken when a newly licensed minor or other unknown authorized driver is using the vehicle; that is why some policies provide coverage responsibility only at the minimum \$25,000 level required by law. **Mr. Richards** stated that if S 1126 becomes law, then the larger amounts of coverage will apply to every situation in which the vehicle is in operation, and this will result in an unknown increase in policy costs to cover this risk. As affordability is a major factor in purchasing insurance products, this will only contribute to a higher percentage of motorists who will not be able to afford auto insurance.

Extensive discussion followed, with Committee members asking questions about the purpose of insurance coverage, requirements for full disclosure, minimum legal requirements, and potential increases in policy costs.

**Kent Day**, attorney with Liberty Mutual Insurance, also addressed the Committee in opposition to S 1126. **Mr. Day** expressed his concern with the provision in this legislation which amends Section 49-2417(2), Idaho Code, and would increase the limits of liability for imputed negligence to the limits of the liability insurance maintained by the owner. He stressed there seems to be a perception that automobile insurance is bought to protect the automobile; however, individuals purchase insurance "for protection of personal assets" and the underwriter considers the purchaser's personal assets in determining how much coverage is appropriate. **Mr. Day** stated that this will result in an increase in rates in all situations.

**Phil Barber**, counsel for the American Insurance Association, addressed the Committee in opposition to S 1126. He agrees that the family

exclusion provision should be retained, and stated that this provision is used frequently to avoid entire families being “kicked into the high risk pool” of insurance. He believes that a disclosure and “opt out” provision would address the issue sufficiently.

**Allyn Dingel**, representing State Farm Insurance Companies, also addressed the Committee in opposition to S 1126. **Mr. Dingel** opened his presentation by disclosing for the record that **Senator Bilyeu** is his sister-in-law. **Mr. Dingle** advised that the step down provision is not a concern for his companies, but the additional language regarding imputed negligence does not take into consideration self-insureds. He suggested that, at a minimum, the legislation be amended to include the words “except as provided in Section 41-2510” at line 55, page 2, after “No motor vehicle liability policy.” This would retain the exclusion provision of Section 41-2510.

**Senator Broadsword** asked **Senator Hill** if he would accept the amended language, and **Senator Hill** agreed.

**MOTION:** **Senator Werk** made a motion, and **Senator Stegner** seconded, to send S 1126 to the floor with a do pass recommendation.

**SUBSTITUTE MOTION:** **Senator Broadsword** then made a substitute motion, seconded by **Senator Bilyeu**, to send S 1126 to the 14<sup>th</sup> Order for Amendment. The substitute motion carried with a **Roll Call Vote** of six Ayes (**Senators Coiner, Stegner, Davis, Broadsword, Werk and Bilyeu**) and two Nays (**Senators Goedde and Cameron**).

Due to time constraints and the loss of a quorum, both S 1125 and S 1124 were carried over to the next meeting on February 27, 2007. Opportunity to provide testimony was allowed for individuals who would be unable to attend the next meeting on February 27th.

**Darrel W. Aherin**, an attorney from Lewiston, Idaho, addressed the Committee regarding S 1126 and S 1125. **Mr. Aherin** stated that Idaho law is very different from other states, in that we do not have standard automobile policies for insurance. Therefore, each time a purchaser obtains insurance from a different company, the coverage purchased is different. This has resulted in many of the problems that these bills are trying to correct. He provided an example of consumers being told by their agent what was contained in the policy. However, the insurance company had modified that policy from what was presented to the consumers; therefore, when the individuals filed a claim and the discrepancy in coverage amounts was discovered, the insurance agent's errors and omissions insurance was required to make-up the difference in the coverage amount.

**Breck Barton**, an attorney from Rexberg, Idaho, also addressed the Committee and provided a specific example of the problem that is addressed with S 1126. He cited a situation with his clients “Judd” and “Susan” who had a married daughter that stayed with them over the summer as she finished her education at BYU Idaho; the daughter had a two-year old son. After dinner one evening, when the family was outside on the front lawn, “Judd” asked his son to move the irrigation pipe. The

son jumped into the truck without looking and backed out of the driveway. Unfortunately, he backed over his nephew, crushing his thorax and resulting in internal injuries to the gastrointestinal tract, liver, spleen, and lungs. The child was Lifeflighted to Primary Children's Hospital where he spent three weeks in the Intensive Care Unit. The child was released from the hospital and the prognosis is good, but the medical bills amounted to more than \$300,000. The child's uncle was very remorseful and repeatedly said, "I should have looked, I should have looked!" His father consoled him, telling him not to worry because the farm was insured at very good limits. However, after consulting with the insurance agent, the family was told that there was a family step down that would result in limited coverage of only \$25,000. The family asked the agent, "What are we going to do to pay the bills?" The agent's response was, "Tell your kids to apply for Medicaid."

**Mr. Barton** advised that the legislation addressed an issue that would not be faced by the lowest covered, minimum limit carriers, but the individuals who can afford the coverage. They purchase the coverage believing that they are insured to the limits of the coverage that they purchased, but when the insurance claim is filed they are told, "tell your kids to apply for Medicaid." **Mr. Barton** stated that he has changed his personal insurance carriers to make certain that his wife and son are covered by the same limits as his neighbors or a stranger. When insurance companies step down the limits of coverage, then the citizens of Idaho must bear the costs incurred. If this were truly a price-sensitive issue, then all insurers would have the step down provision rather than just a few companies. Other states prohibit the use of family step down, and this legislation will eliminate this unjust practice in Idaho.

**ADJOURNMENT:** **Vice Chairman Coiner** adjourned the meeting at 3:20 p.m.

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Senator Charles Coiner  
Vice Chairman

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Olga Coply  
Secretary

**NOTE:** Any sign-in sheets, guest lists, and/or testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).

MINUTES

**SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE**

**DATE:** February 27, 2007

**TIME:** 1:30 p.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** None

**GUESTS:** See attached Sign-In Sheet.

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:33 p.m.

**Chairman Andreason** introduced **Jane Kinn-Buser, Executive Director of Human Resources for Boise State University**, to present RS 16948 for consideration to be sent to a privileged committee for request to print.

**RS 16948** **Optional Retirement Program, Revise, Percentages**

**Ms. Buser** stated that public higher education institutions throughout the country have increased their employer contribution rates during the last several years, with the average employer rate approximately 10%. This has resulted in the Idaho institutions being at a competitive disadvantage in both recruitment and retention of key faculty and professional staff. The effect of this legislation is to increase the contribution to the employees to 9.25% while extending the time for payments to be made to the Public Employee Retirement System of Idaho (PERSI) at a reduced rate. This would be revenue neutral and is supported by the Presidents of Boise State University, University of Idaho, Idaho State University, and Lewis & Clark State College, as well as the State Board of Education's Executive Committee. The PERSI Board has been briefed and does not oppose this legislation.

**UNANIMOUS CONSENT:** On request by **Senator Werk**, granted by unanimous consent, RS 16948 will be sent to Judiciary and Rules Committee to be sent to the floor to be printed, and then referred back to the Commerce & Human Resources Committee for further action.

**Chairman Andreason** then recognized **Tom Williamson of the Idaho Film Advisory Commission** to present S 1156 before the Committee.

**S 1156** **Film/TV Production Business, Rebate**

**Mr. Williamson** thanked the Chairman and Committee for their input and comments provided at the previous meeting on February 20, 2007. **Mr. Williamson** advised that **George Kennedy**, a well-known actor in films

and television, had planned to attend today's meeting for the purpose of testifying in favor of S 1156. Unfortunately, **Mr. Kennedy** had suffered an injury that morning which prevented his attendance at the meeting, but copies of **Mr. Kennedy's** testimony were distributed to the Committee for review. *(A copy of Mr. Kennedy's testimony is included in these minutes as Attachment 1.)* **Mr. Williamson** then introduced **Kathleen Haase, Film Specialist with the Idaho Film Bureau**, to present the proposed amended language for S 1156.

**Ms. Haase** said that changes had been made to correct the typographical errors noted by Committee members on February 20, 2007. The title has also been changed to be more descriptive of the purpose of the legislation. Page 1, lines 20-22, includes language to provide the Director of the Department of Commerce & Labor the authority to promulgate Administrative Rules, and Subsection 2 has been changed to clarify the types of productions that qualify for this rebate program. Page 2, line 6, provides clarification of the process to be used to verify the employment of in-state workers. A new clause has also been added to Section 2, page 3, stating that any unused money will be returned to the General Fund as of July 1, 2010. **Ms. Haase** stated that the amended document now presented to the Committee was referred to by Legislative Services staff as "radiator capping" and it was not an actual "amendment" to the legislation.

**Ms. Haase** concluded by re-affirming that this legislation is an economic development tool. It has been designed specifically to grow the film industry in the state of Idaho, it will attract millions of dollars into the economy, and build an experienced workforce and an infrastructure in a well-paying industry for existing workers as well as students who will be entering this industry in the future. The film industry has proven to be a good business partner to many states. The film industry is non-consumptive and non-polluting, and does not require the building of roads, schools, or other facilities to accommodate the industry.

Extensive discussion followed about film industry rebates provided in neighboring states, average wages for jobs within the film industry, and film industry facilities currently in Idaho that would also benefit from the passage of this legislation.

**Senator Cameron** commented that the concept behind this legislation has already proven to work in other states, and he believed that Idaho could also benefit from this type of economic incentive program.

**MOTION:** **Senator Cameron** made a motion, and **Senator Werk** seconded, to send S 1156 to the 14<sup>th</sup> Order for Amendment.

**SUBSTITUTE MOTION:** **Senator Stegner** made a substitute motion, and **Senator Davis** seconded, to hold S 1156 in Committee.

**DISCUSSION:** **Senator Stegner** said he could not, in good conscience, support "the singling out of this industry" for what he considered "a slush fund" when there are other industries also deserving of economic incentives.

**Senator Cameron** responded that this legislation is for “economic development” of the film industry and it is not “a slush fund.” Other industries have approached the Legislature for economic incentives, and the Legislature has responded appropriately with tax breaks, incentives and benefits. It is always a struggle to find enough money to address the needs of the state, and any proposal that will generate more income than it will expend is a “good investment.” Funding has been identified within the Department of Commerce & Labor to cover the cost of this program, so there would not be any impact on the state’s general fund.

**Senator Broadsword** said that the limited time frame of two and a half years appeared very short when compared to the film production life cycle, which can take several years. Mr. Williamson confirmed that while the total life cycle of a film production may cover a few years, there are hundreds of projects currently at the point of locating their film sites and gearing up for filming; and, these are the projects they hope to entice to Idaho with this rebate program.

**Senator Goedde** spoke in favor of the substitute motion, stating that Idaho already has resources that have been put into economic development tools, and the workforce training program is the largest funded program available to develop Idaho industry. While the film industry is a “transitory business” he would prefer to attract other industries that would remain in Idaho for many years and employ Idaho citizens.

**Senator Werk** reminded that this is an opportunity to “attract economic input into the economy without footprint” and there is no need to provide school services, road access, or any other infrastructure that would have to be paid for with local tax dollars. He feels that this is a definite advantage to providing the economic incentives of S 1156.

**ROLL CALL  
VOTE:**

A **Roll Call Vote** on the Substitute Motion to hold S 1156 in Committee failed, with three Ayes (**Stegner, Goedde and Davis**) and six Nays (**Andreason, Coiner, Cameron, Broadsword, Werk and Bilyeu**).

A **Roll Call Vote** on the Original Motion to send S 1156 to the 14<sup>th</sup> Order for Amendment passed, with seven Ayes (**Andreason, Coiner, Cameron, Goedde, Broadsword, Werk and Bilyeu**) and two Nays (**Stegner and Davis**).

**Chairman Andreason** introduced **Trent Wright, Executive Vice President for the Idaho Automobile Dealers Association (IADA)**, to present S 1152 to the Committee.

**S 1152**

**Motor Vehicle Dealer/Manufacturer Incentive Program**

**Mr. Wright** explained that the purpose of this legislation is to provide terms for reimbursement of claims to motor vehicle dealers under a manufacturer incentive program and to provide a time frame for submission of such claims.

**Mr. Wright** stated that it is very important to Idaho’s dealer body to have legislative guidelines for manufacturers to follow, so dealers are not left

“holding the bag” in rebates given to the consumer to which the dealer may have no way of recovering. This bill will level the playing field between automobile dealers and manufacturers by providing terms for the reimbursement of incentive programs, Claims that are not disapproved within 30 business days after the manufacturer or distributor receives the claim are deemed automatically approved. Dealers will have the necessary time needed to submit an incentive claim (90 days), and the manufacturers will have a uniform time line to audit a claim (one year). Currently, 39 states have code in place that addresses these specific concerns.

Similar legislation was brought forth in 2006, but did not go forward because of concerns expressed by the National Alliance of Auto Dealers and the manufacturing groups. A meeting with representatives of those groups has resulted in amended language that is mutually acceptable to all parties. **Mr. Wright** requested that the Committee approve S 1152 with the amendment presented.

**MOTION:** **Senator Goedde** made a motion, and **Senator Broadsword** seconded, to send S 1152 to the 14<sup>th</sup> Order for Amendment. The motion carried with a **Voice Vote**.

**Chairman Andreason** introduced **Senator Brent Hill** to present S 1125 before the Committee.

**S 1125** **Motor Vehicle, Underinsured**

**Senator Hill** stated that this legislation deals with “uninsured” motor vehicle coverage and “underinsured” motor vehicle coverage. Idaho law requires that insurance companies offer “uninsured” motor vehicle coverage to provide payment for bodily injuries sustained if the customer is in an auto accident with an uninsured motorist; this is a completely voluntary coverage, but the insurance company must offer this coverage to the customer.

Most companies also provide “underinsured” motor vehicle coverage, which provides additional coverage if the customer is involved in an auto accident with someone who is only insured to the statutory minimum limits. (Example: Motorist A is involved in an accident with Motorist B. Injuries to Motorist A amount to \$100,000 but Motorist B is only insured to the limit of \$25,000; therefore, the “underinsured” policy purchased by Motorist A would provide additional coverage to pay for injuries sustained in the accident.)

**Senator Hill** advised that if a consumer does not have “underinsured” motorist coverage, they “are actually better off getting in an accident with a driver that does not have insurance coverage at all,” which did not make any sense to him. This legislation will require that insurance companies at least offer “uninsured” and “underinsured” insurance coverage to customers in Idaho. This is a requirement in 15 other states.

The legislation will also make it clear to customers that “underinsured” motorist coverage truly is additional coverage. Senator Hill provided the following scenario: Under the current law, a consumer is involved in an

auto accident that is not their fault, and their resulting medical expenses amount to \$100,000. The motorist, who is at fault for the accident, has coverage limits of \$25,000, and the motorist not at fault has “underinsured” motorist coverage in the amount of \$25,000. The injured consumer, who is not at fault for the accident, really believes that they have a total of \$50,000 of insurance coverage that will be applied toward the \$100,000 medical expense. However, under current law, this is not the case. The insurance company is allowed to reduce its coverage limit by the amount of coverage provided by the perpetrator. So, the consumer has paid premiums for policy coverage in the amount of \$25,000, but the coverage limit will be reduced by the \$25,000 of insurance coverage received from the perpetrator. The result would be \$25,000 minus \$25,000 which means that the consumer’s insurance company would not pay anything at all on the underinsured motorist policy. Senator Hill advised that S 1125 would eliminate the ability of a consumer’s insurance company to “offset” the limits of coverage with the coverage of the perpetrator. All too often, people believe that they have purchased sufficient insurance coverage to address their needs, only to find that this is truly not the case.

**Senator Hill** read from a letter he received from a citizen facing this problem: “... now that the Hartford Company [*the insurance carrier for the perpetrator*] is finally paying out its \$25,000 limits toward my bills, my own company is now telling me they can deduct that \$25,000 from my \$50,000 policy and they only have to pay another \$25,000 toward my expenses.” Her expenses, to date, have amounted to \$48,000 and are still ongoing. **Senator Hill** offered to provide other examples, as well, where consumers had paid premiums for this coverage, only to find that the limits of coverage they had purchased would not be provided when needed.

**Woody Richards** spoke on behalf of Property Casualty Insurance Association in opposition to S 1125. (*A copy of Mr. Richard’s testimony is included in these minutes as Attachment 2.*) Mr. Richards advised that S 1125, as currently worded, would mandate that underinsured motorist coverage become “excess” rather than “gap” insurance coverage, which would result in higher premiums for customers. Higher premiums would make it more difficult for people to purchase auto insurance policies and increase the number of uninsured motorists in Idaho.

There is also no provision in the bill regarding when the offering of underinsured insurance must be made to existing policyholders and it does not allow sufficient time for reprogramming of computers, rewriting the wording in policies, repricing of insurance coverages, etc.

**Senator Davis** advised that the insurance coverage is voluntary and not mandatory. Nothing in the bill is compelling someone to purchase the policy. While increased premiums will affect the decision on whether to purchase the policy and/or the amount of coverage that is purchased, he does not see that it would affect those people who purchase the minimum limits of coverage only.

**Senators Goedde, Broadsword and Coiner** then posed several



questions regarding insurance coverage (excess and gap), exposure liability, and limits of coverage. Extensive discussion followed, with comments provided by **Mr. Richards** and **Phil Barber**, representing the American Insurance Association.

**Paul Jackson**, representing Farmers Insurance, also spoke in opposition of S 1125, advising that a review of claims on underinsured motorist policies last year revealed that if Farmer's Insurance has been required to pay all of the claims as "excess" rather than "gap" coverage, it would have cost their policyholders \$1,125,000 in claims costs. For their 160,000 policyholders, that would equate to roughly a \$7.00 increase per policy, without adjustment for administration or other related costs.

Due to time constraints, further discussion on S 1125 and consideration of S 1124 were carried over to the next meeting on March 1, 2007.

**ADJOURNMENT:** **Chairman Andreason** adjourned the meeting at 3:07 p.m.

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Senator John Andreason  
Chairman

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Olga Copley  
Secretary

**NOTE:** Any sign-in sheets, guest lists, and/or testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** March 1, 2007

**TIME:** 1:00 p.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Chairman Andreason, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** Vice Chairman Coiner

**GUESTS:** See attached Sign-In Sheet.

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:06 p.m.

**Chairman Andreason** began the meeting with the continuation of testimony on S 1125. **Chairman Andreason** advised that further testimony would be heard only from individuals who had not had the opportunity to address the Committee at the last meeting. He then invited **Senator Brent Hill** to provide a brief overview of the bill to the Committee.

**S 1125**                      **Motor Vehicle, Underinsured**

**Senator Hill** stated that this legislation will require that insurance companies offer underinsured motorist coverage, and eliminate the ability of an insurance company to offset the limits of coverage provided by the amount of insurance carried by the perpetrator.

**Phil Barber**, Idaho counsel for the American Insurance Association, then spoke in opposition to S 1125. While this bill would be acceptable with amended language, he is in favor of a House Bill currently in process that would provide disclosure if the insurer did not provide this coverage. He discussed various types of underinsured motorist coverage (liability and excess) that is currently available. He urged the Committee "not to over-regulate the insurance industry" by passing S 1125.

**Kurt Holzer**, an attorney in private practice in Boise, Idaho, then addressed the Committee in favor of S 1125. **Mr. Holzer** referred to the uninsured motorist (UM)/underinsured motorist (UIM) coverage selection form which had been distributed to the Committee which indicated a premium cost of approximately \$15.00 per year for underinsured vehicle coverage. He has had hundreds of people come to him after a motor vehicle injury accident, and he has never had one person ever mention the word "gap" with regard to their insurance coverage; all of them believed that they would receive claim reimbursement up to the limits of coverage included in their policies. *(The UM/UIM selection form is included in these minutes as Attachment 1.)*

**MOTION:**

**Senator Werk** made a motion, and **Senator Broadsword** seconded, to send S 1125 to the floor with a do pass recommendation. The motion passed with a **Roll Call Vote**, with five Ayes (**Andreason, Stegner, Davis, Broadsword and Werk**), three Nays (**Cameron, Goedde and Bilyeu**) and one Absent/Excused (**Coiner**).

**Chairman Andreason** then recognized **Senator Mike Burkett** to present S 1124 to the Committee for consideration.

**S 1124**

**Motor Vehicle Operator, Service of Process**

**Senator Burkett** explained that this statute is designed to eliminate unnecessary court hearings and defaults by individuals. Currently, when a person's location is unknown, a plaintiff must get an order from the court and publish a copy of the summons for four weeks. This often leads to a court defaulting a defendant even when there is an insurance company involved. This bill authorizes an insurance company for the person who caused a collision to accept service of process. This will allow a defense lawyer to appear more easily in a case and reduce costs of litigation.

Service of process is sometimes very difficult, particularly if the person resides out-of-state. Section 49-2421, Idaho Code, was adopted in 1933 and allows the Secretary of State to be the agent of service for anyone driving in Idaho who has an accident and then leaves the state. A more efficient and effective way to accomplish this service of process would be to serve the insurance company. As the insurance company already has a contract relationship with the insured, they would be the one party directly in the "communication loop" regarding litigation. This is an easier, more efficient way than serving the Secretary of State or publishing notices in several publications.

**Senator Burkett** stressed that this action would only be taken in the most difficult cases. For example, if the defendant is working out of the country and publication costs would be excessive. Also, the insurance company would have the right to accept, or decline, service of notice for the defendant. He provided examples of situations where the insurance company was the most direct manner of contacting the defendant.

Extensive discussion followed regarding the process followed in litigating motor vehicle insurance claims, the roles of the insurance company, attorneys, and courts and others in this process, and the various methods of service currently available. Several questions were posed by the Committee to clarify the service process through the Secretary of State, as well as the precise role and obligation of the insurance company as proposed in S 1124.

**Mike Kane**, representing Idaho Counties Risk Management Program (ICRMP), addressed the Committee regarding S 1124. **Mr. Kane** advised that ICRMP represents and insures 43 of the counties and almost all of the cities and highway districts in Idaho. They have approximately 12,000 vehicles in Idaho. There is no justification to make S 1124 apply to counties, cities, highway districts, and other governmental entities. Therefore, he is requesting that the bill be amended to include language that would exempt local political subdivisions in the State of Idaho from

the provisions of this legislation. As everyone is aware how to serve a public entity, there is no justification not to go through the appropriate governmental agency for service. ICRMP is opposed to this bill without the amendment.

**Kurt Holzer**, a private practice attorney in Boise, addressed the Committee in support of S 1124. He stressed that the acceptance of service “is an affirmative act of the claims adjuster or claims representative, which is what many companies are calling their claims adjusters these days” and they “may” accept service, but are not required to do so. This legislation will merely allow them to accept service for a defendant if they choose to do so. The bill will address the problem of incurring excessive costs to issue notices in publications. Some of the costs for publication of notices can amount to thousands of dollars and prohibit the ability of a plaintiff to pursue their case in court.

**Allyn Dingle** spoke on behalf of several insurance carriers in opposition to S 1124. **Mr. Dingle** advised that the provision for service of the insurance company is not allowed in any other state, and Louisiana is the only state which allows individuals to sue insurance companies directly. He expressed concern with the use of the term “claims representative” rather than “claims adjuster” and spoke to the possible issues that could result from service upon these individuals. Auto insurance policies are “occurrence policies” and the carrier that is responsible would be the carrier who insured the individual on the date of loss. He stressed that people move their auto insurance frequently from carrier to carrier. There is a two to five year period in which individuals can file claims; and, by that time, the company that is held responsible for the accident claim may not have had any contact with the defendant for months or years. The proposed legislation does not say what will happen if the insurance carrier cannot locate the defendant.

**MOTION:** **Senator Goedde** made a motion, and **Senator Cameron** seconded, to hold S 1124 in Committee. The motion passed with a **Roll Call Vote**, with six Ayes (**Andreason, Cameron, Stegner, Davis, Goedde and Broadsword**), two Nays (**Werk and Bilyeu**) and one Absent/Excused (**Coiner**).

**Chairman Andreason** then introduced **Roger Hales**, counsel for the Bureau of Occupational Licenses, to present H0005 to the Committee.

**H 0005** **Cosmeticians, Definitions Revised**

This legislation revises the definitions for “cosmetology” and “esthetics” to provide consistency with the training currently being provided and clarify the scope of practice for cosmetologists and estheticians. **Mr. Hales** stated that two sections of code are amended to allow estheticians the ability to provide non-invasive care of the skin, to use of certain creams, lotions and essential oils, and use certain chemicals and electrical apparatus designed for special esthetic and non-medical care. There is no known opposition to this legislation.

**MOTION:** **Senator Goedde** made a motion, and **Senator Broadsword** seconded, to send H0005 to the floor with a do pass recommendation and to the

consent calendar. The motion carried with a **Voice Vote**, with **Senator Davis** dissenting.

**Chairman Andreason** introduced **David Curtis**, Executive Director of the Board of Professional Engineers and Professional Land Surveyors, to present H0028 before the Committee.

**H 0028**

### **Engineers/Land Surveyor/Miscellaneous Changes**

**Mr. Curtis** advised that this legislation will achieve five objectives: (1) to better define “responsible charge” and “standard design plans”; (2) increase the honorarium paid to members of the Board from \$50 to \$75 per day; (3) clarify the requirements for sealing and signing work documents prepared by engineers and land surveyors; (4) clarify some requirements for disciplinary matters; and (5) exempt private professional land surveyors from trespass prosecution if they need to access property owned by someone other than their clients in the course of their work (which is the same exemption currently allowed for federal surveyors), while still retaining liability for any damages they might inflict.

**Mr. Curtis** provided an example of the problem that frequently arises when “controlling corners” that are not located on adjacent properties must be accessed in order to complete a survey for a private landowner. As access to the public land survey monuments is necessary to complete accurate property surveys, this exemption from trespass prosecution has always been in effect for federal survey crews. The proposed legislation would provide this same exemption for private surveyors as well. **Mr. Curtis** emphasized that the private surveyors would still be required to make all reasonable efforts to contact the affected property owners, and they would still be liable for any damages they might inflict. The purpose of this exemption is to insure that property owners will not be prohibited from an accurate survey of their property boundaries because of the refusal of another property owner to access a public land survey monument which is needed for the survey.

Discussion followed regarding the make-up of the Board and number of meetings per year, and the right-of-entry exemption requested for private survey crews. **Mr. Curtis** advised that “section corners” and “quarter corners” were established by the federal government and are, in fact, public property. Regardless of whether the surveyor is a federal surveyor or a private surveyor, they still need to access those corner monuments to establish or re-establish property boundaries. This would only be done “when necessary,” and “necessary” does not mean “expedient.”

Several questions were posed by Committee members, with some expressing concern that the language of the bill was too broad and should specify the purpose of the right-of-entry is only to locate the public monuments needed for completion of the survey.

**MOTION:**

**Senator Broadsword** made a motion, and **Senator Goedde** seconded, to send H0028 to the floor with a do pass recommendation. The motion carried with a **Voice Vote**, and with **Senator Cameron** dissenting.

**Chairman Andreason** introduced **Jack Lyman**, representing the Idaho Manufactured Housing Association, to present H0100 before the Committee.

**H 0100**

**Manufactured Home, Retailer/Broker**

**Mr. Lyman** distributed an article from The Spokesman-Review, dated July 24, 2003 regarding 20<sup>th</sup> Century Homes, Inc. (*This article is included in these minutes as Attachment 2.*) The company promoted a program that offered consumers a furnished manufactured home, with automobile, for \$99,000 with financing for the deal available for 30 years at 3%, and with interest only payments for the first five years. This made the monthly payment only \$248 per month. Over 200 Idahoans put \$100 down to take advantage of this amazing offer. Not surprisingly, no homes were actually delivered. At that time, the industry realized that the current statutes in Idaho Code did not provide any enforcement or penalty provisions for non-compliance.

This legislation updates the licensing statute for the manufactured housing industry. The original statute was enacted in 1988 and currently offers virtually no sanctions against those not in compliance with the licensing requirement. This legislation has been almost two years in development by the Manufactured Housing Advisory Board. It has been approved by that board and by the Idaho Manufactured Housing Association. This bill will require background checks for new applicants for licenses, similar to the provisions for the real estate industry; allows reinstatement of lapsed licenses; updates definitions; increases the performance bonding requirements for retailers and adds a performance bond requirements for resale brokers; allows the Administrator of the Division of Building Safety to take disciplinary action for violations; and requires retailers and brokers to meet certain requirements for each business location.

**Larry Spencer**, representing himself, addressed the Committee in opposition to H0100. **Mr. Spencer** stated that he is from the Couer d'Alene area and was a dealer at the time of the 20<sup>th</sup> Century Homes incident. **Mr. Spencer** stated that H0100 "is not a simple bill," and referred to a handout he had provided to the Committee. (*A copy of this handout is included in these minutes as Attachment 3.*)

**Mr. Spencer** stated his concern that the true intent of this legislation was to "squeeze out some of the competition and smaller businesses." He is concerned that the requirements of this bill will drive small companies or other competition out of business. He is also concerned with the provisions of this bill that would: (1) Require a full background check to include fingerprinting to obtain a license; (2) implement signage requirements for dealerships, and (3) affect the continuing education requirements for licensure.

**MOTION:**

**Senator Cameron** made a motion, and **Senator Broadword** seconded, to send H0100 to the floor with a do pass recommendation. The motion carried with a **Voice Vote**, and with **Senator Werk** dissenting.

Due to time constraints, the remaining bills on the agenda (H0102, H0139 and H0135) were carried over to the next meeting on March 6, 2007.

**ADJOURNMENT:** Chairman Andreason adjourned the meeting at 3:04 p.m.

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Senator John Andreason  
Chairman

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Olga Copley  
Secretary

**NOTE:** Any sign-in sheets, guest lists, and/or testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** March 6, 2007

**TIME:** 1:00 p.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** None

**GUESTS:** See attached Sign-In Sheet.

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:05 p.m.

**APPROVAL OF MINUTES:** **Senator Broadsword** made a motion, and **Senator Bilyeu** seconded, to approve the Minutes for January 25 and 30, and February 1, 2007. The motion carried with a **Voice Vote**.

**Chairman Andreason** recognized **Jane Kinn Buser**, Executive Director of Human Resources for Boise State University, to present S 1183 before the Committee. *(A handout was provided to Committee members for review and is included in these minutes as Attachment 1.)*

**S 1183** **College/University, Optional Retirement Program**

**Ms. Buser** stated that S 1183 would increase the employers' contribution to the employees' retirement plans from 7.718% to 9.258% which is an increase of 1.53%. This would be accomplished by extending the payoff date to the Public Employees Retirement System of Idaho (PERSI) by ten years, from 2015 to 2025. This extension of time was provided by Allan Winkle, Executive Director of PERSI, who asked the actuaries to determine a new end date based on reducing the 3.03% to 1.49%. This legislation would impact 3,426 current faculty and professional staff at the four-year institutions. Each employee currently contributes 6.97% to their Optional Retirement Program (ORP) account.

Public institutions of higher education throughout the country have increased their employer contribution rates during the last several years. This has resulted in Idaho institutions being at a competitive disadvantage in both recruitment and retention of key faculty and staff. The overall average employer rate is approximately 10%. The PERSI plan has been improved during this time period, resulting in an approximate 20% increase in benefits for PERSI participants upon retirement.

The PERSI Board has reviewed these proposed changes and does not oppose them; and, S 1183 is revenue neutral. All four institutions of higher education (University of Idaho, Idaho State University, Boise State University and Lewis & Clark State College) approve of this legislation.



**Senator Werk** asked **Ms. Buser** if data could be collected to determine whether or not the increased employer contribution to the ORP does, in fact, make a positive difference in the recruitment of qualified candidates to the institutions of higher learning. **Ms. Buser** stated that it would be possible to ask new, professional employees if the ORP rate was a factor in their decision to accept employment with the Idaho institutions.

**Senator Werk** then directed questions to **Allan Winkle** regarding the revised repayment schedule to PERSI. **Mr. Winkle** indicated that the proposal is completely neutral from an actuarial aspect, and the Board is not opposed to this action.

**MOTION:**

**Senator Werk** made a motion, and **Senator Coiner** seconded, to send S 1183 to the floor with a do pass recommendation. The motion carried with a **Voice Vote**.

**Chairman Andreason** then introduced **Bob Corbell**, representing the Building Owners & Managers Organization of Boise, Idaho, to address the Committee regarding H0102 and H0139.

**H 0102**

**Elevators, Code Compliance**

**Mr. Corbell** stated that the oversight authority for elevators was initially the Industrial Commission, and the elevator inspections in public buildings were financed through worker's compensation funding. Legislation was passed in 2004 which placed elevator registration and inspection under a separate body, and fees were imposed for the registration of elevators and used to cover the costs of elevator inspections. **Mr. Corbell** said that H0102 was developed by a committee of individuals from the Division of Building Safety, elevator supply and service companies, and property owners of buildings with elevators, who met to evaluate the effectiveness of the inspection program and to identify improvements. **Mr. Corbell** then yielded to **Geoffrey M. Wardle**, President of the Building Owners & Managers Association of Boise (BOMA), to address the Committee.

**Mr. Wardle** advised that this legislation is "a set of technical amendments that have come forward as a result of two or three years of experience with the elevator regulations that were passed in 2004." (*A copy of the letter provided to the committee by Mr. Wardle is included with these minutes as Attachment 2.*)

These technical amendments provide clarification as to the applicability of codes to existing elevators and to new installations; clarifies the process by which codes are adopted and applied to both existing elevators and new installations; modifies the fee authority of the Division of Building Safety to authorize the reduction of fees as may be reasonable in the future; and provides for negotiated compliance agreements that more realistically represent the actual timing process for taking corrective actions based upon the inspections of the Division of Building Safety.

**Senator Goedde** asked why the documents referenced in H0102 do not include specific dates. **Mr. Corbell** advised that the documents referenced are specific to the type and age of the elevator; they are too voluminous, and change too frequently, to list the dates within the code for each document.

**MOTION:** **Senator Broadsword** made a motion, and **Senator Bilyeu** seconded, to send H0102 to the floor with a do pass recommendation. The motion carried with a **Voice Vote**.

**H 0139** **Contractors, Certain Violations, Penalty**

**Mr. Corbell** advised that this legislation pertains to Idaho's naming law, Section 67-2310, Idaho Code, which requires contractors to list plumbing, HVAC, and electrical contractors on bids for public works. This law is often overlooked because it is a separate title, and H0139 will include the naming law in Title 54 in order to ensure that contractors and public officials are aware of the requirement to name electrical, HVAC, and plumbing contractors in their bids for a public works project. It also provides for the general contractor to perform the HVAC, plumbing, or electrical, if he has the license for the trade and names himself as the provider of the construction. It also provides for enforcement by the Public Works Board and the Administrator of the Division of Building Safety. There is no fiscal impact to the general fund and the legislation is endorsed by a task force that includes cities, counties, and subcontractor trades.

**MOTION:** **Senator Goedde** made a motion, and **Senator Werk** seconded, to send H0139 to the floor with a do pass recommendation and to the consent calendar. The motion carried with a **Voice Vote**.

**Chairman Andreason** recognized **John Eaton** of the Idaho Realtors' Association, to present H0135 before the Committee.

**H 0135** **Real Estate Brokerage, Representation**

**Mr. Eaton** explained that the purpose of this legislation is to clarify the difference between a "customer service agreement" and a "representation agreement" and requires that a real estate agent be available to receive and timely present offers and counter offers for the sale of property. The legislation was brought forth by the Idaho Realtors' Association and is supported by the Idaho Real Estate Commission.

**Mr. Eaton** stated that H0135 was brought forth to address the specific concern of how real estate agents represent individuals in a regulated real estate transaction. For years, when an interested buyer wanted to make an offer on a home, they would work with the listing agent who would represent both sides of the transaction. Recognizing that this would potentially disadvantage the buyers in the marketplace, the state legislature began to move toward the "single agency" relationship where a licensed agent could have an exclusive agreement representing the buyer or the seller. While these legislative actions provided a greater level of consumer protection, they also opened the door to a number of new business models which have helped the market to flourish. None of the actions included in H0135 will change any of the existing business models, but rather maintain a high level of consumer protection in a changing marketplace. It is important to note that nothing in this legislation would mandate that an individual who wants to sell a house would be required to use a licensed real estate agent. The bill is designed to make sure that an agent who is licensed with the State of Idaho and represents a "customer" or a "client" in a regulated real estate

transaction has an added duty “to be available” to the client to receive and timely present all written offers and counter-offers on behalf of his or her “customer” or “client.”

A particular concern arises when an agent signs a contract with a seller to place the property into a multiple listing service, which is a private organization which is owned by brokerages. At that point, they (the brokerages) waive all of their customer/client responsibilities and abandon the transaction. Generally, this is done in one of two ways: (1) The seller can sign a “customer service agreement” with the agent stating that the agent will enter them into the multiple listing service and is then no longer available to assist any further in the transaction; or (2) the seller might sign an “exclusive client agreement” but waive all of the duties owed to the client under the same statute, in favor of just being included in the multiple listing service. This creates a number of potential problems for the buyer, when the buyer wants to make an offer on this type of property. Agents have reported to the Association that this happens frequently in these types of transactions and creates two problems. First, the seller is obviously not receiving any type of representation by his/her agent that the Legislature anticipated when the agency laws were created in Idaho. The second problem is “minus fired agent.” What is the appropriate response when a seller has a representation agreement with one agent, but then asks another agent for advice? An exclusive agent currently has the responsibility to their client to obtain the property at the purchase price he/she wants; they also have “customer duties” which require that they “deal in good faith with the seller.” This situation currently exists because the seller’s agent has been allowed to essentially abandon the transaction; and, the problem would be eliminated by requiring the seller’s agent to be available to receive and timely present offers and counter-offers.

**Mr. Eaton** responded to questions from **Senator Bilyeu** to clarify the difference between “customer” and “client” stating that a “client” is an individual with an “exclusive agency agreement” whereas a “customer” would be provided with services per a “customer service agreement.” A “client” would receive more services, but agents are bound by code to fulfill certain “duties” to “customers” as well.

**Heinrich Wiebe**, broker/owner of Genius Realty, spoke in opposition to H0135. He agreed that the bill does “make it better for consumers and clears up issues.” He stated that there are many buyers and sellers that are dissatisfied with the “antiquated and unfair real estate model that the National Association of Realtors has been patterning since the 1960’s.” He continued that “whether the industry likes it or not, the market is undergoing a paradigm shift; and, if you’re wondering what that looks like, just think about what’s happened to stock trading, investments, or the travel industry.” He is offended at the idea that people are “too dumb” to handle real estate transactions on their own and without the assistance of a real estate agent. **Mr. Wiebe** cited three reasons why he felt the legislation should not be passed: (1) It avoids clear definition; (2) it’s redundant to existing statutes; and, (3) it takes away consumer rights while limiting competition.

He referred to page 3, paragraph 2, of the bill and stated that there is no

definition for “present” and “available.” He feels a clear understanding of these terms is critical. Is the word “present” used as an adjective, noun or verb? Can offers “present” themselves or is a “presentation” required? If so, what is the minimum requirement for that?

Extensive discussion followed with questions from several committee members regarding the definitions of various terms, what is expected of a real estate agent or broker, and the nature of **Mr. Wiebe’s** multiple listing service. **Mr. Wiebe** stated that nothing in this bill would change the way his company provides services to his customers. However, he feels that passage of H0135 would prohibit a broker’s ability to provide specific services in an “unbundled” manner specific to the wants and needs of the customer.

**Dave Griffin**, owner of High Desert Construction, also spoke in opposition of H0135. He said that “there is a monopoly in the valley with the realtors with this technology” and he advised the Committee “don’t limit the technology of what we have to do.” **Mr. Griffin** stated “homeowner builds is the number three biggest permit pull” and services from real estate agents should be available, but he wants “companies coming in to be able to unbundle the services” provided to customers. Technology is driving the markets, and he does not want any restrictions on technology.

**Jeremy Pisca**, chief legal counsel for the Idaho Association of Realtors, addressed the Committee. He said that the statutory duties of a broker/agent to a client or customer cannot be waived, and this bill provides clarification of that point. There is no restriction to a broker/realtor charging a fee for their services, either bundled or unbundled, and there are no restrictions regarding the particular services that a consumer may obtain from a broker/realtor. Consumers will still be able to “pick and choose the services they want.” **Mr. Pisca** provided the legal clarification between “customer” and “client” status.

In response to an inquiry from **Senator Davis**, **Mr. Pisca** provided clarification of the position of the United States Department of Justice regarding this legislation. **Mr. Pisca** advised that representatives from the United States Department of Justice appeared last year at a meeting of the Idaho Real Estate Commission regarding pending legislation. The legislation considered at that time was much more restrictive, and they were advised by the Department of Justice that any attempt by the Real Estate Commission to limit business models would be considered restraint of trade and a violation of federal anti-trust laws. **Mr. Pisca** stated that the United States Supreme Court had spoken on this issue and determined that state legislatures, courts and commissions could regulate industries in any manner they deemed appropriate. The legislation presented in H0135 “is a much more watered-down bill” and was changed, in part, to address the concerns expressed by the Department of Justice staff. **Mr. Pisca** has not received any communications from the Department of Justice regarding H0135, but he is aware that they continue to oppose legislation of this kind in several states, although 13 other states have already passed similar legislation.

**MOTION:**

**Senator Goedde** made a motion, and **Senator Broadsword** seconded, to send H0135 to the floor with a do pass recommendation. The motion

carried with a **Voice Vote**.

**Chairman Andreason** introduced **Patrick Collins**, General Counsel for the Idaho Bankers Association, to present H0136 before the Committee.

**H 0136**

**Banking Laws, Miscellaneous Amendments**

**Mr. Collins** said that the Idaho Bank Act was enacted in 1979, and a number of sections of the Bank Act are either obsolete or require modernization. This legislation addresses several “housekeeping” amendments to the Bank Act and adds a new provision to the law prohibiting financial fraud to respond to a new type of fraud and will better protect Idaho consumers and banks.

The legislation was developed in partnership with the Idaho Department of Finance and includes the following changes: (1) The bill conforms Idaho’s requirements for financial statements submitted by bank officers and directors in connection with loan applications to their own bank, to the applicable federal requirements; (2) repeals Section 26-504, Idaho Code, which dealt with the transition to the new Bank Act in 1979, and became irrelevant at the end of 1979; (3) deletes an obsolete restriction on mortgage loans; (4) treats borrowings from federal home loan banks the same as borrowings from the Federal Reserve, in determining the amount of debt a bank may have; (5) allows the Director of Finance to extend the length of time between bank examinations for certain well-capitalized, well-managed banks; (6) makes it clear that the mortgage company chapter of the Bank Act only applies to residential mortgage loans as intended, not commercial mortgage loans; and (7) expands the definition of financial fraud so as to prohibit a practice whereby a person uses the trademark, service mark or logo of a financial institution in a manner intended to cause confusion or mistake to deceive consumers, and allowing banks to sue those who commit that fraud. This bill will have no fiscal impact on the general fund.

**MOTION:** **Senator Davis** made a motion, and **Senator Coiner** seconded, to send H0136 to the floor with a do pass recommendation. The motion carried with a **Voice Vote**.

**Adjournment:** The meeting was then adjourned by **Chairman Andreason** at 2:55 p.m.

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Senator John Andreason  
Chairman

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Olga Copley  
Secretary

**NOTE:** Any sign-in sheets, guest lists, and/or testimony, booklets, charts and graphs will be retained in the Committee Secretary’s Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** March 8, 2007

**TIME:** 1:30 p.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** None

**GUESTS:** See attached Sign-In Sheet.

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:36 p.m.

**Chairman Andreason** introduced **Stephen Keys**, Deputy Administrator of the Division of Building Safety, to present H0132 and H0140 to the Committee.

**H 0132**                    **Electrician/Plumber/HVAC, License**

**Mr. Keys** advised that H0132 codifies the provisions of an existing Memorandum of Agreement (MOA) that was formulated among the Electrical, Plumbing, and HVAC Boards within the Division of Building Safety.

The existing MOA was put in place to address statutory conflicts that arose from the approval of the HVAC statute and to accommodate a licensee in one trade being able to perform minor work traditionally performed by another trade that is associated with work being performed within the scope of the tradesman's original license. For example, an HVAC licensee would be allowed to connect the electrical wiring to a replacement air conditioning compressor unit; or, an electrician would be allowed to connect the venting to a bathroom exhaust fan. Without the MOA or this statute in place, separate licenses and permits would be required for the incidental work. The MOA has been in force since July, 2005, and no major problems have been encountered. All of the Boards support this legislation.

**Mr. Keys** stated that H0132 goes beyond the scope of the MOA in one major area. A licensee in one trade may take out a permit for the work being performed within the jurisdiction of another trade. This was the one major criticism of the MOA, as there was no legal means to accommodate the cross-jurisdictional permitting. The additional fees recognize that the base permit fee is already paid within the licensee's original permit, and only the additional incremental fee for the work outside the licensee's trade will be applicable. An example of this would be the electrician installing the venting for a bathroom fan. The electrician would pay his normal electrical permit fee plus the \$5.00 incremental permit fee normally

incurred by an HVAC contractor. Without the MOA or this bill, a \$50 base HVAC permit would also be applicable. This legislation simplifies the licensing and permitting requirements for contractors and reduces costs to the consumer, while assuring that the installations are performed in accordance with applicable codes.

**MOTION:** **Senator Coiner** made a motion, and **Senator Bilyeu** seconded, to send H0132 to the floor with a do pass recommendation and to the consent calendar. The motion carried with a **Voice Vote**.

**H 0140** **Building Safety Division, Powers/Duties**

**Mr. Keys** stated that H0140 defines the duties and authority of the administrator of the Division of Building Safety. Because the division encompasses many boards and sections of Idaho Code, the references to the duties and authority of the administrator are many, and are spread among the various chapters of Idaho Code. This bill will rectify that situation and allow for a concise and intelligible statement of those duties and the administrator's authority. The legislation makes clear that the administrator has the authority to promulgate rules relative to establishing a coordinated licensing system and for the orderly administration of the other chapters listed in Section 67-2601A. It is not the intent of this bill to infringe upon the existing rule making authority of the various boards; the boards currently having authority to promulgate rules retain that authority, especially when it comes to identifying the technical requirements for licensure, issuing permits, and conducting inspections.

**Senator Werk** directed questions to **Mr. Keys** about the language at page 3, item (4) which references responsibilities of the Department of Administration that are "devolved." **Mr. Keys** responded that the specific language was included in the bill by the Attorney General's Office.

**Senator Cameron** expressed similar concern, and asked **Mr. Keys** what would happen if H0140 did not pass this year, and if there were any particular rules the Division would not be able to promulgate. **Mr. Keys** said that the rule making authority would not be explicit to the administrator, and "the references to his authority would continue to be spread across the board in various chapters" without the passage of H0140. At this time the major concern is the Division's effort to coordinate licensing, and legislative approval is currently being sought to secure a new licensing and permitting software package. One intent of H0140 is to allow the administrator to make decisions regarding the administrative component of how licenses are granted, how many forms must be submitted, etc. If the administrator is not given the authority for this decision making, then each of the six boards will be required to address these issues individually.

**Senator Broadsword** stated her understanding of the language at page 3, item (4), as referenced by **Senator Werk**, would mean that "if no agencies are devolved, then that authority would not take place." **Mr. Keys** confirmed that was true, and that he shared the same understanding of that language in the bill.

Extensive discussion followed, with **Senators Broadsword and**

**Cameron** asking for clarification of the administrator's authority to assess civil penalties, employ individuals, make expenditures, enter into contracts, require reports, make investigations, travel, and take other actions as deemed necessary. **Mr. Keys** stated that, to his knowledge, the administrator has always performed those actions.

**Senator Werk** commented that the wording on page 3, item (4) "is entirely unfortunate" but if the phrase was removed "it would make no difference to the sentence; and basically, the administrator has the duties assigned whether we want to devolve something to the administrator or not." He said that although the language used was unfortunate, he would make a motion to send H0104 to the floor with a do pass recommendation, unless there were objections from other Committee members.

**MOTION:**

**Senator Werk** made a motion, and **Senator Coiner** seconded, to send H0140 to the floor with a do pass recommendation. The motion carried with a **Voice Vote**.

**Chairman Andreason** recognized **Jeremy Pisca**, legal counsel for the Idaho Building Contractors Association (IBCA), to present H0101 before the Committee.

**H 0101**

**Contractor Registration, Reciprocal**

**Mr. Pisca** stated that H0101 is the solution to a very real and very severe problem in Idaho. In 2005 the Legislature passed the Idaho Contractor Registration Act, and the program has been in operation for one year. To date, approximately 19,000 contractors have been registered in Idaho. The Idaho Contractors Act was the result of 40 years of effort to obtain some form of regulation of the industry. The main reason for legislative action in 2005, was that cities and local governments were beginning to develop their own contractor regulations due to the failure of the state to impose any regulation at all. The Idaho Contractors Act was an effort to create one uniform regulation statewide and avoid the possibility of multiple layers of licensing being imposed at the local government levels.

Three cities in Idaho (Pocatello, Chubbuck and Idaho Falls) had already adopted contractor registration programs prior to the 2005 legislation. The Idaho Building Contractors Association worked with those cities to develop the state legislation that was passed in 2005, and a special exemption was included in that legislation to accommodate those cities. However, the statutory language was too broadly worded and multiple other cities have now expressed interest in creating costly local licensing programs.

The exemption provided for Pocatello, Chubbuck and Idaho Falls has now become a "loophole" by which the Idaho Association of Building Officials (IDABO) is now soliciting municipalities throughout the state to adopt their own contractor registration program and to utilize IDABO to collect fees and operate the registration program on behalf of each municipality. Unlike the state program, which requires a registration fee of only \$35 for work throughout the state, the IDABO proposal has four different licenses at \$200 each, and states that the registration fee will be reciprocal for any other municipality which maintains a registration program that is



administered by IDABO. **Mr. Pisca** asserted that it is unconstitutional for a governmental entity to delegate their police or legislative powers to a private entity.

**Mr. Pisca** advised that the significant reason for passing a statewide registration program was to prevent “piece-meal” local contractor licensing programs that would require contractors to purchase licenses in multiple jurisdictions. A state contractor registration system provides uniformity in contractor requirements and avoids duplicate and costly licensure fees. This legislation will prevent further “piece-meal” licensing of construction contractors. Further, it will continue to grandfather in the three cities with existing licensing programs.

**Mr. Pisca** stated that the construction industry is not opposed to the imposition of higher standards; however, the standards need to apply statewide, to all contractors throughout Idaho, and eliminate multiple fees and different rules for every jurisdiction.

**Senator Goedde** asked how many contractors had been registered statewide, and how many complaints and disciplinary actions have been enacted against contractors to date. **Mr. Pisca** provided “ball park” counts of 19,000 contractors registered; more than 600 complaints have been filed; of those 600 complaints, 200 were dismissed, 200 are pending investigation, and 200 have been dealt with in a disciplinary disposition. Under the Contractors Registration Act, the forms of discipline that can be taken against a contractor include the suspension/revocation of the contractor’s license and administrative penalties.

**Teri Ottens**, Executive Director of Idaho Association of Building Officials (IDABO), then addressed the Committee in opposition of H0101. **Ms. Ottens** discussed the registration program that IDABO is supporting. She said that the registration program enacted by the state is entirely different than the IDABO “licensing” program. IDABO was supportive of the Idaho Contractor Registration Act which passed in 2005; however, their understanding was that the language included in that bill was never intended “to just include three cities.” Everyone agreed that the 2005 registration program was “just a beginning” and “a better program was needed than what was presented in that bill.” Now, as IDABO is looking to move forward with a program that the Idaho Contractors Association finds objectionable, it appears that the legislative intent has suddenly changed.

**Ms. Ottens** is opposed to this bill, because it will take away some very basic rights that cities have always enjoyed. She explained that IDABO was contacted by several cities and a county that were interested in establishing their own licensing programs and wanted IDABO to administer their programs. The ordinance displayed by **Mr. Pisca** during his presentation was not a “model” document, but the actual ordinance for the City of Idaho Falls. IDABO has never presented this document as a “model ordinance” although “it has been presented to other cities as a way they could enact contractor licensing.” IDABO’s intention matches that of the Idaho Contractors Association with regard to multiple licensing for contractors. **Ms. Otten** stated, “When it became apparent that contractor licensing is not a priority of the Legislature, at least not a

couple of years ago, we worked with the City of Idaho Falls to enter into a contract with them to take over the administration of that program.” She continued, “It is our intent, I will be very honest with you, to approach other cities and counties that might be interested in licensing. We are not going to force them, there is no jurisdiction for us to force them.” **Ms. Otten** advised that other cities and counties wanted to be involved in contractor licensing, including Pocatello, Chubbuck, and the City of Amman, as well as some cities in northern Idaho; and, it was IDABO’s intention to convince them to be involved with their licensing program so there would be one fee, which would be recognized among all programs administered by IDABO. This is very similar to the state registration program.

**Senator Davis** questioned whether the practice explained by **Ms. Otten** for IDABO’s contractor licensing was actually “creating an extra-governmental private entity.” **Ms. Otten** stated that IDABO is a private, non-profit organization that collects a fee on behalf of the City of Idaho Falls, and the contract lists IDABO as “the administrative agent.” The intention is that, as other cities choose to come on board, then the fee paid to IDABO on behalf of Idaho Falls would be good in any other city that also enters into an administrative agreement. **Senator Davis** questioned the collection of fees for one jurisdiction, but then allowing “a free ride” for contractors to work in another jurisdiction. **Ms. Otten** explained that the fee collected actually goes directly into a fund for “continuing education” that is offered by the IDABO program. By law, IDABO cannot make a profit from this program.

**Senator Goedde** posed questions about the disposition of the fees collected on behalf of the local governments. **Ms. Otten** explained that IDABO had created a separate Board, the Contractor Licensing Review Board, as another non-profit organization. The Board is composed of four contractors, two building officials, and a public member. The fees collected by IDABO are used by this board to set-up and offer the continuing education courses at no cost to the contractors or government entity. The instructors are paid for their services and are selected from the International Code Conference, which is the national organization that offers code education. It is IDABO’s intention to also provide contractor-related education courses, such as how to market their business and how to perform estimating. The curriculum is chosen by the Contractor Licensing Review Board.

**Senator Werk** noted the appearance that IDABO is setting-up a “quasi-governmental organization” to try and unify construction standards across the state and impose continuing education and other requirements for contractor licensure. **Senator Werk** stated that it is the responsibility of the State of Idaho to perform those functions; therefore, in spite of IDABO’s good intentions, he questioned why IDABO had not come to the state legislature, rather than taking action on their own, to move forward in these areas.

**Ms. Otten** said, “for the last 16 years the state legislature has declined to adopt a program that has as much teeth in it.” She said that IDABO has

traditionally supported the state's contractor registration program, and it was out of frustration that IDABO felt the need to provide a tool for cities and counties to move forward in this area. **Senator Werk** asked **Ms. Otten** if IDABO has ever submitted their proposal to the legislature and made the request that they enact this program on a statewide basis. **Ms. Otten** stated, "we have never been implementers, we have always been in the group of people who have come to the state to ask for this program, as we were two years ago."

**Senator Coiner** recalled his memory of the initial legislation that was passed in 2005. He said that the particular language being amended with H0101 was included specifically to grandfather-in the plans of the three communities specified (Pocatello, Chubbuck and Idaho Falls). Based upon **Ms. Otten's** testimony, however, it appears that IDABO felt the language remained "wide open." **Senator Coiner** stated that he fully understood, when voting upon the initial legislation in 2005, "that the loophole was closed." He also questioned why IDABO has not worked more closely with the Idaho Contractors Association, as they are the specific group that IDABO is striving to regulate.

**Ms. Otten** discussed details of meetings with various contractors and contracting associations in Idaho Falls and in northern Idaho. She discussed a two-hour meeting with the Idaho Bureau of Occupational Licenses to discuss IDABO's intention for this program and whether or not they would oppose it. At that time, staff did not provide any indication that they were opposed to IDABO's program, and they even offered to help IDABO to set-up their licensing registration process.

**MOTION:** **Senator Goedde** made a motion, and **Senator Coiner** seconded, to send H0101 to the floor with a do pass recommendation.

**DISCUSSION:** Before voting, **Senators Broadsword and Coiner** disclosed a potential conflict of interest under Rule 39, as both are registered contractors.

**Senator Werk** commented that his reading the original language of the bill did not appear to prohibit other jurisdictions from enacting their own contractor registration program.

**Chairman Andreason** then recognized **John Eaton** of the Idaho Realtors Association. **Mr. Eaton** advised that the Idaho Realtors Association does support H0101.

**Senator Goedde** stated that he shared **Senator Werk's** concern with the original language of the legislation, but he also shared **Senator Coiner's** memory that the exemption was provided only to the three cities mentioned - Pocatello, Chubbuck and Idaho Falls. The concern, at that time, "was that we did not want to restrict these cities in any way or put them out of business." He then discussed a letter he received from his Mayor, citing a constitutional problem and asking him to vote against H0101. **Senator Goedde** discovered that the language of the Mayor's letter was provided by IDABO. **Senator Goedde** said he "takes issue with an organization of building officials giving my Mayor what appears to be incorrect advice, and then asking her to pass it on." He also expressed concern with some of **Ms. Otten's** testimony which seemed to

indicate that the Idaho Falls contractor licensing program was intended to limit competition.

**Senator Stegner** commented that his memory of the original legislation passed in 2005 made it very clear to him that the language was not a “grandfather clause for three cities,” but it was an authorization for any city, incorporated municipality, county, or any subdivision of the state to regulate the construction industry. He stated that H0101 “is a huge amount of overkill” in an attempt to address the problem and is counter to what, he believes, is the best interest of the state. While he shares and supports the objective of establishing a uniform building contractor statute for Idaho, he cannot support this legislation.

**Senator Davis** said that while he originally was not in favor of H0101, he had re-measured the findings of all the arguments for and against this bill. While he finds a great deal of value in **Senator Stegner’s** comments, he believes that the solution to this problem must come from state government. Everyone agrees on the same objective, but differ in how that objective can be achieved. Consumer protection is important, and he applauds the efforts of local government to protect their citizens. However, the costs incurred by legitimate contractors in Idaho is also a primary concern, and it is not appropriate to require contractors to comply with different fees and standards depending upon which side of the road they are working. For this reason, he will support H0101.

**ROLL CALL  
VOTE:**

The motion carried with a **Roll Call Vote**, with eight Ayes (**Andreason, Coiner, Cameron, Davis, Goedde, Broadsword, Werk and Bilyeu**) and one Nay (**Stegner**).

**Chairman Andreason** then introduced **Ken Baker** of the Association of Idaho Cities to present H0137 before the Committee.

**H 0137**

**Building Codes, Certain, Date Changes**

**Mr. Baker** stated that the purpose of this legislation is to adopt the 2006 International Energy Conservation Code. The International Energy Conservation Code has been revised for energy efficiency and to make it more user-friendly for designers and builders. There is no fiscal impact to the state or local governments, and there is no opposition to this bill.

**Senator Davis** questioned whether the adoption of this code could be achieved through administrative rule, rather than legislation to amend Idaho Code. **Mr. Baker** advised that meetings to develop a rule had been attempted, but were unsuccessful in reaching consensus as there was disagreement on the fire sprinkler requirements included in the International Code. All parties agreed to adopt the International Energy Conservation Code, so legislation was drafted to incorporate this into the Idaho Code.

**MOTION:**

**Senator Broadsword** made a motion, and **Senator Coiner** seconded, to send H0137 to the floor with a do pass recommendation. The motion carried with a **Voice Vote**.

**Adjournment:** The meeting was then adjourned by **Chairman Andreason** at 3:03 p.m.

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Senator John Andreason  
Chairman

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Olga Copley  
Secretary

**NOTE:** Any sign-in sheets, guest lists, and/or testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** March 13, 2007  
**TIME:** 1:00 p.m.  
**PLACE:** Room 437  
**MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu  
**MEMBERS ABSENT/ EXCUSED:** None  
**GUESTS:** See attached Sign-In Sheet.  
**CONVENED:** **Chairman Andreason** called the meeting to order at 1:03 p.m.  
**APPROVAL OF MINUTES:** **Senator Broadsword** made a motion, and **Senator Goedde** seconded, to approve the Minutes for February 6, 8, 13 & 15, 2007. The motion carried with a **Voice Vote**.

**H 0255** **Motor Vehicles, Underinsured Motorist**

**Chairman Andreason** announced that **Representative Russ Matthews**, sponsor of H0255, was currently involved in business with the House of Representatives and was unable to address the Committee at this time. Therefore, the bill would be reconsidered at a later date, if necessary.

**Chairman Andreason** then recognized **Donna Van Trease**, Executive Director of the Idaho Public Employees Association (IPEA), to present H0105a to the Committee.

**H 0105a** **PERSI, Unused Sick Leave**

**Ms. Van Trease** said that this legislation will increase the formula limiting the unused sick leave that can be transferred to an employee's retirement account by 60 hours, an increase from 1,200 to 1,320 hours, and the sum can only be used to pay premiums for group health, accident or life insurance programs maintained by the State of Idaho.

**Ms. Van Trease** advised that the the cap on sick leave has not been raised since 2000. The rising cost of health insurance premiums is the number one concern of state employees as they plan their retirement, and she distributed a chart that illustrated how much the retired state employees health insurance premiums have increased since 2000. (*A copy of this handout is included in these minutes as Attachment 1.*)

**Ms. Van Trease** said that state employees currently earn eight hours of sick leave per month, for a total of 96 hours per year. Unless the employee has a major illness or injury, many employees would only use a portion of those days in a 12-month period. When employees are allowed to accumulate sick leave hours, it gives them the opportunity to build a benefit; and, employees will try harder to save sick leave hours because

they know it will help with their insurance premiums when they retire. Increasing the cap in sick leave hours is a small way to recognize career employees and thank them for their dedication to the State of Idaho. The original bill was amended in the House of Representatives, and she encouraged the Committee to send H0105a to the Senate with a do pass recommendation.

**Senator Goedde** noted that the Statement of Purpose/Fiscal Note was not in accordance with the language of the bill. **Ms. Van Trease** advised that the Statement of Purpose/Fiscal Note was changed when the bill was amended in the House of Representatives. As it was not received with the bill when it was forwarded to the Senate, **Ms. Van Trease** stated she would obtain this information for the Committee members.

Copies of the revised Statement of Purpose/Fiscal Note were obtained and later distributed to the Committee members for review. *(A copy of the revised Statement of Purpose/Fiscal Note is included in these minutes as Attachment 2.)*

**MOTION:**

**Senator Davis** made a motion, and **Senator Broadsword** seconded, to send H0105a, with the corrected Statement of Purpose/Fiscal Note, to the floor with a do pass recommendation. The motion carried with a **Voice Vote**.

**Chairman Andreason** then recognized **Roger Hales**, legal counsel for the Bureau of Occupational Licenses, to present H0107 and H0109 before the Committee.

**H 0107**

**Barber-Instructors, Licenses**

**Mr. Hales** advised that H0107 is proposed by the Idaho State Board of Barbers and the Idaho Bureau of Occupational Licenses. Approximately four years ago, the Legislature added barber stylists as a profession under the Barber Board. A barber stylist is allowed the use of color and other chemicals to treat a person's hair. Although this classification was created four years ago, a couple of sections in the Idaho Code which needed to reference this new classification were overlooked. The Board also desired to place the scope of practice and licensure requirements for an instructor and student within the law. There is no fiscal impact on general or dedicated funds, and there is no opposition to this legislation.

**Mr. Hales** then answered questions from **Senator Broadsword** regarding the differences between barbers, barber stylists, cosmetologists and hair cutters. There is an overlap in the practice of barbers and cosmetologists. Barbers are permitted to cut hair and shave, and must complete 900 hours of training; barber stylists are allowed to cut hair and use chemicals/coloring on a persons hair. A cosmetologist is also allowed to cut hair and use chemicals/coloring on a persons hair.

**Senator Goedde** asked whether barber instructors and barber stylist instructors have to work for licensed barber colleges. **Mr. Hales** said yes, as there is no "apprenticeship" in the barber profession. There is only one barber college in Idaho at this time.

**MOTION:**

**Senator Goedde** made a motion, and **Senator Werk** seconded, to send H0107 to the floor with a do pass recommendation. The motion carried

with a **Voice Vote**.

**H 0109**

### **Liquefied Petroleum Gas Facilities**

**Mr. Hales** advised that H0109 amends Section 54-5308, Idaho Code, to require a general liability insurance policy of not less than one million dollars (\$1,000,000) for licensing of a liquified petroleum gas (LPG) facility, and also changes the word “fireman” to “firefighter.”

In 2005, the Legislature adopted the Liquefied Petroleum Gas Public Safety Act, which established the Idaho Liquefied Petroleum Gas Public Safety Board. This five-member Board is composed of two licensed LPG dealers, one professional firefighter, one volunteer firefighter, and one private citizen. The Act excludes natural gas, portable containers, and the sell and exchange of portable LPG containers. The Act requires that anyone who commercially handles LPG or any facility that commercially fills or stores LPG must obtain a license.

The original legislation used the term “fireman.” This bill changes the term “fireman” to “firefighter” and requires that a facility maintain a general liability policy of not less than one million dollars. The Department of Transportation already requires a general liability policy for LPG facilities that is related to the trucks used to transport the LPG. This new general liability policy requirement will provide an additional level of safety by requiring coverage on the LPG facility as well. There has been no opposition to this legislation, and there is no impact on general or dedicated funds.

**Senator Goedde** asked whether the one million dollar limit is per occurrence or aggregate. **Mr. Hales** replied he thought it would be aggregate. **Senator Goedde** suggested that this be clearly defined by the Board. For this type of facility, one million dollars per occurrence would seem more appropriate. **Mr. Hales** stated he would take this issue to the Board for clarification through formal rule making.

**Senator Broadsword** questioned whether the Board actually has the authority to impose this general liability insurance requirement in rule, or if it would require implementation by statute. **Mr. Hales** said he believed that a qualification would have to be established by law. However, if the law sets forth the qualification, he suspected there may be some authority under rule making to make the clarification.

**Gary Van Hees**, Chairman of the Idaho Liquefied Petroleum Gas Public Safety Board, addressed the Committee. **Mr. Van Hees** stated that the one million dollar liability insurance is a general requirement on those who transport LPG. The Board felt that Idaho should impose the same requirements on all facilities to bring an additional level of safety to the public. It is the Board's desire, with regard to licensing, to bring Idaho in line with the general Department of Transportation requirements.

**MOTION :**

**Senator Coiner** made a motion, and **Senator Bilyeu** seconded, to send H0109 to the floor with a do pass recommendation. The motion carried with a **Voice Vote**.

**Chairman Andreason** then recognized **Mark Dunham**, Vice President of the Idaho Association of Commerce & Industry (IACI), to present S1203



before the Committee.

**S 1203**

### **Protect Employer, Legitimate Business**

**Mr. Dunham** advised that S1203 is designed to provide for and clarify voluntary agreements between employers and their “key” employees and “key” independent contractors. He stated that the word “key” is important, because this legislation only affects employees and independent contractors who meet the definition of “key” as defined in this bill. It is important to understand that this does not affect the rank and file employee or independent contractor at all.

This bill is the result of discussion among IACI members who have indicated there has been some confusion and concern about how companies and employers, and their key employees and key independent contractors, deal with confidential and proprietary company information and contacts when those relationships end. Idaho businesses invest substantial time and training in their workforce, and certain “key” employees or “key” independent contractors have such critical roles within a company’s operation that they are entrusted with confidential and proprietary information. When the employment relationship is ended, there is legitimate concern that proprietary relationships and information could be used competitively against the employer.

**Mr. Dunham** continued that S1203 would clarify that employers can seek to protect their legitimate business interests through written, voluntary contracts with “key” employees or “key” independent contractors, and these written, voluntary agreements are called “protective covenants.” This legislation is needed to provide a clear direction in Idaho law on this matter, and the Idaho Legislature has never taken a stand to resolve this public issue. Although companies and employees already enter into such agreements, there has been a trend across the nation for Courts to call these agreements into question or render them invalid. The passage of S1203 would establish clear public policy by the Legislature which would be used in future court actions to address these matters.

**Senator Andreason** asked **Mr. Dunham** to explain how this bill would protect the employee. **Mr. Dunham** said that the employee is protected, in the sense that this is a voluntary, written agreement, and the employer would not be able to force the employee to sign such an agreement.

**Senator Werk** posed questions to **Mr. Dunham** to clarify the intent of the bill, and further discussed the definition for “key employee” and how this would actually be applied by an employer. **Mr. Dunham** acknowledged that the definition, as stated in the bill, is vague, but it is difficult to narrow the definition of “key employee” to one that would fit every business and situation. The agreement is a negotiable instrument between a company and their “key employee.” Some companies may feel that a person hired to serve as their Chief Executive Officer (CEO) would instantly be considered “key personnel” as a spokesperson in a position of “high notoriety.”

**Senator Davis** expanded on this, citing various examples, and stating that the final determination would be made by the Court, with the

employer bearing the burden of proof.

**Senator Werk** said that since the legislation “is telling the Court what we want them to do,” then the definition of “key employee” is critical to the legislative intent. **Senator Davis** stated that any statutory mechanism that is passed into law is going to have these kind of gaps; and there are arguments that an employee can, and should, make in Court for the Court to determine.

**Senator Bilyeu** noted that Section 44-2706 “seems to me that we are telling the Court what to do” and asked whether it was unusual for a Legislature to be directing the Court to “do their work for them.” **Senator Davis** stated that the language in the bill tells the Court that “if they want to give some force and effect” to the agreement “but feel certain provisions to be overly broad, you are not necessarily held by common law standards to say, therefore, the entire agreement is not enforceable, and you are welcomed to fashion a remedy.” **Senator Davis** continued, “Courts regularly fashion remedies that statutorily we have not fully provided for” and said the issue to be considered is not whether the Legislature tells the Courts what to do, but whether or not this should be the public policy of the State of Idaho.

**Senator Goedde** posed an example of a common employer-employee relationship that would occur within his own insurance business, and asked **Mr. Dunham** if the provisions of S1203 would be applicable to such a situation. **Mr. Dunham** said that the bill does reference “exposure to customers” and “trust” but the matter would still have to be interpreted by the Court.

**Senator Werk** asked if any other states had adopted similar legislation of this type. **Jeremy Pisca**, legal counsel for IACI, responded that several state legislatures have enacted this type of legislation, but it typically relates to the sale or transfer of a business. He admitted that “this is sort of stepping out there a bit” but he did not think it was a “bad thing” for the State of Idaho to declare this public policy. **Mr. Pisca** emphasized that the U.S. Supreme Court has ruled that employment-type agreements are lawful, whether or not the individual is a “key” employee; however, these agreements are generally “disfavored.” The focus and intent of this legislation “is to zero-in” on “key” employees and to encourage employers to develop their employees to the “key” level. In any event, the employer will always have to bear the burden of proof that the requirements of the contract are reasonable, not excessively burdensome, and that it does not violate public policy. **Mr. Pisca** advised that “mutuality of contract” should not be construed against one party or the other, and that is the intent of S1203.

**Senator Stegner** commented that, in his opinion, S1203 goes too far in establishing Idaho policy regarding these agreements. He believes that the reason the Courts are more lenient to the employee when these type of agreements are litigated is because “employers have the upper hand, and they are the ones who control the job and employee situation.” He stated that Courts have historically found that agreements with employees containing “non-competes” are unfair, because it deprives a single person from pursuing a livelihood. He cited the example of an employee who has

a legitimate dispute with an employer “and winds up on the street.” However, because of a condition of their employment they might have signed some agreements that may or may not be fair and justified. The Courts will choose to err on the side of the employee, which he feels is appropriate. **Senator Stegner** said he did not like the numerous references in the bill which prohibit the employer-employee agreement from being voided, or the definition of “key employee.” He believes that S1203 “is a solution seeking a problem,” and he does not think that the State of Idaho has had significant problems in this particular area of employee performance. Because this is an overly protective statute on behalf of employers, he will not support this legislation.

**Senator Werk** concurred with **Senator Stegner’s** comments, and noted that the Court’s position in generally disfavoring these employer-employee agreements has been longstanding, and it is not accidental. These agreements are disfavored because “it is an unequal relationship” between the employer and employee from the start. He does not feel that it is appropriate for the State of Idaho “to step into that arena to legislate public policy” and, for that reason, he cannot support this bill.

**MOTION:** **Senator Goedde** made a motion, and **Senator Cameron** seconded, to send S1203 to the floor with a do pass recommendation. The motion carried with a **Roll Call Vote**, with seven Ayes and two Nays (**Senators Stegner** and **Werk** dissenting).

**ADJOURNMENT:** The meeting was then adjourned by **Chairman Andreason** at 2:13 p.m.

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Senator John Andreason  
Chairman

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Olga Copley  
Secretary

**NOTE:** Any sign-in sheets, guest lists, and/or testimony, booklets, charts and graphs will be retained in the Committee Secretary’s Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** March 15, 2007

**TIME:** 1:00 p.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

**MEMBERS ABSENT/ EXCUSED:** None

**GUESTS:** See attached Sign-In Sheet.

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:05 p.m.

**Chairman Andreason** introduced **William “Bill” Deal**, Director of the Idaho Department of Insurance, to present the following bills before the Committee: H0088, H0089, H0090, H0091, H0092, H0096, H0097, H0098 and H0111. **Chairman Andreason** announced that due to time constraints for today’s meeting, he had asked **Mr. Deal** to address all nine bills in succession prior to Committee vote.

**Mr. Deal** began his presentation by introducing Department of Insurance staff: **Shad Priest**, Deputy Director; **Georgia Siehl**, Bureau Chief for Company Activities; **James Genetti**, Bureau Chief for Consumer Affairs; **Don Roberson**, Supervisor of the Investigations Division; and **Ken Robins**, Deputy Attorney General for fraud investigations. He then provided a brief presentation for each of the bills in succession.

**H 0088** **Insurer, Property/Casualty**

**Mr. Deal** stated that this legislation amends the Risk-Based Capital (RBC) Act to adopt a new RBC trend test for property and casualty insurers similar to one that is already in place for life and health insurers. There is no fiscal impact from this legislation and there is no known opposition.

**H 0089** **Insurance, Life/Disability, Records**

This legislation amends Section 41-1036, Idaho Code, to eliminate the current exemption for life and disability insurance so that the same record keeping requirement will apply to all insurance records of producers (Property & Casualty). There is no fiscal impact and there is no known opposition to this legislation.

**Senator Davis** questioned why the life and disability insurance industry had initially been granted an exemption from the record keeping requirement. **Shad Priest** responded that when he investigated this issue, he could not locate any historical reference or reason why this

exemption was included in the original code. He speculated that a possible reason may have been that, in those types of transactions, at least part of the records are maintained by the insurance company, rather than the producer. Today, record keeping is not an issue and the Department of Insurance has added the provision for records to be maintained off-site, as long as they are available for access.

**H 0090**

**Insurers, Examination, When**

This proposal amends Section 41-1427, Idaho Code, which requires the Department of Insurance to examine insurance rate making organizations, advisory organizations, joint reinsurance organizations and group, association or any other organization of insurers that engages in joint underwriting or joint reinsurance every three years.

The Department of Insurance is proposing a change to this code section that will replace the three year examination requirement for these entities to every five years. This change will provide greater flexibility for the Department in allocating its examination resources, and it is consistent with the examination requirements for domestic insurance companies.

**Mr. Deal** advised that this is a good change that will provide consistency. There is no fiscal impact, and there is no opposition to this legislation.

**Senator Broadsword** asked about the frequency of the insurance examinations, error rates, and the process for determining how often to conduct these examinations. **Georgia Siehl** responded that the Department does have the discretion to examine companies more frequently than every five years. The decision to conduct an examination depends of various circumstances and the type of company, and the five year interval "is not an absolute."

**H 0091**

**Insurer, Certain, Newly Formed**

This proposal amends Section 41-509, Idaho Code, which limits the net amount of risk an insurer can retain for property coverage to 10% of surplus to policyholders. Subsection 41-509(7) refers to risk limits provided in 41-2820 for newly formed domestic mutual companies; however, 41-2820 was amended in 1995 and no longer addresses any risk limits for mutual insurers, so the reference no longer makes sense.

The Department of Insurance is proposing to amend Section 41-509 to delete the obsolete reference. A newly formed domestic mutual property insurer is subject to the same risk limit that applies to all other property insurers. There is no fiscal impact and there is no known opposition to this legislation.

**H 0092**

**Insurance Department, Confidential Information**

The National Association of Insurance Commissioners (NAIC ) has added an accreditation standard for state insurance departments that they must also be able to share confidential information with international law enforcement and regulatory entities. This standard recognizes the increasing globalization of the insurance business.

The Department of Insurance is proposing to amend Section 41-249 to

clarify that it can share confidential information with international regulators. There is no fiscal impact and there is no opposition to this legislation.

**H 0096**

### **Insurers, Foreign, Requirements**

Sections 41-2872 (Any Willing Provider) and 41-2873 (Most Favored Nation), Idaho Code, impose requirements and limitations upon insurance carriers that contract with health care providers. The problem that this legislation seeks to address is that Chapter 28 of Title 41 applies only to domestic insurers. As a result, these requirements are currently applicable only to Idaho domestic insurers.

The Department of Insurance is proposing to amend Section 41-2801 to make the requirements of Sections 41-2872 and 41-2873 applicable to foreign insurers as well as domestic insurers. There is no fiscal impact and there is no opposition to this legislation.

**H 0097**

### **Insurance Department, Testimony**

The Department of Insurance is proposing new language that will make Section 41-230, Idaho Code, consistent with Idaho's Criminal Code immunity statute (Section 19-1115). That statute prohibits the use of any compelled testimony or evidence in a criminal case against the party providing the testimony, but does not prohibit the use of independently obtained evidence. This is sometimes referred to as "use immunity" and means that the person compelled to provide testimony can still be criminally prosecuted if the state has independent evidence to support the charge; however, the state cannot use any of the compelled testimony or evidence in the criminal prosecution. There is no fiscal impact, and there is no known opposition to this legislation.

**H 0098**

### **Insurance Fraud, Provisions Revised**

This proposal amends Sections 41-291 and 41-293, Idaho Code, which set out various activities that constitute insurance fraud. The proposal will clarify the definition of what constitutes a "statement" for purposes of insurance fraud, add a definition of "runner" (someone who procures clients at the direction of a person who, with intent to deceive or defraud, performs or obtains a service or benefit under an insurance contract), and add to the list of activities that may constitute insurance fraud.

The purpose of these changes is to make the law more clearly applicable to the wide range of methods used to defraud and deceive insurers and other parties to insurance transactions. Many of these changes were suggested by the deputy attorney general who has been assigned to handle insurance fraud cases. There is no fiscal impact and there is no opposition to this legislation.

**Mr. Deal** advised that the Department of Insurance carries an open caseload of approximately 160 fraud cases involving both insurance agents and fraud claims. There are six investigators and an attorney devoted to fraud investigation and prosecution.

**Julie Taylor**, Director of Governmental Affairs for Blue Cross of Idaho,

spoke to the Committee in favor of H0098. **Ms. Taylor** said that Blue Cross supports the Department of Insurance efforts to obtain funding for fraud investigations. Fraud is an emerging problem in Idaho, and this legislation allows them to pursue cases where an employee lies to a physician and causes a fraudulent claim to be submitted to Blue Cross. Without this particular legislation the link between the member and their physician was too vague, and the cases had to be pursued in federal court. They are pleased that the legislation also addresses the issue of “runners,” as Blue Cross is greatly impacted by this as the “secondary” insurer for medical payments resulting from auto accidents.

**Senator Cameron** referred to page 3, line 38, and the inclusion of the word “ignorance” and how this would be proven in a fraud case. **Ken Robins**, Deputy Attorney General, replied that the particular language is merely a definition about what statements are material and what statements are not. The language comes out of several insurance treatises dealing with insurance law, and it gives a “laundry list” of statements that will, or will not, be material if they are false. If a person merely forgot about something, then it is immaterial; however, if it is a statement that the insurer would need or want to know in order to make the decision of where someone would fit within a certain risk category, then it is material.

## H 0111

### Insurance Marketing, Practices

In September of last year Congress passed the “Military Personnel Financial Services Protection Act.” This Act was passed in response to what Congress found to be abusive financial product sales practices targeting members of the Armed Forces. The federal law calls upon the States to collectively work with the U.S. Secretary of Defense to implement standards to protect members of the Armed Forces from “dishonest and predatory” sales practices with respect to financial products like life insurance and annuities. The federal Act also makes it clear that states have authority to regulate insurance sales activities that occur on federal military bases.

The National Association of Insurance Commissioners, a body made up of the chief insurance regulators of all the states, has been working with the Secretary of Defense to develop model rules for states to implement that will comply with the intent of the Military Personnel Financial Services Protection Act.

**Mr. Deal** advised that H0111 will provide a statutory basis for the Department of Insurance to adopt the model rules when they are completed and to thereby comply with the intent of the federal law that all states implement standards for insurance sales to military personnel. There is no fiscal impact and there is no opposition to this legislation.

## MOTIONS:

**Senator Werk** made a motion, and **Senator Coiner** seconded, to send H0098 to the floor with a do pass recommendation. The motion carried with a **Voice Vote**.

**Senator Cameron** made a motion, and **Senator Goedde** seconded, to send H0088, H0089, H0090, H0091, H0092, H0096, H0097 and H0111 to the floor with a do pass recommendation and with the recommendation that they be placed on the consent calendar. The motion carried with a **Voice Vote**.

**APPROVAL OF MINUTES:**

**Senator Bilyeu** made a motion, and **Senator Coiner** seconded, to approve the Minutes for February 20 & 22, 2007. The motion carried with a **Voice Vote**.

**PRESENTATION:**

**Chairman Andreason** announced that today's meeting would complete all remaining business of the Commerce & Human Resources Committee for this session, and any further meetings would be subject to the call of the Chair. He then recognized **John Tobiasson**, Senate Page for the second half of the 2007 session, and presented him with a letter of appreciation signed by all members of the Committee and a Senate watch in remembrance of his service as a Senate Page.

**John Tobiasson** addressed the Committee regarding his experience this legislative session and his future plans. He thanked the Committee members and commented that he "had learned a lot" from this experience. He noted that the media generally presents a "corrupt" image of our governmental bodies; however, that has not been his observation as a Senate Page. He said that the "independent thought" displayed by the Committee members "has instilled a new hope" and understanding regarding the legislative process. After graduating from high school, **John** plans to work as a pipe installer until he leaves for his church mission. When he returns from his church mission he may attend college or enter military service.

**Chairman Andreason** then thanked the Committee for the quality of work performed by the members. He commended their efforts to study the issues, ask good questions, and "put to task" those who brought legislation before the Committee. In closing, he stated, "This has been one of our better years."

**ADJOURNMENT:** The meeting was adjourned by **Chairman Andreason** at 1:38 p.m.

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Senator John Andreason  
Chairman

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Olga Copley  
Secretary

**NOTE:** Any sign-in sheets, guest lists, and/or testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of session, then will be on file with the minutes in the Legislative Services Library (Basement E).