

House Commerce & Human Resources Committee

Minutes
2009



MINUTES

HOUSE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: January 19, 2009

TIME: 1:30 p.m.

PLACE: Room 316

MEMBERS: Chairman Schaefer, Vice Chairman Marriott, Representatives Lake, Trail, Thayne, Hartgen, Simpson, Takasugi, Ringo, Pasley-Stuart, Higgins

**ABSENT/
EXCUSED:** Representative Ringo

GUESTS: Laurynda A. Williams, Service Employees International Union-Idaho Association of Government Employees (SEIU-IAGE); Andrew Hanhardt, SEIU-IAGE; Alex Neiwirth, SEIU-IAGE; Daniel Wolf, SEIU-IAGE; Dave Rooke SEIU-IAGE; Katie Shield, SEIU-IAGE; Peggy Wright, SEIU-IAGE; Donna Yule, Idaho Public Employes; Dennis Moberly, Division of Human Resources; Dr. Selma Gearhardt, SEIU-IAGE

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

Chairman Schaefer welcomed the group including members of the Administrative and Legislative staff and guests and commented that Idaho is in better financial condition than most states. He introduced the Pages Danielle Schmidt and Todd Beck and secretary Doreen Bowden. He then welcomed Representatives Takasugi, Simpson, Hartgen and Higgins, new members of the House of Representatives serving on the Committee.

Chairman Schaefer then turned the meeting over to Vice Chairman Marriott for review of Rules.

Dennis Moberly of Division of Human Resources explained the rationale behind the temporary rules submitted. The last time rules were finalized was 2005. The temporary and proposed rules for 2006 and 2007 were published together to save publishing costs. Official comments on the rules were received October 1-21, 2008 and a public hearing was held on November 10, 2008. At the public hearing 17 people attended and 10 testified. They received 92 individual comments and 103 written comments on the pending rules.

He further discussed Section 240.04, page 64 which deals with MDA which gave employees 2 hours of leave for medical appointments but stated there was no statutory authority for this rule and it was determined this was covered under sick leave and therefore they recommended elimination of MDA.

Mr. Moberly also explained that on the advice of the Attorney General's office the Definition Section, page 20, was broken into sections, eliminated some definitions and moved some definitions into the appropriate rules section.

Mr. Moberly then moved forward to discuss Disability Lay Off (Page 65). The time allowed for disability leave was changed from 6 months to 12 weeks after which time the agency **may** declare the employee's position vacant. This keeps the rule in balance with the Federal FMLA.

Rep. Trail commented that a state employee he knows had a kidney transplant and appreciated the extra time allowed him so that he could come back and still keep his job.

Mr. Moberly then explained that a classified employee who moves to a non-classified position can be reinstated to his former classified position. There is no specific statute for this.

Mr. Moberly also explained that the changes to the Veterans preference for employment were made to comply to changes made to the Federal Veterans Code in 2006. A veteran is no longer required to reside in Idaho to get preference. A veteran with at least 30% disability will have an additional 10 points added to their test score and if that score puts them in the top 10 of the register, they will get an interview for the job. **Rep. Simpson** complimented them for making these changes to the Veterans preference.

In response to **Rep. Marriott's** question on a gender change in the wording **Mr. Moberly** responded that the Attorney General's office determined that using "he" would be acceptable.

Rep. Pasley-Stuart would like a follow-up on the MDA rule since MDA leave was being granted to employees as far back as 1985 even though there may be no statutory rule on MDA. She commented that if MDA is not in statute, that can be fixed.

There was discussion that the rule can be temporary because it has economic benefit. **Rep. Trail** stated that the elimination of MDA is not a benefit to state employees but is a benefit to taxpayers. In response to the question of the dollar amount of savings to the taxpayers by eliminating MDA it was stated that this had not been determined. The use of MDA has been inconsistent. Some agencies did not use the MDA code on the time sheet, but in some cases there had been as many as 100 hours in a year coded to MDA for an individual employee.

Rep. Trail asked that the Human Resources Department report back to the Committee with a dollar figure for the savings.

In response to question it was stated that even though MDA has been in effect for at least 25 years without statutory authority, it was eliminated because of inconsistencies in application of the rule and that the sick leave policy covered, not curtailed, preventative care appointments.

It was suggested that perhaps the MDA rule should be eliminated and a statute created by Legislation to approve MDA.

The committee recommended a follow up on **Rep. Pasley-Stuart's** comment that according to IC 67.5226 a proposed rule should provide a benefit to all who must use the rule. The employees would use the rule,

but the benefit would be to the taxpayers.

The Committee asked for a follow up regarding the use of “employee’s position **may** be declared vacant” if an employee is on disability leave for 12 weeks. **Rep. Simpson** felt this may leave room for preferential treatment or prejudice by a manager and may leave the state open for a lawsuit. **Rep. Takasugi** asked that we obtain an opinion from the Attorney General is regards to the term “may.”

It was clarified that by eliminating the MDA rule, some leave that employees have been taking in addition to sick leave would be eliminated and that a 2-3 hour medical appointment would be charged to sick leave.

The committee asked for follow up on **Dennis Stevenson’s** comment that the rule (MDA) is not in alignment with state policy.

Rep. Lake stated the Legislature does not review temporary rules; they review Pending Rules and Proposed Rules require legislative authority.

Rep. Hartgen asked that the committee request an opinion on **240.03** from the Attorney General since it states only to be used for “actual illness”. **Rep. Higgins** would like a ruling on whether an employee can take the actual time needed for an appointment or do they have to take a full 8 hours sick leave.

The committee asked for dollar amounts related to the use of MDA. In calendar year 2005, 84,0000 MDA hours were logged at a cost of \$1,528,800 and in 2006, 90,528 hours were logged at a cost of \$1,700,000.

Laurynnda A. Williams, SEIU-IAGE, testified in opposition to the elimination of the MDA leave. She has several children and, with children, there are always reasons for them to see a doctor, especially since she has one child who is diabetic. The MDA allows her the time needed for their doctors appointments.

Andrew Hanhardt, SEIU-IAGE, testified in opposition to elimination of the MDA since there are many unanswered questions on the issue.

Alex Neiwirth, SEIU-IAGE, testified in opposition to the elimination of the MDA. He had concerns that employees would not seek preventative health care if MDA is eliminated. Good benefits help in the retention of good employees and it costs money to retrain employees. He also had concerns with use of “may” in the Long Term Disability rule change. He would encourage the Committee not to repeal the rule and enact statute to cover MDA.

Follow up was requested in connection with **Rep. Trail’s** comment to keep the rule in affect for use of MDA which may save money in the long term.

Dr. Selma Gearhardt, a Pharmacist with the State of Idaho for 5 years,

testified in opposition to the elimination of MDA leave. In August 2008 the Governor's Division of Human Resources instituted temporary rules (out of the legislative session) that eliminated on the spot the state employee benefit of MDA leave and greatly reduced employee's disability benefit. The temporary rules are not permanent until the legislature has its say. She asked the committee to repeal the temporary rule. The sick leave policy states it is to be used only in case of actual illness. MDA leave was used for wellness check ups and she cited many examples of preventative care being a savings to the employer in terms of health care. She was concerned that the public hearing was held on a Monday at 10 a.m. when state employees would not be able to leave their jobs to attend the hearing and that the rule was instituted when the Legislature was not in session.

Donna Yule, representative of the Idaho Public Employees

Association, testified in opposition to two of the temporary/proposed rules on **Docket 15-0401-0801**. Employees are asking that instead of eliminating the MDA benefit, limit the use of the MDA leave to four times in a calendar year. The employees would encourage the committee to change the time a position must remain open when an employee is out on disability from six months to 24 weeks. Employees have no objection to the other changes.

Rep. Lake stated that since there is no statutory rule for MDA, the statutory rule should be in place before eliminating the temporary/proposed rule.

Dave Rooke, SEIU-IAGE, wanted to put a human face on the rule for Long Term Disability. He came to the meeting to represent an employee in his department who had hoped to be back within three months but is still not well enough to return to work. Department employees started filling in for his position. An employee on disability does not need the stress of not knowing if they will have a job to return to when well.

Katie Shields, SEIU-IAGE, testified in opposition to the rule changes. The benefit package is one way to attract and retain young workers since the salary range is not as high as the private sector. State employees are dealing with other issues right now such as hiring freeze, layoffs, furlough days. Her department lost 50 temporary employees and the department still has to get the work done without them. She urged Legislators not to approve the proposed rule changes.

In response to **Rep. Marriott's** question, it was stated that during 2007 and 2008, 480 people used six months of disability leave and that 55 people were laid off after 6 months due to disability.

Rep. Marriott asked the Department of Human Resources to give the Committee the number of layoffs that would have occurred over the past four years if the disability limit was 12 weeks.

Discussion determined that employees can contribute up to 40 hours of vacation time towards another employee's sick leave if contributing employee has at least 80 hours vacation time on the books.

In response to question, the granting of leave time to vote was eliminated since polls are open before and after working hours or people may vote by absentee ballot and there is no statutory rule for granting this time off to employees.

Discussion ensued regarding whether there were any court cases dealing with any of these issues and also the governor's role in enacting temporary rules.

Rep. Marriott turned the meeting back to **Chairman Schaefer** who stated Human Resources Rules will be held in Committee.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:30 p.m.

Representative Jim Marriott
Vice Chairman

Doreen Bowden
Secretary

MINUTES

HOUSE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: January 21, 2009

TIME: 1:30 p.m.

PLACE: Room 316

MEMBERS: Chairman Schaefer, Vice Chairman Marriott, Representatives Lake, Trail, Thayn, Hartgen, Simpson, Takasugi, Ringo, Pasley-Stuart, Higgins

**ABSENT/
EXCUSED:**

GUESTS: Don Drum, Executive Director, Public Employee Retirement System of Idaho (PERSI); Joanna Guilfooy, Deputy Attorney General, Attorney General Office; Bill Oldham, Deputy Director, PERSI; Jennifer Pike, Management Assistant, Department of Administration; Katie Killpack, Intern, Division of Financial Management; Dede Shelton, Director of Advocacy, American Association of Retired People (AARP); Maribeth Connell, Chair Capitol City Tax Force, AARP

Meeting was called to order at 1:30 p.m. by Chairman Schaefer. He had Page, Travyn Mapes, introduce himself. A handout regarding Administrative Rules was distributed to members of the Committee.

DOCKET #: **59-0102-0801** **Don Drum**, Executive Director, Public Employees Retirement System of Idaho (PERSI) explained that the rule changes were made to clarify status, be consistent with other rules or to comply with Federal legislation passed. **Docket No. 59-0102-0801** changes Eligibility Rule 122.03 to make clear that an employee on leave without pay is still an employee and to clarify that if an employee on leave without pay terminates without returning to work, the leave without pay status is negated.

Leave without pay status can affect a member in certain ways because he is not contributing during that time and benefit status is based on date of last contribution. This change will provide added clarity to this issue.

In response to questions, this rule change does not change any other status held by the employee. If an employee is on furlough, terminated voluntarily or involuntarily, the last date of contribution is used to determine status.

MOTION; **Rep. Lake** moved that the committee approve **Docket No. 59-0102-0801**. **Motion passed on voice vote.**

DOCKET #: **59-0104-0801** **Mr. Drum** stated this docket makes technical corrections to rules 100 and 101 to bring them in line with the applicable statutes. The change to rule 100 changes a reference to "10 years" to "5 years" - under statute, 5 years of service is required for disability eligibility. The change to rule 101 adds a reference to "general member" - under statute; all members (police, firefighters and general) are immediately eligible for disability if the disability is occupationally caused.

In response to questions, Mr. Drum stated that even though the rule stated 10 years service was required for eligibility, the practice has been to use 5 years of service in determining disability eligibility.

MOTION: **Rep. Lake** moved that the committee approve **Docket No. 59-0104-0801**. **Motion passed on voice vote.**

DOCKET #: **59-0105-0801** **Mr. Drum** presented this docket which makes a change to rule 125.04 to make clear that eligible rollovers from the base plan include a rollover to a Roth IRA. This change is required under recent changes in federal statutes applicable to the base plan.

In response to questions, Mr. Drum stated that if someone separates from service, they can roll their PERSI account over to another 401k or Roth IRA without tax consequences.

MOTION: **Rep. Thayn** moved that the committee approve **Docket No. 59-0105-0801**. **Motion passed on voice vote.**

DOCKET #; **59-0105-0802** **Mr. Drum** presented this docket which makes a change to rule 126 to reflect the adoption of final federal regulations regarding required minimum distributions. It also adds new rule 127 to allow for rollovers from the base plan to a non-spouse beneficiary IRA. Both changes are required under recent changes in federal statutes applicable to the base plan.

In response to questions, Mr. Drum stated that a rollover to a non-spousal IRA could go to a child or any other person designated. Mr. Drum deferred to Joanne Guilfooy, Deputy Attorney General who clarified that spousal consent is not required for a rollover to a non-spouse beneficiary IRA, but spousal consent is required with respect to retirement fund distribution.

MOTION: **Rep. Higgins** moved that the committee approve **Docket No. 59-0105-0802**. **Motion passed on voice vote.**

DOCKET #: **59-0105-0803** **Mr. Drum** presented this docket which changes rule 100 to remove an obsolete reference to the optional retirement plan and brings the rule in line with applicable statute. Members of the optional retirement plan (university professors, essentially) are not members of PERSI and so this reference needed to be removed.

MOTION: **Rep. Thayn** moved that the committee approve **Docket No. 59-0105-0803**. **Motion passed on voice vote.**

DOCKET #: **59-0106-0801** **Mr. Drum** presented this docket which makes a technical correction to rule 132 to make the wording coincide with the statute and other rules. It also amends rule 178 involving benefit compensation limits. Federal law limits the yearly total amount a person can receive under the base plan. If a person retires before age 62, an actuarial equivalent limit applies. This rule changes rule 178.02 to clarify that the actuarial equivalent is not applicable to members with at least 15 years service such as police officers or firefighters. This change was recommended by outside tax counsel to clarify the rule in accordance with federal law.

In response to a question Mr. Drum stated that the reason for the change to rule 178.02 is that police officers and firemen usually retire at a younger age.

MOTION: **Rep. Takasugi** moved that the committee approve **Docket No. 59-0106-0801. Motion passed on voice vote.**

Chairman Schaefer thanked Mr. Drum for his presentation and stated the Committee looked forward to future dealings. PERSI is a good group to work with.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 1:55 p.m.

Representative Robert Schaefer
Chairman

Doreen Bowden
Secretary

MINUTES

HOUSE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: January 27, 2009

TIME: 1:30 p.m.

PLACE: Room 316

MEMBERS: Chairman Schaefer, Vice Chairman Marriott, Representatives Lake, Trail, Thayne, Hartgen, Simpson, Takasugi, Ringo, Pasley-Stuart, Higgins

**ABSENT/
EXCUSED:** Representatives Lake, Trail, Ringo

GUESTS: Don Drum, Executive Director, Public Employees Retirement System of Idaho (PERSI); Bob Fick, Communications & Legislative Liaison, Department of Labor; Jennifer Hannah, HR Specialist, Idaho Department of Health & Welfare (IDHW); Monica Young, Program Manager, IDHW; Joanna Guilfooy, Deputy Attorney General, PERSI; Bill Oldham, Deputy Director, PERSI; Don Arnold, Unemployment Insurance Compliance Bureau Chief, Department of Labor; Tracey Rolfsen, Deputy Attorney General, Department of Labor; Brian Murphy, Idaho Statesman

Meeting was called to order at 1:30 p.m. by Chairman Schaefer. He had Mary Tipps introduce herself to the Committee as the new Attache for the Committee. Chairman Schaefer turned the meeting over to Vice Chairman Marriott who is chairing the meetings on Administrative Rules review.

**DOCKET #:
59-0103-0801** **Don Drum**, Executive Director for PERSI presented the background for this docket. The docket involves the contribution rates (employer and employee) for the base plan. This docket rescinds contribution rate increases currently scheduled to take effect July 1, 2009 and July 1, 2010. Contribution rates will remain at the rates that became effective July 1, 2004.

In 2003, the Board promulgated a series of contribution rate increases. These rules became effective in March of 2004. The rate increases involve rules 26-28 and rule 100-101 in the contribution rules. The rate increases were scheduled to take effect July 1, 2004, July 1, 2005 and July 1, 2006.

The July 1, 2004 rate increase took effect. However, through a series of temporary rules, the second and third increases were postponed. Each time a new temporary rule was put into effect, the prior one was rescinded. In the most recent of those temporary rules (now before the Legislature as pending in Docket No. 59-0103-0801, the Board deleted (rather than postpone) the second and third scheduled increase. That temporary rule is now a pending rule before the Legislature.

In response to questions, **Mr. Drum** stated that there are different rates of contribution and different classifications of employees. Police Officers and Firemen are under rule of 80 since they usually retire sooner and their contribution rate is higher.

In response to further questions, **Mr. Drum** stated the requested rule change

is because of changes in the market. At the time the rule was proposed as a temporary rule, PERSI was funded at 105% based on rate of return. The rates are based on actuarial data which is reviewed in June of each year. Other factors affecting the actuarial data are increases in the longevity of members and members retiring earlier, but the primary factor is the market. Two years ago the fund made 20% in the market, last year it increased 4.3%, but as of yesterday (1-26-09), it was down 23.92%.

MOTION: **Rep. Higgins** moved that the committee **approve Docket No. 59-0103-0801. Motion passed on a voice vote.**

DOCKET #: **09-0108-0801** **Bob Fick**, Communications & Legislative Liaison, Department of Labor, stated that IDAPA 09.01.08 is being changed to add required sections, provide for public inspection of records, make changes to definitions and provide for access to information by individuals, employers, agents, attorneys and elected officials.

These changes will bring the Department's rules in line with the rules of the US Department of Labor and Employment Security. Individuals or employers may access employment security information pertaining to them for existing records in the Department's custody as of the date of the receipt of request, but not records that may be created in the future. Attorneys, elected officials or agents must have written evidence that an individual has authorized them to access employment security information on their behalf. Anyone who obtains employment security information must protect the confidentiality of those records.

Mr. Fick explained that the second rule change requires the Department to charge persons requesting Employment Security information for the actual costs of disclosure that are not for Employment Security purposes. No costs will be charged for de minimis requests. The Department's failure to comply with the requirement of 20 CFR part 603 would cause the loss of federal funding for Idaho's Unemployment Insurance program.

Mr. Fick further explained that charges for records would be based on a rate of \$41.50 per hour and 20 cents per page for copies. A client will only be charged for costs of records which exceed \$100. There are only a few issues that would exceed the \$100 minimum, most of which would be for records requests from counties. The Department is establishing a yearly rate for counties to cover the costs of records requests they would normally require.

In response to questions, **Mr. Fick** indicated that any funds collected for records requests would be directed to the administrative fund of unemployment insurance.

MOTION: **Rep. Takasugi** moved that the committee **approve Docket No. 09-0108-0801. Motion passed on a voice vote.**

DOCKET #: **09-0135-0801** **Mr. Fick** explained that **Docket # 09-0135-0801 Section 221.01** is being changed to delete "continuity of business activity" and insert "transfer of trade or business" to accurately reflect statutory language found in Section 72-1351A, Idaho Code. The statutory reference in this section is also being changed to Section 72-1351A, Idaho Code. He further explained that if a

business is sold, the current unemployment tax rate for that business is transferred to the new owner.

MOTION: **Rep. Thayn** moved that the committee **approve Docket No. 09-0135-0801. Motion passed on a voice vote.**

Chairman Schaefer asked if there were any changes to the Minutes of January 21, 2009. There were no requested changes.

MOTION: **Rep. Takasugi** moved that the **Minutes of January 21, 2009 be adopted. Motion passed on a voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:10 p.m.

Representative Robert Schaefer
Chairman

Mary Tipps
Secretary

MINUTES

HOUSE COMMERCE AND HUMAN RESOURCES COMMITTEE

- DATE:** January 29, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 316
- MEMBERS:** Chairman Schaefer, Vice Chairman Marriott, Representatives Lake, Trail, Thayn, Hartgen, Simpson, Takasugi, Ringo, Pasley-Stuart, Higgins
- ABSENT/
EXCUSED:**
- GUESTS:** Michael Savoie, Division of Human Resources; Brian Dickens, Department of Commerce; Wendy Widman, Health and Welfare; Andrew Hanhardt, NAGE/IAGE
- The meeting was called to order at 1:34 p.m. by **Chairman Schaefer**.
- Meeting minutes from January 19, 2009 were introduced and reviewed by the committee.
- MOTION:** **Rep. Pasley-Stuart** moved to accept the minutes as corrected, with Rep. Hartgen's name spelled correctly. **Motion passed on a voice vote.**
- Meeting minutes from January 27, 2009 were introduced and reviewed by the committee.
- MOTION:** **Rep. Higgins** moved to accept the minutes. **Motion passed on a voice vote.**
- RS18416:** **Rep. Schaefer** welcomed **Rep. Burgoyne** to present **RS18416**. **Rep. Burgoyne** explained that currently the Division of Human Resources and the Personnel Commission entitle state employees who have been laid off to be reinstated if their position, or a similar position, reopens during a one-year period following the layoff. This proposed legislation would require a new rule that classified employees who are removed from a position due to budgetary constraints during fiscal years 2009, 2010, and 2011, would be considered to be on temporary furlough. If the employee's position, or a similar position, becomes available before the end of fiscal year 2012, the employee would be reinstated, unless the employee refuses the reinstatement in writing.
- In response to questions, **Rep. Burgoyne** said that classified employees of universities would be included under the legislation. He also said that the State would be required to have a larger registry of laid off employees who are eligible for reinstatement than it currently operates. In addition, he said that the Personnel Commission would define terms, and current rules would coordinate with the proposed amendment.
- Rep. Lake** moved to introduce **RS18416**. **Motion passed on a voice vote.**

MOTION: **Rep. Schaefer** welcomed **Brian Dickens**, Innovation Administrator for the Department of Commerce. **Mr. Dickens** explained that **RS18229C2** provides for three language changes: First, that Science and Technology license plates be renamed Innovation Plates; second, that the Office of Science and Technology Fund be renamed the Idaho Innovation Fund; third, that the Science and Technology Council be renamed the Idaho Innovation Council.

RS18229C2:

Mr. Dickens stated that Science and Technology license plates were designed to raise awareness and funds, but had not met expectations and would not continue to be offered, however, drivers possessing such plates would maintain the option to renew. Renewals would continue to generate revenue. Renaming of the license plates is requested to create continuity and to reflect where the renewal fees would be going, as there are other name changes in the works.

As to changes to the name of the Science and Technology Fund, and the Science and Technology Advisory Council, Mr. Dickens shared that using the term "Innovation" in place of "Science and Technology" is more inclusive and would allow for the application of a wider array of technologies and industries within the State of Idaho.

In answer to questions, Mr. Dickens said that there is no projected fiscal impact from the name changes. All existing business cards and printed materials will be used before reorders are placed using the new names. He also said that name changes to the Fund and Council have already been implemented by executive order. The reason for requesting this legislation is that there are references to "Science and Technology" in statutes that reference the flow of funds and workload, which are now being directed to "Innovation." There is a desire to correctly reflect where funds and time are being distributed. He also said that license plate design will not change, only the name of the plate will change.

Rep. Takasugi expressed support for this RS, stating that Agriculture, Forestry, and Mining can be included under the term "Innovation," whereas these fields might not have been represented using the words "Science and Technology."

MOTION: **Rep. Trail** moved to introduce **RS18229C2**. **Motion passed on voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:00 p.m.

Representative Robert Schaefer
Chairman

Mary Tipps
Secretary

MINUTES

HOUSE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 5, 2009

TIME: 1:30 p.m.

PLACE: Room 316

MEMBERS: Chairman Schaefer, Vice Chairman Marriott, Representatives Lake, Trail, Thayn, Hartgen, Simpson, Takasugi, Ringo, Pasley-Stuart, Higgins

**ABSENT/
EXCUSED:**

GUESTS: Woody Richards, Workers Compensation Exchange/Associated Loggers Exchange; Susie Pouliot, ID Medical Association; Megan Gale, Industrial Commission; Patti Sarossy, Industrial Commission; Scott McDougall, Industrial Commission; Mindy Montgomery, Industrial Commission; Tom Limbaugh, Industrial Commission

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

Minutes from the January 29, 2009 meeting were submitted to the committee for approval.

MOTION: **Representative Higgins** moved to accept minutes as written. **Motion passed on a voice vote.**

PRESENTATION: **Chairman Schaefer** turned the meeting over to **Vice Chairman Marriott**, who welcomed **Mindy Montgomery** of the Industrial Commission to give a presentation.

Ms. Montgomery presented an overview of the Industrial Commission including its role in Workers' Compensation.

In a PowerPoint presentation, the following information was covered: The Industrial Commission's functions, misconceptions, IIC funding, basic principles, adjudication, benefits, FY08 benefits statistics, reported accidents and fatalities, the Employer Compliance Bureau, employer compliance, rehabilitation, Crime Victims Compensation, and the Division of Building Safety.

In response to questions during Ms. Montgomery's presentation, **Scott McDougall** stated that in the case of third party liability, if workers' compensation pays a claimant, there is a right to subjugation under the law. He also stated that the number of cases adjudicated is unknown to him, however, claims as a rule have stayed relatively flat over the last fifteen years.

As to subjugation, Mr. McDougall stated that the amount attorneys receive could be changed, but that would be a policy issue. Mr. McDougall had no opinion about whether attorneys' fees are excessive.

Mindy Montgomery answered questions with the following information: She is not able to give the number of employers who were noncompliant in carrying workers' compensation insurance. The ICC discovers noncompliant employers in a number of ways including receiving referrals from insurance companies when policies are not kept up-to-date, and checking on new businesses to be sure they are carrying the required insurance.

Also in answer to questions, Ms. Montgomery stated that the Crime Victims Fund is funded through fines on misdemeanors and felonies, as well as through a Federal grant. She stated that the Crime Victims Fund is the payer of last resort, and that victim applicants must first utilize other methods of having services covered. The fund covers medical and other expenses but does not cover time losses. The fund becomes effective immediately upon the acceptance of an application - the victim does not have to wait for civil or other proceedings to be settled before being eligible for assistance.

**Docket #
17-0204-0801:**

Mindy Montgomery presented **Docket # 17-0204-0801**, Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Benefits.

This rule has been adopted by the agency and is before the Legislature for final approval. The substance and purpose of the rule is in section 72-1104 of Idaho Code, part of the Peace Officer and Detention Officer Temporary Disability Act that was enacted in 2007, requiring the Industrial Commission to adopt rules governing reimbursements under this law. The amendments provide for application procedures for eligible employers to seek reimbursement from the fund.

This rule allows employers of peace officers and detention officers to seek reimbursement from the fund for the amount of an officer's salary that has not been covered by the workers' compensation benefit program, during the time that the officer is temporarily incapacitated, unable to perform employment duties, and eligible for work comp benefits, due to an injury that incurred during the course of employment on or after July 1, 2008 either when responding to an emergency, or when in pursuit of an actual or suspected violator of the law.

In response to questions, Ms. Montgomery stated that there are no changes being made to the existing temporary rule. The fund has been used to pay two claims since it became available in July of 2008, and things have gone well. There is no maximum amount that can be placed in the fund.

MOTION:

Representative Lake moved to adopt **Docket # 17-0204-0801**. **Motion passed on a voice vote.**

**Docket #
17-0208-0802:**

Thomas Limbaugh presented **Docket # 17-0208-0802**, Miscellaneous Provisions, and asked the committee to reject the pending rule.

In explanation, Mr. Limbaugh said that the rule changes workers' compensation reimbursement regulations for hospitals and ambulatory surgical centers. A private consulting company, Ingenix, was used to study Idaho provider and hospital data that was provided by the State Insurance Fund.

The first step was to finish a provider medical fee schedule. That schedule is contained in the pending rule and reflects a 3% increase in reimbursements over the previous year. It is currently in force by temporary rule and if the committee chooses to reject the pending rule, this 3% increase would be adopted as a temporary rule again, and would remain in force.

The second step was to adopt a hospital and ambulatory surgical center reimbursement method. Ingenix, using 2006 data, developed several payment systems for review by the IIC. The preferred system is the CMS Diagnosed Related Group (DRG) method for inpatient reimbursement. The DRG system used in the research was DRG Version 24, however, at present time the current software is Version 26, called MS-DRG. Under the DRG system, hospital cases are put into groups. Each group is assigned a factor (weight) that is multiplied by a base rate (dollar amount). The method, when tested, was to result in less than a 1% increase in hospital and inpatient reimbursements, however, the State Insurance Fund recently purchased the new software and tested it using 2008 bills. Their results are showing an 18% increase in the weight assigned by the MS-DRG compared to the DRG studied. The IIC feels that the increase might be due to worker's compensation related procedures being assigned a higher severity factor when compared to the average.

In March of 2007, the Legislature adopted the Industrial Commission rules requiring insurance companies to reimburse hospitals on a percentage of billed charges. Before this, insurance companies broke down hospital bills and captured procedure codes. The data that is required to further test the proposed method exists only in copies of bills. It will take time to compile the information and study results.

In response to questions, Mr. Limbaugh stated that if the rule is rejected, the temporary rule that is in place will only be in effect until Sine Die. Then a new temporary rule would have to be put into effect until the next Legislative Session. He stated that the reason for asking that the rule in question be rejected is that the IIC needs to continue to work on changes. He stated that if the rule in question is adopted, many bills would be reimbursed at a higher rate than the total amount of the bill.

Also in response to questions, Mr. Limbaugh stated that the 3% increase in this year's medical fee schedule is mandated by statute. Fees must be adjusted each year. He stated that whether they go up or down, and by how much, is dictated by Health and Welfare.

In response to questions, **Patti Sarossy** stated that under Medicare, ambulatory surgical centers receive roughly 65% of what hospital outpatient services receive. She did not know whether the ratio was going to get bigger or smaller, she would need more information. She stated that what is reasonable is determined between the provider and the payer. She stated that the IIC can be involved in dispute resolution.

Mr. Woody Richards asked to convey that the following groups would like to see the rule rejected: the Chamber of Commerce Alliance, the State Insurance Fund, the Property Casualty Insurance Association, the Workers' Compensation Exchange, and the Associated Loggers Exchange. He stated

that the problem with the pending rule is numbers, not the process or system, and that adoption of the pending rule would result in a large increase in spending. He asked for rejection of the rule.

MOTION: **Representative Takasugi** moved to reject **Docket # 17-0208-0802. Motion passed on a voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:40 p.m.

Representative Robert Schaefer
Chairman

Mary Tipps
Secretary

MINUTES

HOUSE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 9, 2009

TIME: 1:30 p.m.

PLACE: Room 316

MEMBERS: Chairman Schaefer, Vice Chairman Marriott, Representatives Lake, Trail, Thayne, Hartgen, Simpson, Takasugi, Ringo, Pasley-Stuart, Higgins

**ABSENT/
EXCUSED:** Representative Takasugi

GUESTS: Wendy Widman, Health and Welfare; Donna Yule, Idaho Public Employees Association; Dennis Moberly, Department of Human Resources (DHR); Judie Wright, DHR; Vicki Tokita, DHR; Andrew Hanhardt, Idaho Association of Government Employees (IAGE); Alex Neiwirth, Service Employees International Union (SEIU)/IAGE; Daniel Wolf, SEIU/IAGE; Dennis Stevenson, Department of Administration

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

**DOCKET #
15-0401-0801:** **Chairman Schaefer** welcomed **Dennis Moberly**, from the Department of Human Resources. Mr. Moberly presented information about changes that have been made to **Docket #15-0401-0801** since it was heard in the House Commerce and Human Resources Committee on January 19, 2009, and since it was heard (and approved) by the Senate Commerce and Human Resources Committee.

Mr. Moberly stated that two main issues were raised by state employees during the comment period, October 1, 2008 to November 10, 2008, and at the public hearing on November 10, 2008. Those issues were the elimination of Medical, Dental, and Optical Appointment Leave (MDA) and layoffs taking place after an employee has been on 12 weeks of Disability, instead of the current rule of 6 months (or when accrued sick leave has been exhausted.)

Wording changes have taken place since the rule was originally introduced to the committee. The Department of Human Resources will be referred to as "Agency" instead of "Department." Also, gender references will be "he" and "his." "Shall" will be changed to "will," or "must," e.g. 20.03 page 29. "Rule" will be changed to "Section" or "Subsection" e.g. 10.22 page 23.

The Definitions Section was reorganized into four sections, with some definitions moved into corresponding sections, and with clarifications made.

Mr. Moberly stated that as to the section on Veterans Preference, there was a change of law in 2006, and these references align rules with Idaho Code.

He stated that as to MDA, the Attorney General's office says that sick leave covers medical, dental, and optical appointments, and there is no need to add language to the sick leave rule. A Guidance Memo to Directors will be given to agency directors and will be posted on DHR's website, letting

people know about the opportunity to use sick leave, compensatory time, vacation time, or leave without pay to cover appointments. The memo will state that agencies are encouraged to allow flexibility and that employees may start work earlier, work later, or take shortened lunch breaks in order to accommodate these appointments.

As to Disability Layoffs, Mr. Moberly stated that there is no change in disability benefits. The change provided in the rule is a matter of how long a position must be vacant before an agency can fill the position. There is a change to this section of the rule since the committee heard it on January 19, 2009: "Shall" is changed to "May."

In response to questions, Mr. Moberly stated that 170 employees have been medically laid off and subsequently replaced over the last four years. He stated that there is no way to know what that number would be, if the proposed rule had been in effect, replacing employees who are on temporary disability after 12 weeks instead of after six months. He stated that 115 of the 170 positions required specialized knowledge and that their jobs could not be done by temps.

Also in response to questions, Mr. Moberly stated that statewide policies cover HR policies for Executive Branch agencies, and that use of sick leave for routine appointments is covered under those policies. He stated that this will remain unchanged by the rule.

Representative Marriott, in response to the same questions, stated that he had sent a letter to the Attorney General's office for an opinion on this matter, however as of the date of this meeting, he had not yet received a reply.

Mr. Moberly continued to answer questions and stated that sick leave can cover appointments on an hourly basis and does not require an employee to take an entire day. If adopted, the rule would allow employees to take leave down to a quarter of an hour, and a letter would be sent to agency directors expressing this, and would also be posted to the DHR website.

Representative Schaefer welcomed **Alex Neiwirth** to testify before the committee. Mr. Neiwirth spoke in opposition to the rule. He stated that he believes there will be hidden costs. He stated that replacing employees after twelve weeks of disability leave will require training of more new employees and declined productivity. He also stated that the current system of MDA encourages employees to have routine medical care, and that this results in prevention and early detection of disease, resulting in less time lost from work. He stated the concern that while there are hidden monetary costs in the changes, there could also be human costs as well, when employees do not feel free to get early or preventive care.

In response to questions, Mr. Neiwirth stated that there is a concern about using "may" in the language associated with laying off employees after 12 weeks. He said that while this might help a few people keep their jobs, this language could also invite unfair or unequal treatment of employees.

As to Title 7 of the Civil Rights Act, Mr. Neiwirth stated that he is not a lawyer, but if someone came with concerns of unfair treatment, those concerns would be pursued.

Mr. Neiwirth stated that he believes employees with medical problems are penalized under this rule. He believes it would be helpful to give a number of hours to each employee that could be taken as paid time off for medical appointments, and he stated that this time could be given annually as a “use it or lose it” benefit.

Mr. Neiwirth stated he is not familiar with the arbitration process.

Chairman Schaefer welcomed **Andrew Hanhardt** to respond to questions. Mr. Hanhardt is familiar with the arbitration process. He stated he has tried to implement changes to the process, as it begins and ends within the employee’s department and there are not outside parties involved in problem solving. He stated most employees opt not to use the process.

Mr. Hanhardt then spoke in opposition to the rule. He stated that after speaking with numerous state employees, hearing testimony from employees, and gathering pages of signatures, the only people he has heard speak in favor of the rule are those who are proposing it, at the Department of Human Resources, and some Human Resource Officers at agencies.

MOTION:

Representative Marriott moved to adopt **Docket # 15-0401-0801** and spoke to his motion. He stated that he spent his working life on the business side of medicine, and that a person’s lifestyle is key. He stated that he did not know how he would operate without an employee for 12 weeks. He stated that in the private sector, a person who was unable to be at work would have to be replaced immediately.

Representative Hartgen stated that the current rule does not limit use of time and that he is prepared to vote in favor of the rule.

Representative Simpson stated that he is still concerned about the use of the word “may,” that the terminology is subjective. He said this will be a problem and could lead to preferential treatment of some employees. Despite his concerns, he said he does believe that we need to go in this general direction, and he would support adoption of the rule.

SUBSTITUTE MOTION:

Representative Pasley-Stuart moved to reject **Docket # 15-0401-0801** and spoke to her motion. She stated that FMLA mandates a 12 week leave of absence for medical problems, and that a two-hour allotment for medical appointments is typical in the private sector. She said that what was presented today was broad and she believed that the rule would open the state up to more spending.

Representative Ringo and Representative Higgins spoke in favor of the substitute motion, citing their concerns with changing “shall” to “may.”

Representative Thayn referenced MDA page 64, subsection 04, where the word “may” is used three times. He stated that he is against the substitute motion.

VOTE ON SUBSTITUTE MOTION:

Roll call vote was requested on the substitute motion to reject **Docket # 15-0401-0801. Motion failed, 5-5.** Voting in favor of the motion: Reps. Trail, Ringo, Pasley-Stuart, Higgins, and Schaefer. Voting in

opposition: Reps. Marriott, Lake, Thayn, Hartgen, and Simpson.

**VOTE ON
MOTION:**

Roll call vote was requested on the motion to adopt **Docket # 15-0401-0801. Motion failed, 5-5.** Voting in favor of the motion: Reps. Marriott, Lake, Thayn, Hartgen, and Simpson. Voting in opposition: Reps. Trail, Ringo, Pasley-Stuart, Higgins, and Schaefer.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 2:30 p.m.

Representative Robert Schaefer
Chairman

Mary Tipps
Secretary

MINUTES

HOUSE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 11, 2009

TIME: 1:30 p.m.

PLACE: Room 316

MEMBERS: Chairman Schaefer, Vice Chairman Marriott, Representatives Lake, Trail, Thayne, Hartgen, Simpson, Takasugi, Ringo, Pasley-Stuart, Higgins

**ABSENT/
EXCUSED:** Representatives Marriott, Trail

GUESTS: Dean Heyl, Direct Selling Association; Theresa Flores, Mary Kay Inc; Bryan Harrison, Amway Global; Justin Powell, Melaleuca; Lyn Darrington, Employers Insurance Group; Mike Kane, Property Casualty Insurers Association of America; Kay Shields, Idaho Trial Lawyers Association; Michael McEvoy; Pam Eaton, Idaho Retailers Association

The meeting was called to order at 1:36 p.m. by **Chairman Schaefer**.

H0076: **Pam Eaton** was welcomed by the committee, and she introduced **Dean Heyl** to present **H0076**. Mr. Heyl stated that as the Director of Government Relations for the Direct Selling Association, he represents over 200 member companies, and is in favor of **H0076**.

Mr. Heyl stated that 37 states have similar language to the proposed amendment that exempts direct sellers from the definition of "employment."

He stated that the proposed amendment is almost identical to, and is based on, Internal Revenue Code Section 3508, which gives direct sellers independent contractor status. He also stated that with a specific exemption from the definition of "employment," direct sellers would be exempt from any future employee misclassification.

Mr. Heyl stated that employees of direct sellers, for instance receptionists or other office workers, would not be exempted and would still be covered under unemployment insurance and workers' compensation.

In response to questions, Mr. Heyl said that this amendment exempts direct sellers from both unemployment insurance and workers' compensation. He also stated that this bill does not address a defect in Idaho law, but requests a specific exemption in case an employee would be misclassified. Also in response to questions, Mr. Heyl stated that the Code listed in the text of **H0076** is existing Code except for the underlined section, section 20, which is the proposed amendment.

Pam Eaton was welcomed to respond to questions, and stated that this bill seeks to define direct sellers as exempt. Other sections of Code address exempt employees as being exempted from unemployment insurance and workers' compensation.

MOTION: **Representative Thayn** moved to send **H0076** to the floor with a **DO PASS** recommendation. Motion passed on a voice vote. Representative Takasugi will carry **H0076** to the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 1:55 p.m.

Representative Robert Schaefer
Chairman

Mary Tipps
Secretary

MINUTES

HOUSE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 17, 2009

TIME: 1:00 p.m.

PLACE: Room 316

MEMBERS: Chairman Schaefer, Vice Chairman Marriott, Representatives Lake, Trail, Thayn, Hartgen, Simpson, Takasugi, Ringo, Pasley-Stuart, Higgins

**ABSENT/
EXCUSED:**

GUESTS: Melissa Vandenberg, Department of Administration (Admin); Cynthia Ness, Admin; Connie Smith, Admin; Melodie Wold, Blue Cross of Idaho; Sheri Core, Blue Cross of Idaho; Genii Hamilton, Statewide Health Insurance Benefits Advisors (SHIBA); Jerry Quick; Thed Riggins; Sabra McCreedy, American Association of University Women (AAUW); Donna Yule, Idaho Public Employees Association (IPEA); Don Brennan, IPEA; Robert Schmidt, Milliman; Damien Bard, Department of Commerce; Eddie Yen; Armando Orellana; Dr. Cao Guoli

The meeting was called to order at 1:10 p.m. by **Chairman Schaefer**.

Meeting minutes from 02/05/09, 02/09/09, and 02/11/09 were introduced for approval.

MOTION: **Representative Pasley-Stuart** moved to approve the minutes from 02/05/09, 02/09/09, and 02/11/09 as written. **Motion passed on a voice vote.**

PRESENTATION: **Damien Bard**, of the Department of Commerce, was welcomed to the committee. He introduced **Mr. Eddie Yen** of Taipei, Taiwan. Mr. Yen stated that he made his first trip to Idaho twenty years ago, and that now people in Taipei joke that he has even more friends in Idaho than he has in Taipei. He expressed that Taiwan, as part of the global economic system, is not immune to the economic slowdown. He stated, however, that promotion helps companies during tough times. He shared examples of partnerships between Idaho businesses and Taiwan, such as Boise Cascade's Boise Wood Products, which is exporting to Taiwan. Mr. Yen's office has been able to help translate promotional materials, and is also working with Boise Wood Products to help them begin exporting to Vietnam.

Mr. Yen spoke of the Taiwanese government's desire to utilize solar energy, and to use green building products. This is an area where Idaho businesses might find yet another way to partner with Taiwan. He expressed that many Taiwanese citizens are being encouraged to travel to Idaho for vacations, and that Idaho is being promoted there as the Gateway to Yellowstone. He passed around travel brochures written in Chinese, featuring Idaho as a destination of choice.

In response to questions, Mr. Yen said that yes, nuclear power is being

explored by the Taiwanese government. He said that for a time, nuclear power was not a method of choice due to the desire to be green, however, due to global warming, this is now being explored again. He stated that they are also looking at cellulosic biomass as part of their Green Initiative.

The committee welcomed **Mr. Armando Orellana**, of Guadalajara, Mexico. He stated that the economy in Mexico is tight and closely linked to the U.S. economy. He said that last year Mexico was a very good customer of U.S. goods, that exports from the U.S. to Mexico were steady. Mexico, he said, is in a mild recession compared with other countries. Inflation in Mexico is estimated to be at 4% this year, not as much as during other crises Mexico has faced. The peso has lost 35% of its value since September, and the tourism industry has benefitted from that low peso value, with more people traveling to Mexico. This means more sales for Idaho businesses that supply the restaurants and hotels with food or other goods.

Mr. Orellana says that Mexico is dependent on food imports from the U.S. and that Idaho businesses supply agricultural products and will continue to do so successfully. He shared that Governor Otter took a trade mission to Mexico during this last year and that he brought with him representatives from 13 Idaho companies.

Dr. Cao Guoli, of Shanghai, China, was welcomed by the committee. He shared good news, that U.S. agricultural product exports to China had gone up 56.9% in 2008. Idaho businesses have a great opportunity to continue participating in this market.

Dr. Guoli said that a variety of other Idaho businesses are exporting to China. An Idaho log home builder has begun selling homes in South China. Insulation and pumice products are being exported from Idaho into China. Timber and food products are major U.S. exports to China. Assembly plants are being set up that allow for products to come from the U.S. but to be assembled in China, reducing shipping costs. He said that imports in China were down 8.8%, which meant good news for Idaho exporters, because exports actually went up. The value of Chinese currency is still rising, which is also good news for Idaho suppliers, because U.S. products are cheaper and therefore in more demand.

Dr. Guoli held up a Chinese newspaper that he said is comparable to our Wall Street Journal, and said that a recent article in that paper called Idaho the ideal place to expand business. Tourism is also being promoted, as are Idaho's higher education opportunities for Chinese students.

Dr. Guoli encouraged Idaho to continue partnering with China, saying that although the global economy is tight, China's economy is still growing, and partnering together offers opportunities for Idaho companies to continue to grow during tough times.

The committee asked questions of **Mr. Damien Bard**, who responded that foreign trade is projected to continue to grow during the recession period. He said that yes, they have seen a hit as far as growth potential, however, growth has still taken place. Last year there was a 6% growth rate, down from 20% in 2007; a slowdown, yes, but still growth. He believes we will continue to see modest growth or at least a flattening out. He recommends putting resources into trading partners with the most potential for growth,

and expanding into new areas as the world market dictates. Last year Idaho had its first trade mission to Vietnam, a very promising new market.

He said he will provide statistical data to the committee.

RS 18571: **Chairman Schaefer** elected to hear **RS 18571** before hearing the presentation on **H0039**. He welcomed **Representative Pasley-Stuart** to present **RS 18571**.

Representative Pasley-Stuart cited statistics and shared an Idaho Statesman newspaper article dated November 27, 2008, in which it was said that women's pay in Idaho is now at \$0.60 on the dollar compared to men's wages when comparing like jobs with like jobs. She stated that statistics have been verified. Women in only three states - Utah, Wyoming, and Louisiana - earn a smaller wage compared with men than women in Idaho. In government, this disparity is smaller, with Idaho women earning 77% of what their male counterparts earn, up from 72% in 1992.

Representative Pasley-Stuart stated that the impact on Idaho families is substantive. Women who support families or whose second income is necessary to support their families are treated unfairly when they do not receive equal pay for equal work, and this affects the entire family and the community. Women who do not receive equitable pay do not have as much to invest or save for retirement, and are more likely to end up requiring State benefits. If women received the same pay as their male counterparts, the poverty rate would fall from 2.1% to 0.8% and this would have a significant, positive impact in Idaho.

RS 18571 is a concurrent resolution to acknowledge that the pay disparity in Idaho is genuine, to reaffirm that women deserve equal pay for equal work, and to demonstrate that Idaho families will benefit greatly by closing the pay gap. The resolution also calls for April 28, 2009, to be proclaimed Equal Pay Day in Idaho, an event that is celebrated nationally.

MOTION: **Representative Lake** moved to introduce **RS 18571**. **Motion passed on a voice vote.**

PRESENTATION: **Teresa Luna** was welcomed by the committee to give a presentation on **H0039**. **Chairman Schaefer** explained that although the House Commerce and Human Resources Committee is the Germane Committee for this issue, the Committee is not voting on **H0039**, because it is currently in the House State Affairs Committee. Ms. Luna will simply be explaining the status and content of **H0039** today.

Ms. Luna gave a PowerPoint presentation with the following information: Active Employee Benefits, The New Plan Design for Fiscal Year 2009, Active Employee Medical/Dental Premiums for FY2009, Retiree Medical Premium Rates for FY2009, Enrollment in Medical Plans for FY2009, State Wellness Initiatives, Retiree Health Benefits, Health Care Reserve Accounts, Governmental Accounting Standards Board (GASB), GASB 45, GASB 45 Liability, GASB 45 Projected Liabilities and Impact of Recommended Changes, 2009 Legislation, Effects on Retirees, Comparison of State Plan and Market Plans, Comparison of Costs, Proposed Rule, and Prescription Drugs and Part D Plans.

Ms. Luna explained that in 2008, the state's healthcare reserve accounts were depleted, and GASB 45 entered the scene. She stated that one had nothing to do with the other, but the timing of last year's legislation implied a connection.

She stated that for the past two years, the State has paid needed health care premium increases from reserve funds, and that those reserves were depleted at the end of FY2008. This has resulted in significant increases on the Active and Retiree medical plans for FY2009.

The Governmental Accounting Standards Board (GASB) establishes the accounting standards which all state and local governmental entities in the United States must follow in their audited financial statements. Beginning in FY2008, GASB requires that all states disclose any unfunded liabilities resulting from the funding of retiree benefits other than pensions. These benefits are called "Other Post Employment Benefits" (OPEB).

While compliance with these standards is currently voluntary, failure to follow them would result in a loss of credit rating, inability to borrow money, increased likelihood of federal statutes mandating compliance, and loss of federal grant proceeds.

The State commissioned the actuarial firm of Milliman, Inc. to calculate this liability and to provide recommendations to reduce the liability. The Retiree Medical Benefit is currently a pay-as-you-go system without any recognition of the liability for the state paid portion of the cost of the retiree plan. The State of Idaho currently has an OPEB liability of \$477 million for the Retiree Medical Plan. This is an increase from the \$442 million liability at the end of FY2008.

Milliman recommended the following to lower the State's GASB liability from \$477 million to under \$100 million: Freeze the state subsidy to early retirees; Remove Medicare eligible retirees and Medical eligible dependents from the State Health Care Plan; Require that non-Medicare eligible retirees retire directly from the state service to qualify for health plan; Not allow for new employees, hired after 7/1/09, to be eligible for any retiree medical benefit.

The current legislation under consideration would guarantee subsidy for retirees under age 65. Those under 65 would also expect annual premium increases of 12% to 15%. While retirees have been receiving a state subsidy and joint rating, there is nothing in statute that requires it. Without the benefit of joint rating, the retiree plan would have increased 74% in FY2008.

For those employees over age 65, under the proposed legislation, the statutory requirement for coverage of Medicare eligible retirees and dependents would be eliminated; Assistance in transitioning to Medicare supplements would be provided by identifying available resources; Sick leave funds could be used to pay premiums with major vendors; Dependents under age 65 would remain on the state plan and receive the state subsidy until they become Medicare eligible. This is a new benefit that is not currently available.

Comparisons between the State plan and market plans show that the major

disparity involves prescription drug coverage. Retirees required to use a market plan would likely incur more out-of-pocket cost for medications. In response to that problem, the State has issued a proposed rule that would be effective from January 1, 2010 to December 31, 2011, saying that any retired personnel or his dependent whom is no longer eligible for health care service coverage due to Medicare eligibility, may petition the Director of Administration for reimbursement for prescription drugs up to but not exceeding two-thousand dollars (\$2,000.00) if he meets the following conditions: Retiree or his dependent has met the initial coverage limit for prescription drug costs (\$2,510.00); Retiree or his dependent has paid \$2,000.00 out of pocket for prescription drug costs; Retiree's or his dependent's total out of pocket prescription drug costs have not yet exceeded the "coverage gap", or for any prescription drug not covered by his Medicare supplement plan, the plan has denied the retiree's or dependent's request for a formulary exception for such drug.

In response to questions, Ms. Luna stated that **H0039** will be pulled and a new bill will be presented with new language. **H0039** lowered the premium subsidy to \$100.00 per month and froze it there. In the new bill, that premium subsidy would be raised to \$155.00 per month, which is where it is currently. This would extend to all State retirees who are not Medicare eligible who participate in the State Retiree Plan. She also stated that under the proposed rule, an individual may petition for reimbursement for prescription drug costs if the conditions are met.

In addition, Ms. Luna expressed that the State's unfunded liability would be lowered to under \$100 million if the recommendations of Milliman are followed, but that if the recommendations of Milliman are not followed, the State's unfunded liability would continue to increase and by FY 2016, would be over \$800 million.

In response to questions, **Mr. Robert Schmidt**, of Milliman, was welcomed by the committee. He stated that Milliman was not asked to formulate a plan to defer change, however, with a deferment, the same end result of reaching an unfunded liability of under \$100 million would still be met, but it would be met at a slower rate.

Representative Pasley-Stuart commented that she would like to commend Ms. Luna, Representative Lake, Representative Crane, and the public employees who participated in the proposed legislation, as well as the Republican and Democratic leadership, who have worked together to solve the problem of the rapidly rising unfunded liability.

Representative Lake said that the plan is to introduce the new RS tomorrow and to hold **H0039** in committee.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 2:59 p.m.

Representative Robert Schaefer
Chairman

Mary Tipps
Secretary

MINUTES

HOUSE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 3, 2009

TIME: 1:30 p.m.

PLACE: Room 316

MEMBERS: Chairman Schaefer (Representative Kupser), Vice Chairman Marriott, Representatives Lake, Trail, Thayn, Hartgen, Simpson, Takasugi, Ringo, Pasley-Stuart, Higgins

**ABSENT/
EXCUSED:** Chairman Schaefer

GUESTS: Representative Grant Burgoyne; Brian Dickens, Department of Commerce; Jennifer Hannah, Department of Health and Welfare; Andrew Hanhardt, Idaho Association of Government Employees (IAGE); Donna Yule, Idaho Public Employees Association; Alex Neiwirth, IAGE; Mindy Montgomery, Industrial Commission; Blair Jaynes, Industrial Commission; Megan Gale, Industrial Commission; Dennis Moberly, Department of Human Resources

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

Teresa Kupser, standing in for Chairman Schaefer in his meetings and on the House Floor this week, was welcomed and she introduced herself. She is an Idaho Native and a current resident of Nampa.

Annie Cuellar, serving as the new Commerce and Human Resources page, was welcomed and she introduced herself as well. She is also an Idaho Native who currently resides in Eagle and attends Eagle High School.

H0056: **Representative Burgoyne** was welcomed by the Committee to present **H0056**. He asked the Committee to please send H0056 to general orders with the attached amendment. The amendment changes language so that it will be easier for the Division of Human Resources to work with. The only substantive change is that the bill will not allow cross-agency reinstatements.

H0056 Relates to the State Personnel System. It amends Section 67-5309, Idaho Code, to provide for a rule that any incumbent classified employee who is removed from his or her position because of budget constraints during Fiscal Year 2009, 2010, or 2011, shall be deemed to be on a furlough and shall be reinstated in the same or similar position if such a position becomes available during a certain time period.

MOTION: **Representative Pasley-Stuart** moved to **send H0056 to General Orders** with the amendment. Discussion on the motion took place.

Representative Burgoyne, in response to questions, stated that he believes H0056 will not give false hope. There is stimulus money and layoffs might be avoided. JFAC and the Governor are studying the issue. He believes it is prudent to go forward and provide potential protection.

In response to questions, **Representative Pasley-Stuart** said that this offers hope but not false hope. Public employees are devoted to their jobs. Allowing them to be on a register is kind and will have no fiscal impact to the state.

**SUBSTITUTE
MOTION:**

Representative Hartgen offered a substitute motion to **hold H0056 in Committee**. Discussion on the motion took place.

Representative Simpson commended Representative Burgoyne for looking out for state employees, but thinks of Micron; many Micron employees are being laid off. If H0056 passes, state employees will be better off and will be protected while Micron employees will not.

Representative Burgoyne said that state employees already have a one year reinstatement period. Compared to other areas, Idaho does still have a lot of job opportunities. One year is not enough. Protection that would be offered by H0056 is not just for employees, it is for the State of Idaho, for our communities. It helps the worker but also helps the smaller communities in the state.

Representative Simpson spoke in favor of the substitute motion, saying that he does not believe he can support creating a protected class of employees within the state when he can not provide the same protection in the private sector.

Representative Ringo said that we do have the ability to control wages and benefits for public employees. In times other than these there are advantages to working in the private sector that public employees don't have, such as bonuses and better salaries. Circumstances are peculiar now and loyal, capable employees might have to be laid off where we might like to retain them. H0056 just extends the period of possible reemployment. It is appropriate and extends loyalty to employees who have been loyal to the state.

Representative Hartgen stated that this would commit us to costs we would be unable to maintain. By implication we are creating a state imperative that would likely become a burden should the current economic crisis continue. This benefit is not typically available in the private sector, when companies are downsizing. H0056 treats employees who have already been laid off unfairly, as they would not be covered.

Representative Thayn said that there are good points being made on both sides of the debate. He wondered if there was someone available to speak on behalf of state employees?

The Committee welcomed **Andrew Hanhardt**, President of the Idaho Association of Government Employees. He stated that Micron employees have a different set of benefits and working conditions than employees of the state. State employees do not enjoy wage increases or bonuses that Micron or other private sector employees enjoy. The public and private sector are as different as they can get. State employees have faced a steady downhill slope over the last seven to ten years, where most private sector employees have had at least a 3% increase in pay. Allowing a furlough vs. a layoff provides a little accountability.

In response to questions, Mr. Hanhardt stated that he is not able to provide the legal definition of the word "furlough." His understanding is that all wages and benefits are suspended during a furlough.

Representative Thayne stated that he believes the amended bill does not contain the word "furlough."

Mr. Hanhardt, in response to questions, stated that he does not believe morale is good among state employees. People are frightened, hearing about wage cuts, layoffs, or furloughs. They are very, very concerned. He said that he can't speak for all state employees, but what he's been hearing from the employees he's talked to is that they are afraid they are going to be used to balance the budget. Public employees who do know about H0056 are genuinely thrilled about the possibility of being furloughed rather than laid off, because often in layoffs, position descriptions or job requirements change, and suddenly the incumbent who was laid off is no longer able to fill the position he left.

The Committee welcomed **Donna Yule**, of the Idaho Public Employees Association. She supports **H0056**. She stated that state workers are realistic and they know there is real and significant pressure on the state. She has polled members on how they feel about this legislation and they support it. They have been feeling beaten down this year and this bill would increase morale without a fiscal impact to the state. This would show them that the legislature cares about its workers.

In response to questions, Ms. Yule stated that she does not agree that extending a benefit to state employees that is not extended to the private sector is problematic. The state is acting, in this case, as an employer. Individual employers have to decide what to offer their employees. It is up to the state to decide, as an employer, how to handle its own employees, and it is up to employers in the private sector to decide how to handle their employees.

Representative Higgins stated that she worked for a private company for 29 years and was fortunate to never be laid off, although her company did engage in layoffs. Any time the company did rehiring, available employees who had been with the company previously were hired back. It costs less to bring back employees who have already been trained than to have to recruit and train new people.

Representative Kupser stated that she was laid off in January. She agrees that preference is generally given to previous employees when layoffs have taken place and hiring is initiated again, whether it has been written into law or not.

Donna Yule, in response to questions, said that if the economy picks back up within a year and state positions are reopened, preference would be given to employees who had been laid off. H0056 seeks to extend that period of time that employees could be offered reinstatement.

Representative Burgoyne stated his concern that state employees who are laid off with no hope of reinstatement beyond a one-year period in this troubled economy may have to leave their communities and will no longer be

available. The state will then lose the investment it made in training those employees, and communities will suffer financially when families move away, taking with them the funds they had been putting into local businesses such as grocery stores and gas stations. H0056 allows for rehire only if a position becomes available and does not guarantee laid off employees will go back to work. It offers hope and attempts to keep the state's labor pool available. The primary focus of H0056 is to protect Idaho.

Alex Neiwirth was welcomed to the Committee, where he spoke in favor of H0056. He stated that the proposed legislation offers a small measure of comfort and hope by assuring employees that if the economy picks up in the next few years, they might be able to stay in Idaho and go back to their jobs. It shows gratitude to state employees whose wages have fallen further and further behind in the market.

Mr. Neiwirth said that we're talking about different things when we talk about the private and public sectors. He spoke of the state providing 911 services. 911 operators do not ask callers "cash or charge?" He said that state employees are different from private sector employees. He told the Members that in their roles as Legislators, they are acting as employers in the public sector. The decisions made here should not be tied to the decisions made by other employers in the private sector. If a private sector business decided to move offshore and open offices in the Philippines, that does not mean the state should also move offshore. Decisions made by individual employers are individual decisions.

In response to questions, Mr. Neiwirth said he thinks that this boils down to respect. Some families might stay longer in their Idaho communities to wait for jobs that might be reentered, but ultimately H0056 will increase morale.

Representative Ringo said this is a two way street. Employees may benefit from the opportunity. JFAC has heard a lot of testimony on loss of employees and how expensive it is to retrain someone new.

MOTION:

Representative Pasley-Stuart moved to **end debate on H0056**. **Representative Takasugi** stated a 2/3 vote will be required.

Roll call vote was requested on the motion. **Motion failed on a tie, 5-5-1**. **Voting in favor** of ending debate were Reps Trail, Thayn, Ringo, Pasley-Stuart, and Higgins. **Voting in opposition** to ending debate were Reps Marriott, Hartgen, Simpson, Takasugi, and Schaefer (Kupser). Rep Lake was absent and excused.

Speaking to the substitute motion, **Representative Takasugi** said that if a state position is reopened within one year of an employee being laid off, that employee is already protected and will be rehired. After that, if the employee had not been a good employee, the Director now has the option to choose someone else to fill that position. H0056 would tie the hands of the employer's hands. In this case, the State is the CEO and the taxpayers are the Board of Directors. Morale is bad for everybody right now, not just state employees, and hope is tough. The state provides services, not just 911 services but many nonessential services. When the money is not there cutbacks are necessary, and those cutbacks are not made at the risk of people dying. He supports the substitute motion.

**VOTE ON
SUBSTITUTE
MOTION:**

A roll call vote was requested on the substitute motion to **hold H0056 in Committee. The substitute motion passed, 6-3-2. Voting in favor** of the substitute motion were Reps Marriott, Thayn, Hartgen, Simpson, Takasugi, and Schaefer (Kupser). **Voting in opposition** to the substitute motion were Reps Trail, Ringo, and Higgins. Reps Lake and Pasley-Stuart were absent and excused.

H0043:

Brian Dickens of the Department of Commerce was welcomed by the Committee to present **H0043**. This is an act relating to the Department of Commerce and Innovation. It amends Section 49-416C, Idaho Code, to provide for an Innovation motor vehicle license plate and directs the allocation of revenue derived from those license plates. It also amends Section 67-4725, Idaho Code, to provide for the Idaho Innovation Fund, and it amends Section 67-4726, Idaho Code, to revise terminology.

In response to questions, Mr. Dickens stated that changes in language apply to three places in statute and are there to more inclusively handle economic development, to include innovative technologies in Idaho industry. H0043 renames an existing fund, office, and license plate, and directs funds from the renewals of the license plates to the already existing, but renamed, fund. There will be minimal fiscal impact. Mr. Dickens stated that he did have trouble with the term "Innovation" originally, as he felt it was too vanilla and nondescript. The feeling from the Governor's Office and the Department of Commerce is that we need to move away from "Science and Technology" as it referred only to those companies who produced science and technology. Idaho wants to attract companies in these but also traditional industries, and to be more inclusive.

MOTION:

Representative Simpson moved to send **H0043** to the floor with a **do pass** recommendation. **Motion passed on a voice vote.**

S1075:

Mindy Montgomery, Director of the Idaho Industrial Commission, was welcomed by the Committee to present **S1075**. This bill amends Section 72-517, Idaho Code, to revise the Commission's authority to enter into certain cooperative agreements with other agencies, and to limit the information provided to other agencies.

To be sure Idaho workers are protected by worker's compensation, the Commission often needs to gather information from other agencies. S1075 spells out what pieces of information can be shared between agencies and protects Idaho workers.

In response to questions, Ms. Montgomery yielded to **Blair Jaynes**, Deputy Attorney General for the Idaho Industrial Commission. He stated that the words "private agencies" were removed because he could not determine what a "private agency" was or if there were any. He believes the term was applicable when it was written, but no longer applies.

S1075 give clear authority to enter into agreements with agencies and also narrows what specific information can be shared.

MOTION:

Representative Takasugi moved to send **S1075** to the floor with a **do pass** recommendation. **Motion passed on a voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:44 p.m.

Representative Jim Marriott
Acting Chairman

Mary Tipps
Secretary

MINUTES

HOUSE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 11, 2009

TIME: 1:30 p.m.

PLACE: Room 316

MEMBERS: Chairman Schaefer, Vice Chairman Marriott, Representatives Lake, Trail, Thayne, Hartgen, Simpson, Takasugi, Ringo, Pasley-Stuart, Higgins

**ABSENT/
EXCUSED:**

GUESTS: Will Rainford, Legislative Advocate for the Roman Catholic Diocese; Marty Durand, Attorney and member of the Idaho Women Lawyers; Sylvia Chariton, Vice President of Public Policy for the American Association of University Women in Idaho; Dede Shelton, Lobbyist for AARP; Gayle Wilde, American Association of University Women (AAUW); Charlotte Mallet, AAUW; Taryn Magrini, Public Policy Director, Idaho Women's Network; Donna Yule, Idaho Public Employees Association; Mary Slaughter, AAUW; Teresa Baker, Attorney for Ada County; Sylvia Campbell, AAUW; Katie Killpack, Division of Financial Management; Hannah Saona, Legislative Director for the American Civil Liberties Union; Annie Henna, Catholic Charities

The meeting was called to order at 1:38 p.m. by Chairman Schaefer.

MOTION: Minutes from Tuesday, March 3, 2009 were presented for approval. **Representative Thayne** moved to **accept the minutes as written. Motion passed on a voice vote.**

HCR23: **Representative Pasley-Stuart** presented **HCR23**, a Concurrent Resolution stating findings of the Legislature and recognizing the importance of women's pay equity, as well as recognizing Equal Pay Day.

Will Rainford, Legislative Advocate for the Roman Catholic Diocese of Idaho, stated that Catholic Charities supports HCR23. He said that sadly, women are paid less than men for the same jobs. He gave an example of two families, one headed by single father, one by single mother, both with two children. They have the same job, and work the same number of hours each week. The man is paid \$15.00 per hour and the woman is paid \$9.00 per hour or less, under the current pay disparity in Idaho. This means that if both work full time, the family headed by the single father will receive \$31,200. per year, and the family headed by the single mother will receive \$18,720. per year. The poverty issue is true for both single and married women. Married women working full time may not bring in enough income to put their families above the poverty level. Many women are living in poverty due to inadequate income, and because of this the government ends up paying out more welfare dollars. If women received the same pay as their male counterparts, poverty rates would be cut by 50% for single women.

In response to questions, Mr. Rainford said that he is a professor of social

work and has studied poverty his entire adult life. He has seen women bump up against a glass ceiling and be unable to rise in the workplace to the same degree as men. He stated this is because a woman's duties are perceived to be child raising first and outside employment second, so giving them pay raises and promotions is perceived as a gamble.

Marty Durand, Attorney and member of Idaho Women Lawyers (IWL), testified in support of HCR23. She stated that In the spring of 2007, IWL surveyed Idaho attorneys about legal careers. Regarding salaries and career opportunities, men reported annual average income of over \$90,000 per year, while women reported \$69,000. Survey participants had similar time in their field. Women comprise 24% of state bar, but make up only 11% of the State Judiciary. Only 14 out of 119 Idaho judges are women.

In response to questions, Ms. Durand said that the survey asked attorneys how many hours per week they work. Men reported 44 hrs per week and women reported 41 hrs. Men worked approximately 3 more hours per week than women, but earned 24% more. She stated that the legal profession is a little different because many attorneys are self employed, but the survey provided an average. She works for a firm and the partners determine what her salary will be. She could be self employed and set a higher rate, but would also incur risks. Her salary is simply an annual salary, if there is a big win she might get a bonus, but generally her income is predetermined. Her organization does actively encourage their members to run for magistrate and judicial elections and appointments. She can say, based on her personal experience practicing law for 19 years, that she does believe women are making progress, however the gap is still there.

Sylvia Chariton, Vice President of Public Policy for the American Association of University Women (AAUW) in Idaho, supports HCR23. AAUW believes this is a matter of economic justice. Equal Pay Day is held around the nation on a Tuesday each year, because Tuesday is the day women's wages catch up to men's wages from the previous week. At the current rate wages are changing, the wage gap won't close until 2059. Pay equity is a missing piece of economic security. Unemployment rates are rising, a great number of women are now family breadwinners. This impacts not only families, but also the U.S. and Idaho during economic recovery. It is Idaho's turn to speak out.

Dede Shelton, Associate State Director for Advocacy for the AARP, supports HCR23. She stated that according to US Census Bureau, Idaho women earn an average of less than \$6.00 per hour. This is 49.8% of the average Idaho man's wages. Income earned during her working years determines the level of a woman's retirement income via pensions and social security. The median annual social security income for women is \$8800, compared to \$12,600 for men. Risks of poverty increase as longer life expectancy for women and less income brings lack of security in retirement.

Taryn Magrini, Public Policy Director for Idaho Women's Network, supports HCR23. She stated that pay equity is on statute, title 44, chapter 17. This resolution does not intend to change statute or place blame, it simply wishes to reaffirm that women deserve equal pay for equal work. Equal Pay Day is a national effort and was created by the National Committee On Pay Equity in 1996 to build public awareness.

In response to questions, Ms. Magrini stated that her organization is an advocacy organization and as such, she works on this sort of policy. If someone came to her with a case of discrimination, that person would be referred for legal assistance.

Representative Trail came forward to testify in support of HCR23. He stated that when his wife began her career, she discovered that her male colleague was being paid twice the amount she was even though they had the same qualifications and training. When she asked her supervisor about this disparity, she was told, "That's just the way it is." He stated that Idaho has been a leader in the fight for equal rights over the years, and in many cases, ahead of the national trend. In 1870, it was the leadership of Idaho male legislators that led the fight that eventually led to granting women the right to vote. He believes this resolution is simply an acknowledgment from the state that women are a valuable part of our economy and deserve equal pay for equal work.

Representative Schaefer shared two anecdotes related to pay inequity and expressed his support for HCR23.

MOTION:

Representative Trail moved to **send HCR23 to the floor with a do pass recommendation.**

Representative Marriott commented that he has heard "equal pay for equal work" and sees that the resolution does not use those words.

Representative Thayn supports the motion. He would support it more fully if HCR23 mentioned the importance of women raising children and supporting families.

Representative Takasugi supports the motion. He has a sister who has enjoyed equal pay for equal work. He hopes that when his 11-year-old daughter enters the marketplace, she will receive equal pay for equal work. He urges positive votes.

Representative Higgins spoke in favor of the resolution. It sends a message to Idaho ladies that they, their families, and their contributions are valued.

Motion passed on a voice vote. Representative Pasley-Stuart will carry **HCR23** to the floor.

H 222:

Representative Hartgen presented **H 222**. It is a simple procedural fix for the way in which monies are handled by Ada County with respect to juveniles performing community service. This change addresses only one county in the state, because there is only one self-insured county with regard to workers compensation, and that is Ada County. There are many juveniles in the court system and they generally work outside the detention facility performing community service. Individuals performing service pay sixty cents per hour and that is sent to the state to cover workers compensation premiums. In the case of Ada County, the insurance fund has been returning the monies to the county, as it is self insured. Last year 1500 juveniles performed community service, and \$12,660. was remitted.

In response to questions, Representative Hartgen said that the money collected for juveniles' community service is placed in the county's workers compensation fund.

MOTION: **Representative Thayne** moved to **send H 222 to the floor with a do pass recommendation. Representative Hartgen** will carry **H 222** to the floor.

Representative Takasugi wished to clarify that juveniles will still be covered under workers compensation. **Representative Hartgen** stated that juveniles performing community service are and will continue to be covered under workers compensation.

In response to questions, **Teresa Baker**, attorney for Ada County, stated that Ada County was allowed to self insure by the legislature several years ago. Under statute they do still have to have the same reserves, and those reserves will be pooled to cover claims and injuries.

Motion passed on a voice vote.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:42 p.m.

Representative Robert Schaefer
Chairman

Mary Tipps
Secretary

MINUTES

HOUSE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 19, 2009

TIME: 1:30 p.m.

PLACE: Room 316

MEMBERS: Chairman Schaefer, Vice Chairman Marriott, Representatives Thayn, Hartgen, Simpson, Takasugi, Ringo, Pasley-Stuart, Higgins

**ABSENT/
EXCUSED:** Representatives Lake, Trail

GUESTS: Don Drum, Public Employee Retirement System (PERSI); Joanna Guilfoy, PERSI; Bill Oldham, PERSI; Teresa Baker, Ada County; Ben Marchant, City of Jerome; Don Dietrich, Department of Commerce

The meeting was called to order at 1:32 p.m. by **Chairman Schaefer**.

MOTION: **Representative Pasley-Stuart** moved to approve the minutes of March 11 as written. **Motion carried on a voice vote.**

Don Dietrich, Director of the Department of Commerce, provided the Committee with an annual update. Mr. Dietrich explained Project 60, a comprehensive plan to grow our gross product and to strengthen Idaho communities. This encompasses three key strategies to focus energies and budget: Systemic Growth, Domestic Recruitment, and Foreign Investment.

Systemic Growth is what can be done internally. It is about creating jobs. Because the current economic situation has been so difficult, Mr. Dietrich spends about 40% of his time retaining what we have already. He stated that Idaho has to take care of businesses that are already in place. Operating capital and retention are big issues that affect systemic growth, and sometimes there are legislative obstacles. Mr. Dietrich stated that the Department of Commerce is working diligently to try to knock down barriers to growth and retention, and he gave examples of two local companies who were helped by the Department of Commerce during periods of growth.

For domestic recruitment, Idaho is reaching outside the state to find qualified engineering and computer science graduates. Finding the specific talent that is needed continues to be an issue. The medical field is expected to have to reach beyond Idaho as well.

In response to a question, Mr. Dietrich said that Idaho needs to pursue an aggressive approach to math and science programs early on. The University system seems to embrace expanding those programs. Companies are pursuing highly skilled graduates. Many of those people are attracted to Idaho, because we have the Idaho National Laboratory, and great things starting to develop on the green energy front. Existing businesses point out that we have an entrepreneurial community. Domestic businesses, however, are affected by a lack of seed capital. Tourism is a \$3 billion industry in Idaho, and plays an important role.

February saw tourism down almost 20%. Dedicated tourism funds will be impacted this year. Marketing campaigns are being adjusted to reflect “stay at home” campaigns. The Department of Commerce asked the Idaho Travel Council to reach out to foreign travelers, who tend to stay longer and invest more when they are here.

They’re seeing activity, and currently Idaho is launching a domestic campaign to focus on California businesses. The projects currently being recruited into Idaho include technology and green energy products. International companies continue to aggressively move forward with their plans. Over the past 12 months, Idaho has seen more investment from international funds than domestic. Some of our best energy products are coming out of Europe. Interesting technology is coming out of Israel. One tool being used in domestic recruitment is the “top to top” approach. Business leaders are helping recruit companies to come to Idaho. Using media events, pitching Idaho business stories.

Foreign investment is the last piece of Project 60. This involves going after international markets. Exports that help support our economy make a big impact, with a total of \$4.98 billion coming into Idaho in 2008. During the height of Idaho’s record export year, we have seen changes in the value of currency that has affected our foreign trade dollars, and the economy is working against us. The Mexican government has recently put tariffs on products moving south, and this is affecting agriculture products. Approximately 25,600 Idaho jobs are involved in exports.

In response to questions, Mr. Dietrich said that there are small businesses that could take advantage of the Small Business Incentive Act - if the Act is extended, some existing companies would probably also like to take advantage of it. The original formula has been changed, and Mr. Dietrich thinks there will be more participating companies, following those changes.

The Committee's thanks were extended to Mr. Dietrich for his presentation.

S1122: **Don Drum**, Executive Director of the Public Employee Retirement System (PERSI) presented **S1122**. This bill relates to the public employee retirement system and amends Section 59-1351, Idaho Code, to revise protections relating to optional retirement allowances. It amends Section 59-1352, Idaho Code, to clarify a requirement of eligibility for disability retirement, and it amends Section 59-1355, Idaho Code, to provide a correct Code reference and to make technical corrections.

The bulk of the changes bring legislation and statute into compliance. The bill also allows protections for spouses to take place sooner after election. This will be a better benefit to members who choose to marry and retire.

MOTION: **Representative Higgins** moved to send **S1122** to the floor with a **DO PASS** recommendation. **Motion carried on a voice vote. Representative Higgins** will carry the bill to the floor.

H 231: **Representative Maxine Bell** presented **H 231**. This bill relates to publication of personal service contracts. It amends Section 59-514, Idaho Code, to revise provisions relating to the publication of personal service contracts.

In 1985, legislation was drafted that caused service at a higher wage be split, so retirement benefits could not be leveraged, however, this did not take into account public employees who would later go into public service in elected positions with low rates of pay, and who would see their retirements benefits cut. March Smith in Jerome worked 18 years for Health and Welfare, and is now a city councilwoman. Under current law, her retirement will be less if she continues to serve on City Council, than it would if she was not serving.

Ben Marchant, City Administrator for the City of Jerome, spoke **in favor of H 231**. He stated that it came as a surprise that service in public office could actually penalize a former state employee. He said it is hard to find good, committed citizens who would like to serve in this capacity, and a penalty to their retirement benefits makes this harder.

In response to questions, **Don Drum** stated that the goal is to protect the benefit an employee currently has, and not to penalize them for staying in some sort of service and accruing a benefit. H 231 would allow the employee to lock in a benefit and continue to accrue service and benefits without being punished for continuing in public service. As mentioned in the fiscal note, there is a potential impact of up to \$6 million.

In response to questions, Mr. Drum stated that “AMS” means Average Months of Service. He said that legislators are exempt from this legislation. The original legislation did fix an existing issue, however, it was not intended to be punitive to those who had previous general service, and went on to be serve in an elected office.

MOTION: **Representative Ringo** moved to send **H 231** to the floor with a **DO PASS** recommendation. **Motion carried on a voice vote. Representative Bell** will carry the bill to the floor.

H 230: **Representative William Killen** presented **H 230**. This bill relates to the Public Employee Retirement System. It amends Section 59-1342, Idaho Code, to revise provisions relating to certain members' initial service retirement allowance and to make technical corrections. It also amends Section 59-1346, Idaho Code, to revise provisions relating to certain members' accrued retirement allowance.

Currently all counties are required to publish a monthly accounting of activities and expenditures. H 230 allows counties to include personal service contracts in their monthly summaries. This bill would reduce cost to county taxpayers, as it would result in decreased numbers of publications.

MOTION: **Representative Takasugi** moved to send **H 230** to the floor with a **DO PASS** recommendation. **Motion carried on a voice vote. Representative Killen** will carry the bill to the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:39 p.m.

Representative Robert Schaefer
Chairman

Mary Tipps
Secretary

MINUTES

HOUSE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 25, 2009

TIME: Upon Adjournment of the House

PLACE: Room 316

MEMBERS: Chairman Schaefer, Vice Chairman Marriott, Representatives Lake, Trail, Thayne, Hartgen, Simpson, Takasugi, Ringo, Pasley-Stuart, Higgins

**ABSENT/
EXCUSED:**

GUESTS: Suzanne Budge, State Director, National Federation of Independent Business; Dave Whaley, Idaho State AFL-CIO; Cindy Hedge, Idaho State AFL-CIO; Bob Fick, Department of Labor; Jayson Ronk, American Association of Commerce and Industry; Pam Eaton, President and CEO, Idaho Retailers Association, Idaho Lodging and Restaurant Association

The meeting was called to order at 2:47 p.m. by Chairman Schaefer.

H 248: **Bob Fick**, of the Idaho Department of Labor, presented **H 248**, an act relating to the employment security law. H 248 amends Section 72-1306, Idaho Code, to define "base period," and "alternative base period," for claimants who have insufficient wages in the base period to establish eligibility for unemployment benefits. It also amends section 72-1366, Idaho Code, to provide that certain claimants shall not be denied regular unemployment benefits solely because they are seeking only part time work. It seeks to define a phrase, to provide a specific code reference, to provide that certain job training must be completed in two years, and to provide that certain claimants shall be eligible for training extension benefits. It seeks to provide criteria, to provide for weekly training benefit extension amounts, to provide that the application of certain provisions shall not result in a denial of training extension benefits, and to provide that employers' accounts shall not be charged for training extension benefits paid to claimants.

H 248 implements a provision of the American Recovery and Reinvestment Act of 2009 called Unemployment Insurance Modernization. Under the provision, the State of Idaho would receive \$33 million from the Reed Act Account of the U.S. Department of Labor's unemployment insurance trusts in return for adopting three expansions of benefits.

In order to be eligible for the funds, the State must first adopt an alternative base period for determining benefit eligibility for unemployed workers who would not qualify for benefits under the traditional formula. This would affect less than 8% of filers. When this alternative base period is adopted, about \$11 million will be deposited into Idaho's Unemployment Insurance Trust Fund. If the alternative base period is adopted, then the state will be eligible for about \$22 million more in Reed Act money by adopting two of four expanded benefit proposals. Since these four were first suggested in 2007, the Department of Labor has conducted extensive cost analysis of each and determined the most fiscally conservative benefits to adopt. Those benefits

are to provide additional benefits to workers in approved training who have exhausted all benefit programs, and providing benefits to qualified claimants who only want to seek part-time work.

If Idaho adopts these provisions, the Reed Act money will be received immediately upon certification to the U.S. Department of Labor that Idaho has complied with the provisions of the stimulus package. The significant unemployment insurance tax increases forecast for Idaho in 2010 would be reduced by approximately 10% to 15% with the receipt of these funds. The stimulus package allows the implementation date for the benefit expansion to be delayed up to one year. The Idaho Department of Labor is proposing to implement the alternative base period by October 1, 2009, and the benefits for workers in approved state training or seeking part-time work on January 1, 2010, when the new benefit year begins.

In response to questions, Mr. Fick said that the \$33 million would be tracked independently of already existing funds in the Trust. The number of people who qualify for additional benefits would be followed. The \$33 million would probably be used in the first year, but would be \$33 million less that the state would have to borrow. The U.S. Department of Labor will apparently allow states to repeal the expanded benefits after Reed Act money has been used, and may not ask for repayment of the money, however there has not been a timeline given for when states can repeal.

Last year's rate increase to employers was 70%. Next year will likely be larger, however, if H 248 is passed, employers will pay 10% to 15% less than they would have otherwise paid in premiums. For instance, if the rate increase would have been 70% prior to receiving Reed Act money, the actual increase would only be 55% to 60%, saving Idaho employers some money during this tough economic time.

The most recent projection of unemployment rates came in December, when FY 2010 was projected to see a rate of 6.9%. There are currently 51,000 Idahoans who are unemployed. If we hit a 10% rate of unemployment, it will be disastrous. The general belief is that it will take 18 to 24 months to reach levels of unemployment that are more favorable, as seen in the second half of 2007.

The change to allow recipients to seek only part-time work would actually save the state labor costs, as currently employees of the Department of Labor must check to be sure that claimants are seeking full time employment. This is done through viewing documents and making phone calls. If claimants were allowed to seek part-time or full-time employment, that need would be eliminated.

MOTION:

Representative Takasugi moved to send **H 248** to the floor with a **do pass** recommendation.

Representative Thayn spoke in opposition to the motion. He said that he is uneasy with a \$33 million injection that would commit Idaho to maintain expanded benefits for a period of time. It may not solve problems.

Chairman Schaefer said that the \$33 million would only cover the expanded benefits. People have earned the benefits, and the enhancement would help

them get through a tough spot.

Representative Pasley-Stuart spoke in support of the motion. She stated that conditions in Idaho are dire. Employers have faced large increases in their rates, and there are tens of thousands of Idahoans seeking jobs. Employees and employers would be in a win-win situation under the benefit expansion.

Representative Lake expressed that we would receive \$33 million up front, but the benefits we could offer claimants would extend out for years.

A roll call vote was requested. **Motion passed, 10-1.** Voting in favor were Representatives Lake, Trail, Hartgen, Simpson, Takasugi, Ringo, Pasley-Stuart, Higgins, Vice Chairman Marriott, and Chairman Schaefer. Voting in opposition was Representative Thayn.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:25 p.m.

Representative Robert Schaefer
Chairman

Mary Tipps
Secretary

MINUTES

HOUSE COMMERCE AND HUMAN RESOURCES COMMITTEE

- DATE:** March 31, 2009
- TIME:** 1:30 P.M.
- PLACE:** Room 316
- MEMBERS:** Chairman Schaefer, Vice Chairman Marriott, Representatives Lake, Trail, Thayn, Hartgen, Simpson, Takasugi, Ringo, Pasley-Stuart, Higgins
- ABSENT/
EXCUSED:** Rep. Trail
- GUESTS:** Mary Tipps, citizen; Jennifer Hannah, Department of Health & Welfare; Erin Armstrong, Risch Pisca
- Chairman Schaefer called the meeting to order at 1:30 p.m. .
- MOTION:** **Rep. Pasley-Stuart** moved to approve the minutes of March 25 as written; **motion carried on voice vote.** **Rep. Higgins** moved to approve the minutes of March 19 as written; **motion carried on voice vote.**
- S 1152** **Sen. Bart Davis** presented **S 1152**, an act relating to worker's compensation. He said members of the judiciary and attorneys who practice law in the area of worker's compensation have encouraged this legislation. Currently, when a person receives worker's compensation benefits, whether for lost wages or for medical expense reimbursement, that income is exempt without limitation, since it is intended to reimburse for lost wages or to pay for medical expenses that have not yet been incurred but are anticipated.
- A problem arises, however, when a resident of Idaho is performing work in Oregon, Washington, or another neighboring state and makes a worker's compensation claim. The benefits received are not protected under the existing Idaho statute. Sen. Davis said it has been recommended that new language be added to Idaho Code to protect such worker's compensation payments in the same way they are exempted if paid by the state of Idaho.
- In response to committee questions, Sen. Davis said he does not know of specific examples of this problem. He said, however, that the situation has apparently occurred often enough that the courts and attorneys working in this area have called for the amendment. Sen. Davis said the change in Idaho Code will not compromise the court's ability to recover benefits in the case of fraudulent worker's compensation claims.
- MOTION:** **Rep. Thayn** moved to send **S 1152** to the floor with a **DO PASS** recommendation; **motion carried on voice vote.** **Rep. Thayn** will sponsor the bill on the floor.
- ADJOURN:** There being no further business to come before the committee, the meeting

was adjourned at 1:50 p.m.

Representative Robert Schaefer
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: April 13, 2009

TIME: 1:30 p.m. or Upon Adjournment

PLACE: Room 316

MEMBERS: Chairman Schaefer, Vice Chairman Marriott, Representatives Lake, Trail, Thayne, Hartgen, Simpson, Takasugi, Ringo, Pasley-Stuart, Higgins

**ABSENT/
EXCUSED:** None

GUESTS: Starr Kelso, Dan Bowen, Alan Gardner, Jon Bauman, Alex LaBeau, Idaho Association of Commerce & Industry (IACI); Lyn Darrington, Employers; John Watts, Chamber Alliance; Woody Richards, Associated Loggers Exchange and Workers Compensation Exchange; Mike Kane, Property Casualty Insurers Association of America; Tom Limbaugh

Chairman Schaefer called the meeting to order at 1:35 p.m.

MOTION: **Rep. Pasley-Stuart** moved to approve the minutes of March 31 as written; **motion carried on voice vote.**

H 305 **Rep. Dick Harwood** presented **H 305**, a bill dealing with denial of worker's compensation claims. He said this legislation has arisen as a result of Supreme Court ruling on March 5, 2009, *Neel v. Western Construction*. Rep. Harwood talked about his own personal experience with the worker's compensation system when he was a young man. He experienced lead poisoning while working for a gas company, filling tanker trucks. After being treated with intravenous injections for about five months to reduce the lead level in his blood, he was instructed by the worker's compensation program to see a Spokane doctor who was a specialist in lead poisoning. After a very brief and cursory examination that did not include any blood tests, the lead specialist ruled that he did not have lead poisoning, and his worker's compensation payments were subsequently cancelled. Rep. Harwood said he later found out that the doctor who examined him was a gynecologist.

Rep. Harwood explained that, at that point in his life, he did not know he could have hired an attorney to help him appeal the decision on his worker's compensation claim. He said this bill, H 305, is an attempt to bring some equity to the worker's compensation system when a claim is wrongfully denied.

Starr Kelso, an attorney from Coeur d'Alene, testified **in favor of H 305**. Mr. Kelso gave his personal history to the committee, saying he was born and raised in Wallace and attended the University of Idaho. He is an attorney who has worked for the past 28 years in the area of worker's compensation, representing insurance companies, self-insured employers, the State of Idaho second injury fund, and injured workers. He has wide experience representing all possible parties in proceedings before the state Industrial Commission. He is one of the founding members of the Idaho State Bar

Worker's Compensation Committee and has also served on the Idaho Association of Commerce & Industry's work comp committee.

Mr. Kelso gave details of an Idaho Supreme Court case involving former Treasurer Lydia Justice Edwards and the State Insurance Fund. He said it was discovered that the State Insurance Fund had not been paying their insurance reserve amounts to the Idaho State Treasury, required since 1917. A suit was brought against the State Insurance Fund to force them to pay the reserves. Eventually the Idaho Supreme Court ruled 5-0 that the fund was required to pay the reserves; at that time the amount they owed was approximately \$30 million.

Mr. Kelso testified that he was instrumental in forming the North Idaho Employers Group. He said he supports H 305 because he wants to provide a voice for injured workers who cannot afford to hire an attorney or a lobbyist. He stated that, in light of the Neel decision, it will be nearly impossible for injured workers to obtain legal help when they are denied medical care. Currently it is easy for an insurance company to get a physician to rule that a treatment is not necessary or is not caused by a work-related accident. That ruling provides a basis to deny medical care to the worker.

This legislation will require insurance companies to be very careful when they deny medical care. They will need to evaluate cases more carefully, using doctors who are actual experts in the related fields. Mr. Kelso said the legislation will have no fiscal impact and will, in fact, save money since without it injured workers may move to county medical assistance programs.

Mr. Kelso presented information from actual work comp injury cases to support his testimony, including the case of a worker's knee injury and the case of a logger struck on the head by a falling tree. In the case of the knee injury, a recommendation was made for total knee replacement. That decision was later reversed after a doctor hired by the insurance company examined the patient and determined that a replacement was not medically indicated.

The logger suffered injuries resulting in herniated disks in his lumbar and cervical spine areas. Although a physician initially evaluated him as a candidate for surgery, the same doctor reversed his diagnosis ten days later and said the injuries may not have been caused by the accident. Since the worker continued to have problems, but was denied medical care, he requested a hearing. When the original doctor testified under oath at the hearing, his testimony was that the worker did suffer herniated disks as a result of being struck by the tree, and that he ought to have surgery. Although he did have two surgeries, he continues to have problems.

Mr. Kelso said that in cases where the needed treatment is relatively inexpensive, it is not cost effective for an injured worker to engage in an appeal if the claim is denied. The cost of the necessary depositions would be more than the cost of the surgery or treatment in some cases. Mr. Kelso pointed out a New York Times article which states that cases are "routinely tilted to benefit insurers by minimizing or dismissing injuries."

Mr. Kelso distributed a chart showing the situation pre-Neel decision and post-Neel decision. He explained that prior to the Neel decision, insurance

companies paid for approved medical care at an adjusted rate, according to a work comp formula. If medical care was denied, it would often take four to six months before a hearing was scheduled. The cost of the appeal was borne by the injured worker. After the hearing, it might take two to three months before a decision is rendered. If the Industrial Commission ruled that the denied medical care was reasonably required, the insurance company would have to pay 100% of the medical billing's full amount. From that payment, the treating physician received the amount of the adjusted rate, the worker's costs were reimbursed, and the attorney received a fee based upon whatever amount was left.

After the Neel decision, the insurance company still pays at the adjusted rate, and the hearing process still takes about four to six months. However, if upon appeal the care is deemed to be reasonably required, the insurance company pays the doctor and the hospital directly, and at the adjusted rate. There are no funds available to reimburse the injured worker for his or her appeal expenses, and no funds to use for attorney fees.

Mr. Kelso said H 305 states that if a claim is denied and if the treatment is later found to be necessary upon appeal, the employer or his surety is required to pay reasonable costs and attorney fees of the claimant. He said a typical appeal case can take as long as two full weeks, or 80 hours, of attorney time, including hearings, depositions, and briefs. He said H 305 will require insurance companies to be very careful when they deny medical care to injured workers.

Responding to committee questions, Mr. Kelso said insurance companies have no liability unless an employer is liable. Although some employers are self-insured, most of the time employers have an insurance company that assumes their risk. He stated the purpose of H 305 is to address the problem of injured workers who are not able to hire an attorney to represent them because there will be no funds to pay for the attorney's services. Asked whether the committee is being asked to override the Supreme Court's Neel decision, Mr. Kelso said he is attempting to return to what the Industrial Commission was doing prior to the Neel decision.

Mr. Kelso said this legislation would have no impact on a company's costs for work comp insurance, since legal fees are not included as a factor in the formula that figures work comp rates. The factors that are included are the number of claims and losses. He said attorney fees are the sole area of the insurance company. He also said the Neel decision seems to provide an incentive to regularly deny claims, since there will be a disincentive for the injured parties to pursue an appeal.

Asked whether this legislation is being rushed through too quickly after the Supreme Court's decision, Mr. Kelso pointed out that just six days after the decision insurance companies were sending out letters stating that they would be using it to their advantage.

Mr. Kelso was asked whether the legislation had been reviewed by the Industrial Commission's work comp advisory committee. He said he wrote a letter to the chairman last July and had a conference call in January with the advisory committee. Mr. Kelso said he had not spoken to the advisory committee since the Neel decision, because they meet only once each quarter.

Dan Bowen, a worker's compensation attorney, testified **in opposition to H 305**, stating that he brought the appeal in the Neel case. Mr. Bowen said the legislation has been hastily prepared. He pointed out that the Neel decision does not talk about attorney fees at all, and he does not believe the Neel case will affect the law of the land. He also noted that Neel has been suspended because a petition to intervene and a petition for rehearing have been filed by Mr. Kelso. To date, the court has not ruled on either of the petitions.

Mr. Bowen stated he brought the Neel case because he thought it was time to review the Commission's position to find out if it is reasonable. He said the Industrial Commission has the power to regulate attorney fees, according to their rules and regulations. The Commission may deal with Neel in subsequent decisions. Bringing a bill to deal with the Neel decision is premature at this point, in Mr. Bowen's opinion.

Responding to questions from the committee, Mr. Bowen said he thinks the proposed legislation could encourage litigation of modest cases because attorneys could work them on an hourly basis. In these cases, attorney fee claims could be awarded which are many times the medical cost in dispute. Mr. Bowen indicated that he primarily represents self-employed persons and insurers in the state of Idaho.

In further discussion and questions, Mr. Bowen said the Industrial Commission should be given the chance to work its way through the Neel decision, deciding what its weaknesses are and determining the best way to improve upon it. He said it is not clear whether H 305 would adversely affect work comp insurance rates, noting that attorney fees are sometimes described as a benefit. Mr. Kelso testified that the legislation is premature because it is not known yet what the courts will say under the Neel decision. He thinks the Commission should have the opportunity to implement the decision before any corrective measures are undertaken.

Allen Gardner, an attorney with 40 years of experience in work comp practice, testified **in opposition to H 305**. Mr. Gardner said the Industrial Commission has an advisory committee that can appoint a subcommittee to study the issue if necessary. The advisory committee would be made up of all possible interested parties. Mr. Gardner thinks the changes envisioned in H 305 are premature and the legislation should not be rushed through at the end of the session.

Mr. Gardner said he disagrees with the statement that only one doctor's opinion is needed to disallow benefits. He also disagrees that this bill will save money, and thinks it will actually increase costs. He noted that the bill does not discriminate between possible reasons for the denial of claims.

Responding to committee questions, Mr. Gardner said although there are 45,000 to 50,000 injuries on average per year in Idaho, only about 20% of them are time-loss cases. He said he is unsure whether the Neel decision will cause the Commission's work load to increase.

Jon Bauman, an attorney in private practice, testified **in opposition to H 305**. Mr. Bauman defends employers and insurance companies and has also taught a work comp course for the University of Idaho law school since

1995. He served as a hearing referee at the Industrial Commission for a number of years. He said he is not familiar with the practice cited by Mr. Kelso of having just one doctor ruling on work comp claims. He also said this bill will remove the discretion of the Industrial Commission to award attorney fees. Mr. Bauman said H 305 will tie the hands of the Industrial Commission and require them to impose fees and costs regardless of how an employer or a surety company reaches its decision.

MOTION:

Rep. Simpson moved to **HOLD H 305** in committee. He said this legislation would have wide-ranging implications for businesses and sureties in Idaho, and it should be studied further before any action is taken.

Rep. Pasley-Stuart argued in support of the motion, saying she thinks the legislation is premature. She said the Commission needs to be allowed to do its job, and this bill would remove the discretion of the Industrial Commission to award attorneys' fees. She said there is not sufficient time to do justice to this bill at this point in the session, although she would consider hearing it again next year.

Rep. Takasugi argued in favor of the motion. He said he is a member of the Industrial Commission Advisory Committee and he will take heed of the discussion on H 305 and bring it to the attention of the advisory committee.

Rep. Trail stated his support of the motion, saying this legislation had been rushed and adequate time was not allowed for all interested parties to learn about it. He said he would reconsider the question next year.

Rep. Hartgen argued in support of the motion, saying he agrees that there may be situations in which a person is not adequately represented in the appeal process, but this legislation is premature at the present time. He said the matter should be studied in the future.

Rep. Higgins stated her agreement with the motion to hold H 305. She said she has a problem with overriding a Supreme Court decision, when they have studied the matter more thoroughly in order to come to their decision.

VOTE ON MOTION:

Chairman Schaefer called for a vote on the motion to **HOLD H 305** in committee. **Motion carried on voice vote.**

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 3:25 p.m.

Representative Robert Schaefer
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: April 17, 2009

TIME: Upon Adjournment of the House

PLACE: Room 316

MEMBERS: Chairman Schaefer, Vice Chairman Marriott, Representatives Lake, Trail, Thayne, Hartgen, Simpson, Takasugi, Ringo, Pasley-Stuart, Higgins

**ABSENT/
EXCUSED:** Rep. Takasugi

GUESTS: Roger Madsen, Bob Fick, John McAllister, Jay Engstrom

Chairman Schaefer called the meeting to order at 11:00 a.m.

MOTION: **Rep. Higgins** moved to approve the minutes of April 13 as written; **motion carried on voice vote.**

S 1214 **Bob Fick**, Department of Labor, presented **S 1214**, which will allow Idaho to take advantage of a provision of the federal stimulus law, under which the federal government will pay 100% of extended unemployment benefits for unemployed workers.

Mr. Fick explained that, prior to the stimulus package, such benefits were triggered on and off when the unadjusted unemployment rate was 5% based on a three-month rolling average. When the rate drops below for three months, the benefits then triggered off. He said Idaho's rate reached 5% at the beginning of February and the extended benefits were triggered on. Because unadjusted unemployment rates follow a seasonal pattern, this rate will drop below 5% in mid-June and will therefore trigger off.

The new federal stimulus package, however, allows the state to adopt a formula for triggering that would use the adjusted unemployment rate. It allows the extended benefits to trigger on when the adjusted rate exceeds 6.5 % on a three-month rolling average. In Idaho, this rate exceeded 6.5% around the end of March or first of April. Mr. Fick said the seasonally adjusted rate is expected to remain above 6.5% for the rest of the year; thus, the extended unemployment benefits will continue for the entire year.

Senate Bill 1214 will allow Idaho to use the total unemployment rate calculation in cases where the federal government is paying 100% of the cost of extended benefits. Before the stimulus package was enacted, the state and federal governments shared these costs 50-50. S 1214 will keep the eligibility period for the 13 weeks of extended benefits open until the end of 2009, at which point the federal 100% payment ends.

Mr. Fick said the employment situation in Idaho has not improved and will continue to deteriorate. He stated that Idaho currently has 110,000 active job seekers but only about 4,000 available jobs. At a recent job fair held in

Coeur d'Alene, about 4,000 people lined up to apply for just 100 jobs.

Mr. Fick testified that S 1214 will have no effect on unemployment benefit levels, no effect on the unemployment tax rate, and no effect on the trust fund balance. He said that when the federal government ceases to pay 100% of the extended benefits, Idaho will revert to using the more conservative unadjusted unemployment rate to figure extended benefits.

Roger Madsen, Director of the Department of Labor, testified **in support of S 1214**, saying that unemployment benefit payments are running about 135% of last year's rate. He said Idaho could pay out more than \$500 million in benefits in 2009, which would be near record levels.

Responding to questions from the committee, Mr. Madsen said Idaho's unemployment rate is 7.1%, while the national rate is 8.5%. Some areas of the state are suffering from double-digit unemployment; the rate is high in Ada, Gem, Owyhee, and Boise counties. Boise has lost jobs at the rate of about 1,600 jobs per month for the last 12 months, and there are now over 19,000 fewer jobs in Boise than there were a year ago. Mr. Madsen said the unemployment trust fund will be empty in a few months and the state will borrow from the federal government to pay the necessary benefits. As part of the federal stimulus package, however, these loans will be interest-free.

During further discussion and questions, Mr. Madsen said the number of new unemployment claimants declined slightly during the past few months but it is still higher than at any time in history. He said the decline should be greater than it is, given that agriculture and construction hiring should be on the rise at this time of year. Mr. Madsen said the trust fund balance is expected to recover from its projected deficit position fairly rapidly because Idaho will receive \$32 million from the stimulus package and the first quarter receipts will be coming in soon.

Mr. Fick was asked about the point at which Idaho will cease using the adjusted unemployment rate to figure extended benefits. He said the federal government's 100% payment of extended benefits is projected to end at the end of December, at which time Idaho will revert to the old calculation. However, if the federal government extends the time during which they will pay 100% of extended benefits, Idaho will continue to use the newer formula. He said there are actually two triggers in S 1214; one is the insured unemployment rate and the other is the total unemployment rate.

Mr. Madsen was asked if there are any bright spots in the overall unemployment picture. He said the Magic Valley, Pocatello and Idaho Falls are actually doing fairly well, although every Idaho county has higher unemployment than it did a year ago. He reported that the more urban counties have tended to decline more rapidly than others. Nationally, Mr. Madsen said there seems to be some bottoming out in the housing market but retail sales are still down as of last month. Durable goods have declined, but the stock market has recovered about 20% from its recent lows. He said the current recession has continued for about 17 months, whereas recessionary cycles normally last about nine months.

Asked whether the Department of Labor can handle the required 5%

reduction in personnel costs without laying off any employees, Mr. Madsen said he is confident that they can. He said their workload has increased dramatically during this period of high unemployment. The department has cut 100 positions in the past three years and has brought back about 30 positions recently. Mr. Madsen said any cuts in Department of Labor positions have been accomplished through attrition.

Mr. Madsen was asked how Idaho's unemployment rate compares to those in surrounding states. He said Oregon and Washington have unemployment of about 9%, and California's is double-digit. Wyoming, on the other hand, is very low, at 3%; Utah's rate is about 5%, as is Montana's. In terms of the Northwest states, Idaho's rate is in the mid-range. He said other states have stronger trust funds than Idaho does. On a national basis, about six states are suffering from double-digit unemployment rates.

MOTION: **Rep. Lake** moved to send **S 1214** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Rep. Lake** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 11:27 a.m.

Representative Robert E. Schaefer
Chairman

MaryLou Molitor
Secretary