

Senate Commerce & Human Resources Committee

Minutes
2009



AMENDED MINUTES

**SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE and
HOUSE BUSINESS COMMITTEE**

DATE: January 15, 2009

TIME: 1:30 p.m.

PLACE: Room 117

This was a joint meeting of the Senate Commerce and Human Resources Committee and the House Business Committee with the staff of Blue Cross of Idaho.

MEMBERS PRESENT: **SENATE** - Co-Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Goedde, Lodge, and Sagness [Malepeai]

HOUSE - Co-Chairman Black, Representatives Bilbao, Chadderdon, Crane, Mathews, Patrick, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, and Cronin

MEMBERS ABSENT/ **SENATE** - Senators Stegner and LeFavour

EXCUSED: **HOUSE** - Vice Chairman Henderson, Representatives Collins and Bayer

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

GUESTS: See attached sign-in sheet.

CONVENED: **Co-Chairman Andreason** called the meeting to order at 1:38 p.m..

MINUTES: **Co-Chairman Andreason** welcomed **Steve Tobiason**, General Council for Blue Cross of Idaho, who gave a brief biography of **Dr. Doug Dammrose, Chief Medical Officer, Blue Cross of Idaho**, his medical background and qualifications. **Doctor Dammrose** began by explaining that unreconcilable cost inflation with health care does not always result in getting the best affordability that you would like to see. He said his role is to improve access to care, as well as quality of care and make it affordable. The biggest problem in health care today is the way everyone pays for it. The industry has created incentives that are misaligned and continue to drive certain areas of inflation.

Doctor Dammrose believes Idaho is a unique state and gives real opportunities to attract business and be a healthier community. He said his presentation today will focus on a "Healthier Idaho". Fifteen to sixteen cents of every dollar is going to health care costs and employers have difficulty competing in the world market because of health plan costs. Insurance costs are driven by health care costs. This nation has an unlimited appetite for more services.

What must be focused on is outcomes not more services. The cost of health care insurance is driven by negative health behaviors that are driving up the chronic disease burden. The “more services” mentality has driven up the cost of insurance and out of pocket health care costs which are exceeding the ability for people to pay. Higher costs are not equated with better health care outcomes and results. Uninsured patients drive more late diagnosis, increased costs and cost shifting, and poorer outcomes. We have a system that is not affordable for many today and will not work for everyone tomorrow if costs are not reined in. Patients are receiving only about 50% of care that we know actually works. Employers are struggling to compete globally. States are struggling with balancing budgets to afford better education. Health care spent in Idaho went from \$4 billion in 2000 to \$5.6 billion in 2004 while the positive outcomes for those extra dollars is questionable.

Representative Mathews asked if **Doctor Dammrose** could elaborate on who specifically is absorbing those increased costs, where is the money going? **Doctor Dammrose** explained that during this time there was a \$350 million building project going on to expand a hospital facility, more infrastructure drives more services. This study that was paid for by the legislature has a description of where the dollars were spent. Some of the money was spent on facilities, ancillary services, lab and x-ray. Expanding access without reducing wasteful health care spending will break the bank. Incentives must be promoted that drive efficiency and quality.

Waste occurs in: 1) Behavior: The population must live healthier lifestyles as drug and alcohol abuse, smoking and obesity are causing a burden to the health care system; 2) Clinical readmission to the hospital because of faulty discharge planning; and 3) Operational efficiencies like electronic health records, prescribing and staff turnover all result in increased needless health care costs.

Blue Cross is committed to reducing behavioral waste, encouraging wellness and personal accountability of members, benefit designs, promotion of self-management of chronic diseases, and attempting to eliminate clinic waste in medical management.

In 2020 about 47% of the population will be approaching a chronically ill condition and 70% of the expense will be spent on conditions that could be avoided by personal behavioral change to reduce the chronic care burden. There is a greater need to focus on factors that influence health, particularly on health behaviors where investment has traditionally been low. Obesity starts at a very young age so Blue Cross hired an employee, who as part of their PHD program, is engaging children in a learning environment to modify their eating habits. About 1,800 preschool age children throughout the state have been engaged in a program called “Color Me Healthy.” Blue Cross is educating children about healthy food and exercise. The economic benefits to a wellness program on the worksite are improvement in employee morale, improved health, reduced health care costs, less accidents on the job, less absenteeism and increased productivity. Clinical care was explored all over the country by

looking at patients who had died and checking on the care they received over the two years before their death. They researched the differences in that care in these major medical centers and the cost of the care received for the same outcome which was the patient died.

Dr. Dammrose said Blue Cross has found that compliance with appropriately using a medication for a condition is many times determined by the cost of the medication. In order to optimize diabetic control they have removed the co-pays for the medication for 2,500 diabetics with the State of Idaho and are studying them around their compliance if there is no added co-pay for the medicines. This should enhance the way their diabetic control is being managed. A study of 30,000 disease management participants between 2005 to 2007 compared the costs of a group who did not participate in disease management and found that the management group saved \$7.8 million.

Blue Cross is trying to change behaviors in the evidence based medicine to reduce costs. For example: they looked randomly at Sweden, Oregon and Florida to determine how they manage hypertension (high blood pressure) and their procedure to stabilize patients on medicine and the follow-up on the patient's care each year. The Swedish doctor said he would never see the patient. The nurse would call them and make sure they were all right. The Oregon doctor would see the patient twice a year and the Florida doctor would see the patient once a month. This is a very simple condition which has a wide variation in the way the care is delivered and a marked difference in expense and no difference in outcome. Case management is a collaborative process of assessment, planning, facilitation and advocating for a member, options of care to try to improve their outcome.

The purpose of case management is to identify members who could benefit from case management involvement to optimize their function and quality of life for those patients who have an intensive illness or injury and to coordinate and facilitate the delivery of services during the illness episode. Blue Cross is in the process of educating their members on cost containment, increase family and patient awareness, maximize efficiency for utilization of their benefits and monitor activities to assure better outcomes. The types of case management done are acute case management, discharge planning and ensuring better care after the acute stay. They have a nurse on staff that knows every newborn baby in the membership, which ones are in NICU, when they are going home, when they need their prophylaxes for respiratory virus and they are able to be on top of the patient and intervene.

Dr. Dammrose said as part of the state mental care pilot, special nurses are employed that have knowledge in mental health and have had benefit by understanding that much of the medical cost is driven by mental health issues. Patients who go to the emergency room with an overdose or with other medical issues are being driven to the emergency room by inadequately cared for mental health problems. When you put all these factors together in medical management it saves about \$130 million out of \$1.3 billion. This is a sizeable amount of impact on what dollars, if they

were not saved, would have gone to even higher premiums. The quality improvement programs are meant to try to drive quality and reduce variations in the hospital and physician community. They measure the performance and look at qualified providers that are outstanding in the way they provide services and make an effort to raise the bar for everyone.

Blue Cross looks at process, outcome and quality of care measures and identifies opportunities to help members become healthier by the activities that they provide. Comprehensive diabetes patients who had poor control, A1C greater than 9, have through managed care lowered that to 12.2% the national average is 45%. Blue Cross has paid for performance with participating rural and urban hospitals since 2005 allocating \$1.7 million of extra money that goes to hospitals for meeting process and outcome measures for quality. The goal is for changing reimbursement from a fee for service method of payment to a more global desire for physicians to get paid rather than paying for a population. Another goal is paying for outcomes, process improvement and trying to identify centers of excellence. They are working with the spine surgeons locally to try to identify how to make them centers of excellence in what they do. **Vice Chairman Coiner** said that speaks to your administrative cost only, is that correct? **Dr. Dammrose** said that was correct.

Vice Chairman Coiner asked, "Have you followed what your providers' administrative costs have done in the same time period?" **Dr. Dammrose** replied that they are faced with an incremental increase each year and they are not going to pay that increase. They are assuming that this incremental cost is based on their added cost of staff and their overheads. They have engaged a group of physicians in the last year to try to improve their administrative efficiency and have suggested a number of things like group purchasing for the office, grants for their technology, etc. He said he did not know the exact amount of their administrative overhead.

Dr. Dammrose said the solution we need are outcomes not more services. If we were to say we are going to improve the access today and change the way we are spending now, with mark variations, we will definitely break the bank. They need to design benefits and provide payments for services that are proven to work and no pay for ineffective treatment. They need to promote an efficient delivery system based on access to primary effective care and support an ideal coverage for everyone. Imagine Idaho with a healthy economy that attracts businesses, an efficient low cost health care delivery system and healthy citizens which make businesses want to come to Idaho.

Representative Mathews asked, "How much do medical administrators drive United States decision as to what tests are given or how medicine is practiced in order to achieve business goals?" Administrators need to change to the philosophy of better outcomes so they don't need to buy more MRI machines. You don't just build more infrastructure and not expect to have a business model that does not drive up more costs.

Senator Sagness questioned how pharmaceuticals factor into health

care costs. **Dr. Dammrose** said the spending on retail pharmacy would be 15% of the total health care dollar. Cost of specialty drugs that fall under the medical benefits can run \$30,000 per month. Sixty-seven percent of all prescriptions filled are now generic and that is saving an incredible amount of money.

Senator Sagness questioned if medical schools' philosophies and teaching practices reflect the change in accordance with relationship to needed changes in medical practice. The Doctor responded "no." The fill rate of residencies in primary care right now is only 8%. Mentors at medical schools say never go into primary care as it does not pay enough. If they want a life, they need to go into an expensive specialty in which there are far too many doctors now.

Representative Bilbao stated that 100 years ago you could go to the doctor and you were lucky if you had a nurse. You could walk in and get treated and there was very little paperwork. Today when you are treated there are rows and rows of records. If you go to the hospital's record department, there are vast rooms of records. All this costs money for records clerks to file and locate. The cost to run the business office of a practice and coordinate with an insurance company to pay the doctor for the services and also extracting the money from the patient are high administrative costs. The Medicare and Medicaid rules and all other health agencies that place demands on the practices business office along with the lights, equipment and personnel drive the costs.

Dr. Dammrose stated that what they have done in Idaho is form a co-op between all the rural hospitals in the State and through this co-op they purchased everything from band-aids, CT's, MRI, etc. on a cooperative basis which has cut the cost for rural hospitals. Still the administrative costs are quite large. You cannot keep people in a rural hospital 45 miles from St. Al's or Mercy Hospital and not pay them equal to what they are receiving in Boise. Otherwise the people leave and you do not have staff to attend to the patients. **Representative Bilbao** said he was in one of their pilot projects under the generic drug program and it worked beautifully, because not only did it cut their cost, it cut his cost. His doctor who had him on the program could find no difference within the blood tests between having him on generic over traditional drugs.

Representative Durst stated he had two questions: One, regarding medical price transparency, could you speak to the role that Blue Cross may not have in reducing costs in health insurance and medical access for the people of Idaho? **Dr. Dammrose** replied everyone needs to do a better job of exposing what is the real value of health care. An economist once said "health care is like a credit card that never came due" because no one really understands what it really costs them until it is too late. It is critical that we figure out some way to create some transparency around the value of services. There are problems in the way that we are interfacing in demonstrating what those costs are, proprietary issues, and contractual issues. He said there needs to be a better way to demonstrate to a patient what the value of the service is and what it will cost. This will allow patients to make better shared decisions about their

care.

Representative Durst said his second question deals with the likelihood of some reforms at the federal level whether or not newly appointed Secretary of the U.S. Department of Health and Human Services, Tom Daschle, has some significant changes that will take place. What is your sense of whether Idaho will be able to be better positioned, not only as a State, but also as a large State, to provide access to people here in the State? **Dr. Dammrose** responded that he did not know how the federal platform would shake out. He received a recent document that he encouraged all to read by the "National Quality Forum" on national priorities and goals for health care which includes all the items they have been talking about. It includes reducing waste, driving efficiency and engaging people to take better care of themselves. He said all of those things will be a part of those federal level reforms. He thinks that Idaho has some unique opportunities that we should look for a way to build more collaboration. We are an unusual State, in that we have few dense population centers with a relatively small number of physicians. I think that people want to do the right thing and that if we collectively push for the same types of things we can set an example in our nation.

Co-Chairman Andreason thanked **Dr. Dammrose** for his informative presentation to the joint committee.

Co-Chairman Black stated he had viewed Blue Cross' programs in the fall and happened to be on one of their programs which is the diabetes management program. It has had an effect on the personal management of his condition. On this program, he would stop and think about what he was eating. The incentive for his managed care is when he refilled his medication. He does not have to pay his co-pay because he follows their program. If he does not stay on the program, he will have to start paying his co-payment for his medication again.

ADJOURNMENT **Co-Chairman Andreason** adjourned the meeting at 2:53 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: January 20, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, and Sagness (Malepeai)

MEMBERS ABSENT/ EXCUSED: Senator LeFavour

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

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Andreason** called the meeting to order at 1:30 p.m. The **Chairman** welcomed **Senator Melinda Smyser** our new senator and member to the Committee.

Chairman Andreason then turned the meeting over to **Vice Chairman Coiner** for rules review. **Vice Chairman Coiner** informed the Committee that they will receive a consent calendar in the Committee folder at the next meeting.

The Human Resource rule that is before us today is a rule that has been held in abeyance for a couple of years. The Committee has had trouble getting everyone on the same page to write the rule that all could agree on. **Senators Sagness, Goedde** and **Coiner** collaborated with **Dennis Stevenson, Administrative Rules Coordinator, Department of Administration** and **Vicki Tokito, Program Manager, Human Resources** went through the rule and came to the agreement that there were three sections that should be heard before the Committee.

MINUTES: **Vice Chairman Coiner** recognized **Dennis Moberly, Program Manager, Human Resources**, to present Pending Rules Dockets 14-0401-0801, Section 240.04, 15-0401-0801, Section 241.02, 15-0401-0801, Section 250.02.

DOCKET NO. 15-0401-0801
RULE 240.04 **Rules Governing Sick Leave**
Medical, Dental, or Optical Appointments Leave
This rule has no statutory authority for the department to have this rule concerning medical, dental or optical appointment leave. This action is covered in the sick leave section of the code. Medical appointments,

preventive care and wellness would be covered under that section of code. Rule, Section 240.03 which states "reasons for use must only be used in cases of actual illness or disability or other medical or health reasons necessitating employee's absence from work or the employees personnel attendance is required because of family issues". **Chairman Andreason** asked, What is the net result of this change in terms of what an employee can and cannot do in regards to going to these appointments? **Mr. Moberly** answered there will be no further MDA codes. Previously, employees had a chance to use two hours of MDA leave for an occasional appointment; this now will be coded under sick leave. **Chairman Andreason** asked, For the purpose of the change? **Mr. Moberly** clarified that they could not find any statutory authority for that rule being adopted. **Senator Goedde** asked, Since this was dated March 16, 2004, how far back does medical, dental and optical appointment leave go? **Mr. Moberly** replied they had found a copy of old rules in 1985 and the rule was in those rules so they think it was around at the time that the rule was adopted. **Senator Goedde** said apparently Human Resources has conferred a benefit that was not statutorily backed up for employees. Do you have any idea of the fiscal impact for one year of that statutorily unauthorized benefit? **Mr. Moberly** answered we have numbers for the 2005 calendar year that showed that there were 84,238 hours of MDA x salaries of those employees. It came to \$1,000,529,000 for calendar year 2006. There were 90,528 hours and that cost \$1.7 million. **Senator Goedde** asked, If there is anything that states that an employee with agreement from his supervisor could take the couple of hours off for a doctors appointment and make up that time at a later date? **Mr. Moberly** stated that no but they would be able to make up those hours if their supervisor approved their working the time at another time.

Senator Cameron asked what the potential cost would be by not allowing employees to have the time off for these preventative medical appointments? **Mr. Moberly** replied we do not look at this rule change as preventing anyone from having these types of exams. They can use sick leave, comp time or vacation leave for this preventive care. Human Resources believes that these appointments can be handled under the sick leave more consistently across the State. **Senator Stegner** asked, Does the sick leave policies of the State prevent employees in using sick leave for this purpose? **Mr. Moberly** said that was correct. **Chairman Andreason** stated would it be true to say that you are encouraging the employee to take sick leave to go to dental and doctor appointments. **Mr. Moberly** replied that yes they can use sick leave for that purpose. **Chairman Andreason** stated wouldn't this type of leave encourage employees who must use sick leave for this preventive care just take the day off, call in sick. **Mr. Moberly** responded the sick leave can be coded in any increments and hours. **Chairman Andreason** stated that it is an attitudinal perception that he is addressing here. He believes if an employee is required to use sick leave for these appointments that they will just take a day off of sick leave. **Mr. Moberly** replied they could have that option. **Senator Sagness** stated it has been his experience that employees will do almost anything to protect their sick leave rather than

using it when they do not need it.

Alex Neiwirth, Representative and Organizer for SCIU and Idaho Association of Government Employees, explained that prior to the elimination of the rule back in August this State had a very visionary idea in this rule. This was an incentive for employees to use MDA time for preventive medical attention. The Rule 240.4 states that employees can use up to two hours for visits considered wellness related, diagnostic or preventative appointments. The prior rule encouraged employees to get their regular health check-ups and exams. Employees want to preserve their sick leave, because if they save up their sick leave they are able to finance some of their health insurance after they retire. This is an incentive not to use their sick leave unnecessarily. Employees, under this new rule, might weigh if their preventative wellness check ups are worth losing two hours from their sick leave time. **Senator Cameron** asked, **Mr. Neiwirth** won't the employees want to take that step of prevention anyhow without this rule? **Mr. Neiwirth** answered you would hope that they will but employees want to protect their sick leave and not use it if they do not have to. **Senator Cameron** pointed out that they do not have to use sick leave to take an hour off for a dental or physical appointment. They could adjust their work schedule and make up the hours on another day. **Mr. Neiwirth** responded it may depend on what agency they work in, but yes for many employees it would be possible. **Senator Goedde** said if the benefit is to be kept the Senate will have to enact legislation that provides authority for the time off, which will cost \$1.7 million. Is it worth the benefit to lose some of your fellow staff members? **Mr. Neiwirth** replied no he would not want to see any employees lose their positions because of this enactment of the legislation, but it should be weighed against the costs of increased medical costs which might potentially result from the lower amount of preventive care.

Senator Lodge said that her doctor's office is opened from 8:00 a.m. to 8:00 p.m. and 10:00 to 4:00 p.m. on Saturdays and Sundays and that would be another option. Many doctors offices have these extended hours open for the convenience of their patients. **Mr. Neiwirth** explained that the argument is not that employees are not going to have access to care, but that the rule was a forward thinking incentive to encourage employees to get this care. **Senator Sagness** stated that the easiest way to address these wellness appointments would be through an arrangement between the manager and the employee for the time to be made up at a later date. It would allow the flexibility for the manager and the employee to make these arrangements, would not take away from the sick leave hours and would be the most judicious way to solve the problem. **Vice Chairman Coiner** answered **Senator Sagness** we can suggest this as a discussion for the Committee.

Vice Chairman Coiner stated that if the Committee and the Legislature sees fit to approve section 240.04 that the Committee should ask Human Resources to write a temporary rule and clarify how the hours for these appointments should be dealt with in the departments. For example: the employee knows he has an appointment coming up so he works two or

three lunch hours or comes in early to make up the time-off. Human Resources can clarify this time-off without having to spend \$1.7 million.

Senator Stegner stated that there are some basic problems with the rules as written. Normally the Legislature reacts very quickly when they find rules that don't have statutory authority and he thought that at the very least this rule discrepancy should be addressed. If you want to make this a rule, we should seriously think about making sure that we cover the bases to the point that any rule or policy addressing this action should be very definitive and spelled out. Secondly, the whole concept of occasional appointments is not defined in rule about how many of those you can have, how many you are entitled to over what period of time. Normally the Legislature jumps all over these types of ambiguities. This is no way to run a benefit program with these types of undefined and ambiguous references. Thirdly, we are asking employees to make some very specific qualifications concerning treatment that is preventative in nature. If they choose to use something like this they need to make the choice of whether they are sick at the moment and will then go to the doctor for a diagnosis or whether they are going for what is vaguely referred to in this rule. Finally, the whole concept of having managers in the position of denying this for what are vague references is not the kind of language we like to see in a benefit rule. We like the benefit rule to be specific so everyone knows what the playing field will be. It is good for the employees and management to know the parameters of a benefit and not have situations where there would be abuses by management or employees by the wording which could fall into categories that are vague. **Senator Stegner** said he is not enthralled with the way the Department of Human Resources has brought this rule forward. If the Legislature could have been included in on the rewrite of the rule back when it got a ton of Statewide publicity this rule could have been reviewed instead of all of a sudden throwing this benefit out. This matter was not handled in the most judicious way by the Department and **Senator Stegner** said he was using this opportunity to express this frustration because this is the type of thing that gets everyone worked up. This rule could have been approached in a way that more people could have been dealt in rather than picking up a Statewide newspaper and reading about this action happening in the Department.

Senator Cameron said his comments were expressed by **Senator Stegner**. He is not thrilled about how the change in the rule has been introduced to the Committee. He is trying to find revenue any where he can find it for the coffers to support the public schools, to disabled children, to Medicaid mothers and children. This rule has a cost to us without any statutory authority. That certainly does not mean that the rule or some form of it could not be brought back to us at some later date when times are better.

MOTION:

Senator Cameron moved to accept the amendments to Docket No. 15-0401-0801, Rule 240.04. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Senator Sagness** requested that he be recorded as voting **nay**. **Senator Sagness** asked

**DOCKET NO.
15-0401-0801
RULE 241.02**

that a statement be provided by the department to allow provision for supervisors to grant time for employees to make up time for medical appointments.

Rules Governing Workers Compensation and Disability

Layoff After Twelve Weeks' Disability

Dennis Moberly explained that this section deals with disabled employees and how long the agency must hold their position open before they can lay-off the disabled employee and refill the position. Previously, the rule stated the position had to remain open for six months before it could be filled. The Department received many requests from agencies that it put a hardship on them to get their work accomplished with having to keep a position open that long. The Department looked at trying to make it more of a balance between the needs of the employee and the needs of the employer. This change will make the time the position would be kept open 12 weeks before the agency can refill the position. This 12 week parameter was parallel to the time allowed by the "Family Medical Leave Act" at the Federal level. If the employee is laid off, they are placed on a laid-off register. Once the employee was laid-off they would be placed on the rehire log for one year. When the employee is certified to come back to work they would be considered for rehire from this log and if the agency has a vacancy in the particular classification they had been laid off from, that employee would be placed back into that position or they could be interviewed for positions in other agencies.

The other change to this section "the employee shall be laid-off after 12 weeks" they decided to change the wording to "the employee may be laid-off after 12 weeks" in the event that an employee would be able to come back to work within a reasonable period of time after the 12 week cut-off. They wouldn't have to be laid-off right at that 12-week period.

Chairman Andreason asked, For clarification if this wording was a consensus of agency heads to change the wording from shall to may?

Mr. Moberly answered that it was requests that we received from agencies saying that this was causing them problems. Six months is a long time to keep a position open.

Chairman Andreason asked, Could you tell me approximately how many agencies wrote letters stating that this rule is a hardship? **Mr. Moberly** stated that he wasn't sure of the number of letters but that they had heard from several agencies. **Senator Goedde** asked, Is there anything that stops an agency from hiring someone on a temporary basis to do the work while the employee is on disability and recuperating? **Mr. Moberly** replied if the agency has the funding they could hire a temporary employee but they would still be paying the employee that is in the position. **Senator Goedde** asked, Have you a dollar amount of what we might save in reducing this from six months to 12 weeks? **Mr. Moberly** answered that there would not be a savings because you are either paying an employee who is on disability or you are able to refill the position and would be paying an employee. **Senator Goedde** said the positions that are left open are not filled with temporary employees no

matter how crucial they may be. **Mr. Moberly** answered that if it is a very crucial position it may be hard to hire someone to fill the position on a temporary basis. **Senator Goedde** asked, The “shall” to “may” could that not be construed to be discriminatory where an employee with low skills in a job could be easily replaced and filled would be let go and an employee in a harder to fill position could be viewed as his supervisor’s favorite and would be granted the longer leave time? **Mr. Moberly** responded we would expect that agencies would be consistent in their application of the policy and how they treat their employees.

Senator Cameron asked, Aren’t employees covered under a disability policy and, if they are covered under a disability policy, are we not paying them a salary while they are disabled and also the policy is paying? **Mr. Moberly** said that there is a 60-day waiting period before the policy starts to pay the employee, plus the employee would first use their sick leave. **Chairman Andreason** stated that he has heard from a great number of employees concerning how this change would affect their disability leave and that they would be experiencing a hardship with this rule after having worked for the State faithfully for the last 25 years or more. **Mr. Moberly** said that he didn’t think it would affect the employee’s benefits. This rule change is about what happens with a disabled employee position and whether the agency could refill in a timely manner. The employee, if he was disabled, would still be able to receive whatever disability benefits that they were entitled to. **Chairman Andreason** stated his previous statement had nothing to do with the disability benefit. It has to do with the short period of time an employee has to return to work and that they won’t be able to return to their job. For example: a valuable employee who has worked for the State for over 25 years has a heart problem that will take them off the job for more than 12 weeks. They will lose their job as a result of this rule change.

Mr. Moberly responded that what they are attempting to do is balance out the needs of the employer to accomplish the work in that position and being able to refill that position in a reasonable amount of time while giving the employee a reasonable amount of time to recover from the disability and come back to work. In fiscal year 2007-2008 there were 480 employees who were on disability leave for different lengths of time. During that time period, 55 of them were actually laid-off due to the disability. It would impact more employees than this number if we shorten the time period.

Monica Young, Program Manager, Human Resources, Department of Health and Welfare, stated the Department of Health and Welfare did not provide written requests to Judie Wright, Division of Human Resources, requesting changes to this rule. They did provide feedback to her that many of our managers and supervisors have discussed with Human Resources and management the complexities that the six month disability rule allowed. It is very difficult for our managers to address and get the work done when employees were off for extended periods of time, and in some cases, were off repeatedly. **Senator Sagness** asked, Is there anything in the rules that stipulates how many times within a given period of time that an employee can be on disability leave? **Ms.**

Young replied no that was one of the problems they saw in implementing this rule. It would not be uncommon for employees who would be off 5-1/2 months to come back to work for a couple of months and then the employee would then go out for an extended leave of 4 or 5 months, be back 2 or 3 months. Many supervisors would have a very difficult time to fill my job with a temporary because many of the Health and Welfare positions are at technical and professional levels that require some very extensive experience to be able to perform.

Senator Stegner asked, Are there other conditions other than disability which would allow an employee to be placed on a re-employment preference list, such as active military status? **Ms. Young** said that the re-employment register does not apply only to employees who are medically laid off, but would apply to anyone who was laid off.

Senator Goedde stated that he saw this issue divided into two sections, workman's compensation and disability, does the after six months lay-off procedure apply to those people that are disabled under workers compensation as well? **Senator Goedde** said he is confused about who is paying what when someone is disabled. **Mr. Moberly** said he did not know if he could answer the question. He knows that the employee can use whatever leave they have and if that is longer than 12 weeks they would still be paid by the agency for that amount of time that they were on leave. **Senator Goedde** stated that he has a real concern about the fiscal impact to both agencies and employees with this rule and he is not comfortable voting on it today until he has some additional information.

Vice Chairman Coiner placed section 241.02 on hold in Committee to be heard at the call of the Chair.

**DOCKET NO.
15-0401-0801
RULE 250.02**

Rules Governing Special Leaves

Leave of Absence to Assume a Non-classified Position

This particular rule allowed an employee who was appointed to a non-classified position from a classified position to go back to that classified position. We had some concerns whether it can be handled through the reinstatement process if the employee has served in a classified position for a period of time and whether they have reinstatement rights to go back to that position for the amount of time that they served in the classified position. If you have an employee who has this type of agreement and the director of that agency changes they are now stuck with this agreement that they did not sign. It did not seem appropriate to the Department to try and protect an employee in this classified position when they had chosen themselves to take the non-classified position and they knew what they were getting into. There is no statutory authority for this type of arrangement and it did not seem good business practice to have an employee in a new administration being stuck in a position that they could not vacate. This appointee can be handled by allowing them to go back into the classified position.

Chairman Andreason asked, For clarification in a hypothetical situation where an employee is in a classified position and was given the

opportunity to advance to a non-classified position but there is a hold back if that non-classified position is eliminated, can that employee go back to the classified position? **Mr. Moberly** replied that this is the type of agreement they would have under this rule. **Chairman Andreason** asked please clarify that with this rule change, would the employee be able to go back to the classified position? **Mr. Moberly** said they would not if they are in a non-classified position and they are terminated for some reason they do have reinstatement rights to that classified position but they would not automatically move back into the classified position. It would be up to the discretion of the agency if they wanted to hire that employee back into the position.

Senator Goedde said this rule is basically designed for the political appointee. An employee that gets moved up in a department because the elected official in that department has chosen them to take this position. He would think in the case of cutbacks during that same administration the administrator that elevated the employee would put them back in their old classified position. When you have a change of elected officials through the elective process the new elected official may not be as anxious to move this political appointee back to a certified position, is that correct? **Mr. Moberly** said that is part of the issue. This employee has chosen to take this other position and if you have a change of administration it could create the problem. **Senator Goedde** asked, If a political appointee has been in an elevated position for the past two years and the person who filled his former classified position is doing a great job, why would a new administrator want to have to get rid of that classified employee doing a great job for the sake of the political appointee? **Mr. Moberly** said exactly. **Senator Stegner** asked, If an employee takes a non-classified position do they no longer continue to accrue credit in State service? **Mr. Moberly** answered they would still accrue credit in State service.

MOTION:

Senator Goedde moved to approve Docket No. 15-0401-0801, Rule 250.02. The motion was seconded by **Senator Sagness**. The motion carried by **Voice Vote**.

Vice Chairman Coiner recognized **Roger Hales, General Counsel, Bureau of Occupational Licenses**, to present Pending Rules Dockets 24-0201-0801, 24-0401-0801, 24-0401-0802, 24-0801-0801, 24-0801-0802, and 24-2101-0801

**DOCKET NO.
24-0201-0801**

Rules of the Board of Barber Examiners

This rule follows-up on a law change that was made last year. That law change accomplished three major things: 1) It allowed the Board to use a third party exam administrator. The Board members do no longer have to administer the exam. The exam is now given quarterly in three locations in the state. 2) It eliminates the requirement that students be obligated to register with the Board and saves them a \$20 registration fee. 3) The law last year allowed the Board, for the first time, to pick other types of evidence of the 10th grade equivalency. There are students that have lost their diploma, high school student card or other qualifying documentation, but the law did not accept any information other than the high school information. **Senator Goedde** asked, How

many new barbers do we see in Idaho a year? **Mr. Hales** answered that he did not have that number available, but he did have the number of 770 currently licensed barbers in the State. **Senator Goedde** asked, Isn't quarterly licensing exams at various areas in the state rather a costly item for a few people to take this exam? **Mr. Hales** said that this exam administrator also administers the cosmetology exams and they are both national exams so they are set-up to give the exam from these three locations.

MOTION: **Senator Sagness** moved to approve Docket No. 24-0201-0801. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

DOCKET NO.
24-0401-0801 **Rules of the Idaho Board of Cosmetology**
This rule follows-up on a law change that was approved last year. That law change accomplished three major areas. 1) It allowed the Cosmetology Board to use a third party exam administrator. 2) It eliminates the requirement that students be obligated to register with the Board and saves them a \$20 registration fee. 3) They eliminated the requirement for a cosmetology individual to pass the law on rules. They still have to certify that they have reviewed them, they understand them and they will follow them. There is no longer a requirement that they specifically stick to that jurisprudence. The Board is also adopting a rule that would allow them to close an application file if it sat in the file for a year without activity giving the applicant 30 days notice that they intend to close the file and the applicant does not show them good cause.

MOTION: **Senator Stegner** moved to approve Docket No. 24-0401-0801. The motion was seconded by **Senator Sagness**. The motion carried by **Voice Vote**.

DOCKET NO.
24-0401-0802 **Rules of the Idaho Board of Cosmetology**
This rule is a fee reduction and the total reduction savings is approximately \$58,000 related to the Cosmetology Board. This reduces the fees for their rules review and eliminating a registration requirement.

MOTION: **Senator Goedde** moved to approve Docket No. 24-0401-0802. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

DOCKET NO.
24-0801-0801 **Rules of State Board of Morticians**
Roger Hales introduced **John Bockney, Acting Chair on the Board from Emmett and Delaney Simms, Acting Mortician on the Board from Soda Springs**.
This rule supports a law change that was made last year by the Legislature which corrected a small training requirement for morticians. One of the training requirements for a mortician is they must be a resident trainee (like an internship) under a licensed mortician. Since a mortician is the highest level of license, they must be able to both embalm and conduct funeral ceremonies. The Bureau wanted to make sure that the resident trainee not only acquired experience in 25 embalmings, but also conducted and arranged 25 funeral ceremonies. The rule establishes the requirements for the support of the law.

MOTION: **Senator Lodge** moved to approve Docket No. 24-0801-0801. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

DOCKET NO. **Rules of State Board of Morticians**
24-0801-0802 This is a pending fee rule which is somewhat unique in a sense that what it does is correct the rule. If you let your license lapse, then you have to pay a reinstatement fee. Presently that fee is set in the law at \$250. That fee was established in the law in 2001 and this rule was overlooked and it has been on the books since 1993 and it conflicts with the present law.

MOTION: **Senator Stegner** moved to approve Docket No. 24-0801-0802. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

DOCKET NO. **Rules of the Idaho State Contractors Board**
24-2101-0801 This rule is intended for clean-up of their application files. This new rule will allow them to terminate an application file if it has lacked activity for 12-months and after the Board gives a 30 day written notice to the applicant and the applicant does not show them good cause.

MOTION: **Senator Stegner** moved to approve Docket No. 24-2101-0801. The motion was seconded by **Senator Sagness**. The motion carried by **Voice Vote**.

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

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: January 22, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED:

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

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Andreason** called the meeting to order at 1:30 p.m. The **Chairman** turned the meeting over to **Vice Chairman Coiner** for rules review.

MINUTES: **Vice Chairman Coiner** recognized **Steve Keys, Deputy Administrator, Division of Building Safety**, to present Pending Rules Dockets 07-0204-0801, 07-0205-0801, 07-0301-0801, 07-0303-0801, 07-0501-0802, 07-0701-0802, 07-0102-0801, 07-0203-0802, 07-0301-0802, 07-0501-0801, and 07-0701-0801.

DOCKET NO. 07-0102-0801 **Rules Governing Fees for Electrical Inspections**
This docket changes the electrical permit fee basis for large residences (over 4,500 square feet) to a square footage based fee in lieu of a job cost basis. This change was requested by industry and is consistent with the fee basis for smaller residences. The fee shall be a base fee of \$325 plus \$65 for every 1,000 square feet or portion thereof beyond 4,500 square feet. The rule also clarifies that the square footage includes only living space.

Vice Chairman Coiner stated that **Senator Corder** has issues with the square footage cost increases of this rule change. **Vice Chairman Coiner** recognized **Senator Corder** to present his testimony. **Senator Corder** stated he brought with him today a very nervous constituent from Mountain Home so if you need answers to questions in depth I will defer to him. What has come to my attention and we pass on to your attention is spelled out in spreadsheet 1 where you will see the effects of these fees [see Attachment 1 & 2] . These fees are the concerns of Mr. Redford and other electricians in our area because this new fee calculation will drastically change the cost of doing business.

The spreadsheets before you show the old and new method of calculating these fees. The Senator stated he appreciates what was trying to be done here to bring all of the business licensing agencies that had to do with building fees under one fee schedule. I draw your attention to the first spreadsheet that itemizes the cost of material and labor for the new fee of an \$1,800 job bid. The costs are calculated on costs up to \$10,000 $\times 2\% + \$60 = \96 vs. old fees calculation would bring you to \$85 which is an increase of 12.9%. The cost between \$10,001 and \$100,000 and assuming that the job was worth \$14,200, the new fee would be \$302 vs. the old fee \$201 which is an increase of 50.25%. On a \$120,000 job bid the new fee is \$1,262.50 vs. old fee \$732.50, which is an increase of 72.35%. Perhaps these fee schedules have not been examined closely enough and should these fees be raised that drastically? Spreadsheet 2 shows the residential old method of calculating fees for 200 amp and then 201-400 amps service \$210 vs new method of calculating that fee by square foot using a house with 1,750 sq. ft. The old fee \$120 vs new fee \$195 which is an increase of 62%. We ask you to consider whether this fee rule should have that ability to take that much increase and place all of our contractors with this big of an increase during these hard times. The Senator believed that even the old fees were adequate to cover the costs of more complex jobs; more money was paid for the extra work to perform the inspection.

Vice Chairman Coiner placed Fee Rule 07-0102-0801 on hold in Committee to be heard at the call of the Chair.

**DOCKET NO.
07-0204-0801**

Rules Governing Plumbing Safety Inspections

This rule would modify the existing administrative rule requirement for inspection tags, eliminating the requirement for multiple tags of specific colors. Division of Building Safety is utilizing a single sticker to accommodate multiple inspections which results in significant savings to the agency. Division of Building Safety has received some negative comments regarding this proposal. We feel strongly that the savings in printing costs along with the ability for contractors and property owners to check the status of inspections on line with our new customer access software system provide significant benefits to our customers over and above that provided by the multiple tags. Red tags are still applied in the case of a failed inspection.

MOTION:

Senator Stegner moved to approve Docket No. 07-0204-0801. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

07-0205-0801

Rules Governing Plumbing Safety Licensing

This docket clarifies that advertising to provide services requiring licensure as a plumbing contractor without possessing the requisite plumbing contractor's license is a violation of the plumbing licensing laws. It also requires the advertiser to list the contractor's license number on advertising. The plumbing industry has voiced broad support for this change.

MOTION:

Chairman Andreason moved to approve Docket No. 07-0205-0801. The motion was seconded by **Senator Goedde**. The motion carried by **Voice**

Vote.

07-0301-0801

Rules of Building Safety

This pending rule formalizes the adoption of the 2006 International Building Code and the International Residential Code. It also adopts the 2006 edition of the International Existing Building Code. This rule was promulgated as temporary and pending following the adjournment of last year's session following the failure of legislation that would have addressed the issue of building codes.

MOTION:

Senator Cameron moved to approve Docket No. 07-0301-0801. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

07-0303-0801

Rules for Modular Buildings

This docket formalizes the types of actions that may subject manufacturers and installers of modular buildings to civil penalties. Such acts include failure to obtain inspection approval, modification of a modular building after inspection without approval, removal of top work orders, and violation of a lawful order issued by the Division. Authority to impose these penalties is found in Chapter 43, Title 39, Idaho Code.

MOTION:

Senator Goedde moved to approve Docket No. 07-0303-0801. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**.

07-0501-0802

Rules of the Public Contractors License Board

This pending rule establishes the financial requirements and documentation required for applicants applying for "Unlimited" class Public Works Contractors licenses. The "Unlimited" classification was established via statutory change last session.

MOTION:

Senator Goedde moved to approve Docket No. 07-0501-0802. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

07-0701-0802

Rules Governing Installation of Heating Ventilation, and Air Conditioning Systems

This is the HVAC version of 07-0204-0801 relating to the use of a single large tag in lieu of multiple specific colored inspection tags.

MOTION:

Senator Lodge moved to approve Docket No. 07-0701-0802. The motion was seconded by **Senator Sagness**. The motion carried by **Voice Vote**.

07-0203-0802

Rules Governing Permit Fee Schedule

This proposal clarifies that a plumbing permit and inspection is required for gray water systems and reclaimed water systems. It also establishes the fee basis for the permits.

MOTION:

Senator Goedde moved to approve Docket No. 07-0203-0802. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

07-0301-0802

Rules of Building Safety

This pending rule increases the inspection fees that manufacturers pay for inspections required by the HUD manufactured housing program. The current per floor fee would increase from \$26 to \$45, and the hourly inspection fee for other inspections would increase to \$70 from \$36. This increase has been endorsed by the affected manufacturers in Idaho.

MOTION: **Senator Stegner** moved to approve Docket No. 07-0301-0802. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

07-0501-0801 **Rules of the Public Contractors License Board**
The Temporary and pending rule established the new license fee associated with the "Unlimited" license classification; it also defines examination requirements for Public Works Contractors.

MOTION: **Senator Cameron** moved to approve Docket No. 07-0501-0801. The motion was seconded by **Senator LeFavor**. The motion carried by **Voice Vote**.

07-0701-0801 **Rules Governing Installation of Heating Ventilation, and Air Conditioning Systems, Division of Building Safety**
This docket changes the HVAC permit fee basis for large residences to a square footage basis in line with the remainder of residential permit fees. The change was requested by industry.

MOTION: **Senator Goedde** moved to approve Docket No. 07-0701-0801. The motion was seconded by **Senator LeFavor**. The motion carried by **Voice Vote**.

ADJOURNED: **Chairman Andreason** adjourned the meeting at 2:22 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

- DATE:** January 27, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 117
- MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Smyser, Sagness (Malepeai), and LeFavour
- MEMBERS ABSENT/ EXCUSED:** Senator Lodge
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- GUESTS:** See attached sign-in sheet.
- CONVENED:** **Chairman Andreason** called the meeting to order at 1:30 p.m. The **Chairman** turned the meeting over to **Vice Chairman Coiner** for rules review.
- MOTION:** **Senator Sagness** moved that the Minutes from January 15, 2009 for Commerce and Human Resources Committee be approved. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**.
- MINUTES:** **Vice Chairman Coiner** welcomed **Jeanne Jackson-Heim, Executive Director, Real Estate Commission**, to present Pending Rule Docket 33-010-0801.
- DOCKET NO. 33-0101-0801** **Real Estate Commission Rules of the Idaho Real Estate Commission**
Ms. Jackson-Heim stated Docket No. 33-0101-0801, appears on Page 305 of your pending rules book.
- Ms. Jackson-Heim** said real estate licensees have a continuing education requirement for license renewal. The approved topics for continuing education are contained in Rule 402. The changes to Rule 402 merely rearrange the existing language and delete some duplicative language. The definition of the purpose of continuing education has been moved to the beginning of the rule for clarification. We have combined some topics and added a statement that all of the topics must pertain to real estate brokerage practice and actual real estate knowledge.
- MOTION:** **Senator Smyser** moved to approve Docket No. 33-0101-0801. The

motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

Vice Chairman Coiner welcomed **Barbara Porter, Executive Director, Board of Accountancy**, to present Pending Rule Docket 01-0101-0801.

**DOCKET NO.
01-0101-0801**

**Board of Accountancy
Idaho Accountancy Rules**

Ms. Porter said the pending rule arises primarily from HB379 that was passed in the 2008 Legislative Session. The Idaho Society of CPAs brought HB379 to remove the notice and fee requirements for out-of-state licensees who offer services to Idaho Clients, and to clarify use of Peer Review records in Board disciplinary matters. In addition to the law change, the rules also: incorporate national standards by reference and updates their effective dates; clarify the Board's ability to share disciplinary investigations with other State Boards of Accountancy; explain the evidence used to apply the good moral character requirement set forth in statute; eliminates a conflict between statute and rule on client confidentiality; defines a requirement for an ethics component in Idaho's Continuing Professional Education; and housekeeping items regarding the CPA Examination and the Peer Review Program.

Because HB379 had an effective date of July 1, 2008, the rules had to be enacted as temporary rules at that time. However, none of the rule changes were done "in the dark." The Department issued multiple newsletters, held meetings around the State, and posted the proposed changes on our web sites for our stakeholders to review and comment on. They developed a task force between our Board representatives and Idaho's two professional accounting organizations to develop the Ethics CPE component of the rules. To date, our licensees have successfully transitioned to the new requirement. The rules were published through the Office of Administrative Rules. Legislative Services reviewed our proposed rules and had no objections to the changes.

Ms. Porter stated the first change on Page 6 updates the rule that incorporates national standards by reference. The rule refers to AICPA Professional Standards and the professional standards issued by the Public Company Accountability Oversight Board (PCAOB) created by the Sarbanes-Oxley Act. The change is to the year that the standards refer to 2008. It also added the Model Code of Conduct as issued by the National Association of State Boards of Accountancy. In recent years, it has become apparent nationally and globally that more clarity is needed regarding Codes of Conduct. Public Interest; Integrity; Objectivity; Due Care; Competence; Confidentiality; and Independence are addressed specifically so that both practitioners and the consumers of accounting services are on the same page.

The second change on that page allows Idaho to share disciplinary information during an investigation with other State Boards of Accountancy. The profession operates across state boundaries. This increased our ability to work cooperatively with other boards to discipline licensees who violate Accountancy Act and Rules and increases our ability to protect the public.

Beginning on Page 7, the definitions were updated, primarily to address the new requirement that a portion of a licensee's continuing Professional Education be in Ethics. This includes business Ethics, Ethical decision-making, state-specific Ethics, and Ethics CPE requirements of other State Boards. Later sections fully describe the four hours every two years (out of 80 total hours of CPE) that must be done in Ethics. New licensees must also complete a two hour course on State-specific Ethics. Existing licensees may take the course as a portion of their on-going four hours requirement. The Idaho State Board of Accountancy developed the two hour course, and offers the course free of charge. The course was warmly received by our licensees. Offering it over the Internet was made possible by the gracious support of Idaho Public Television.

Several sections of the rules, beginning on Page 8 have been modified to remove notice and fee for out-of-state licensees to offer services to Idaho Clients. For the past six years, these individuals had to give notice and a fee if they were going to offer services to Idaho clients. HB379 and these rules bring Idaho into compliance with the national regulatory model for CPAs. It automatically grants Practice Privileges (w/o notice and fees) to licensees of other states whose principal place of business is in the other state. The caveat is they must comply with Idaho Act and Rules, and submit themselves to our regulation if there are violations, when offering services to Idaho Clients. If one of these folks harms an Idaho client, we first take action against their Practice Privileges, and then refer the matter to their home-state of licensure for further discipline.

The next substantive change is to Rule 020 on Page 10. It expands and clarifies Idaho's Good Moral Character requirement. Exam candidates, licensure applicants, and renewing licensees must all comply with the definition in our section of *Idaho Code* for good moral character, which is "the lack of a history of dishonest dealings or a felonious act." This rule, which mirrors the national model, clarifies how good moral character is demonstrated, the evidence that Board takes into consideration, and how rehabilitation factors in.

Senator Goedde said where did the definition of good moral character come from? **Ms. Porter** answered for the last 30 years the Idaho Accountancy Law has had the definition of good moral character in the statute and that definition is reflected in the National Regulatory Model of Licensure for CPAs. Good moral character is defined as a lack of a history of dishonest dealings or felonious act. In our rules we had not given both the licensee and the general public a way to get their arms around the good moral character definition. This is an expansion to the national model that we decided would be appropriate to adopt in Idaho. **Senator Goedde** asked, "Had he heard correctly that this is in greater detail than the national model?" **Ms. Porter** replied that the definition is not in greater detail than the national model. The national model only has the one line of definition of good moral character as the absence of a history of dishonest dealings or felonious acts. The national model had additional expansion to the good moral character to help define what is the evidence.

Senator Sagness said are practice privileges something in addition to a license or is it something that an individual who has been allowed the right to practice but has not reached full licensure? **Ms. Porter** clarified that practice privileges apply to license holders in another jurisdiction who have kept their principle place of business in that other jurisdiction. Someone in Washington has a Washington license and their principle place of business is Spokane, but there are some clients in Northern Idaho that would like to use their services. **Senator Sagness** said are these reciprocal agreements done state by state? **Ms. Porter** said each state adopts their own accountancy action rules. More than 35 states now use the national model.

MOTION:

Senator LeFavour moved to approve Docket No. 01-0101-0801. The motion was seconded by **Senator Sagness**. The motion carried by **Voice Vote**.

Vice Chairman Coiner welcomed **Mike Larson, Consumer Finance Bureau Chief, Idaho Department of Finance**, to present Pending Rule Docket 12-0110-0701.

**DOCKET NO.
12-0110-0701**

Department of Finance

Rules Pursuant to the Idaho Residential Mortgage Practices Act

Mr. Larson stated this pending rule was first adopted by the Director of the Department of Finance as a Temporary Rule with an effective date of January 1, 2008. The Temporary Rule was non-controversial then, and it had the support of the Idaho Association of Mortgage Brokers and the Idaho Mortgage Lenders Association. The same is true today. In 2007, the Idaho Legislature authorized the Director of the Department of Finance to establish, by rule, requirements necessary for Idaho to participate in a nationwide mortgage licensing system (finding that a nationwide mortgage licensing system was in the public interest and consistent with the purposes of the Idaho Residential Mortgage Practices Act (26-3105(2))).

The Nationwide Mortgage Licensing System (NMLS) went live just over one year ago on January 2, 2008. The NMLS grew out of a cooperative undertaking involving a nationwide mortgage task force comprised of mortgage industry representatives and state financial institution regulators. Idaho was among the first seven states to implement use of the NMLS. As the system development progressed through the summer and fall of 2007, the goal of the system to go live by January 2, 2008, became a realistic projection. A temporary rule was necessary to enable Idaho to be among the initial participating states. Idaho was a leading state in this effort, and with a year under our belts on the NMLS, we have received a lot of positive industry feedback about the NMLS.

Mr. Larson said this pending rule before you has one minor alteration from the language of the temporary rule which was presented to the Legislature last year. The one change from the original temporary rule came about as a result of a suggestion from **Senator Broadsword** on this Committee last year.

The pending rule extends the period of time from 30 to 90 days after course completion for a loan originator licensee to apply for continuing education credit for attendance at presumptively accredited instruction where the licensee was not issued a certificate of course completion.

The pending rule establishes the legal authority and prescribes the manner in which mortgage brokers/lenders and mortgage loan originators will apply for and maintain their Idaho mortgage licenses through participation in the NMLS, including language that NMLS system user fees are paid by licensees and license applicants to the NMLS vendor, and not to the State of Idaho or any government agency.

Vice Chairman Coiner stated that the Committee should have a presentation on the ethics standard that governs some of the State departments. **Mr. Larson** replied that they would welcome the opportunity to present the ethics standard.

Senator Goedde said on page 114 which references real estate settlement procedures, you might consider changing the date on regulation acts, regulation Z, truth in lending act, as this rule stabilizes, you might give some consideration to incorporating these documents by reference so that you do not have to come back every year or two to change the dates. **Mr. Larson** replied that their Department had been instructed by the Office of Administrative Rules that they are required in referencing federal laws or regulations to require an inclusion of a specific issue date.

MOTION:

Senator Sagness moved to approve Docket No. 12-0110-0701. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

Vice Chairman Coiner welcomed **Bob Fick, Communications and Legislative Affairs, Department of Labor**, to present Pending Rule Docket 09-0108-0801 and 09-0135-0801.

**DOCKET NO.
09-0108-0801**

Department of Labor

Rules on Disclosure of Employment Security Information

Mr. Fick stated this rule brings the Idaho Department of Labor rules in compliance with the new U.S. Department of Labor requirements to protect the confidentiality of the employment security information. Employees and employers will have the same access they always had to employment security information involving them. Attorney's who represent employers or employees need only to provide a notice on their own letterhead that they are representing an employee. An agent of the employer or the employee will have to have an informed consent statement from the individual they are seeking. That form is being prepared and will be on the internet soon.

Mr. Fick stated in the case of elected officials, we are being required by the U.S. Department of Labor to confirm that elected officials seeking employment security information on behalf of constituents are actually acting on their behalf. In the past, when we have had requests from elected officials they have shown us the letter they possess from the

constituent or the phone message. These rules preserve the procedure for setting up agreements with other agencies in exchange of employment security information. There is a provision for individuals who seek information as a third party. Implemented is a procedure for charging individuals for providing information beyond minimal costs. Anyone seeking information will be provided it free unless it would cost the Department more than \$100 to produce the information. The calculations will be based on \$41.50 per hour for the accounting and any other administrative costs in gathering and providing the information and 20 cents per copy.

Senator Stegner asked has the Department researched the hourly rate and the charge for copies and does the Department have the statutory authority to charge these hourly fees? **Mr. Fick** replied that the Legal Department has researched these fees and found that because we have to operate the Employment Security Program in conformance with the federal requirements we must collect the fees. If the Department fails to comply with the disclosure and fee requirements of the U.S. Department of Labor the Unemployment Insurance Program would be deemed out of conformance and the State would run the risk of losing the grants that operate the program. **Senator Stegner** stated he had no problem with the Department charging the fees. Where can he find in *Idaho Statute* that the Legislature is giving the Department adequate authority to set rules for these fees.

Tracey Rolfsen, Deputy Attorney General, stated that Section §72.1333, *Idaho Code*, gives the director latitude to negotiate reimbursement for costs. Section §72.1342, *Idaho Code*, also gives the director the authority to do what is necessary to restrict disclosure to comply with the federal law. The Federal Law CFR §603, requires us to charge for actual costs of disclosure when that disclosure is made for non-employment security law purpose. **Senator Stegner** asked, "Are these not Federal Laws?" **Ms. Rolfsen** said the Public Records Act in Section 9-340, d, 15, provides for complying with Federal Law. The Department must comply with the Federal Law to recover all actual costs of disclosure. **Senator Stegner** requested a memo stating the Statute authority granted them by the Legislature for these disclosure costs.

Senator Cameron said no where in the *Idaho Code* sections **Ms. Rolfsen** referred to does it speak specifically to recovery cost for the disclosure. **Ms. Rolfsen** said in 20 CFR 603, which is the new federal regulation that requires us to implement these disclosure regulations and in conjunction with the Public Records Act whatever is mandated by Federal Law under Section 9-340,d,15, which allows Federal Law to control.

Vice Chairman Coiner requested unanimous consent to postpone Committee consideration of Pending Rule Docket No. 09-0108-0801 to give the Department adequate time to prepare a memo stating statute authority for these disclosure costs.

Senator Goedde asked, "Could you tell me the difference between

employment security information as opposed to employment information?" **Mr. Fick** said the employment security information is the employee's pay history that is used for the calculation of employment taxes and determining unemployment benefits. Employment information is what the Department has on computer tapes about employers and employees and how much they make. **Senator Goedde** said you made mention of fees and he did not see them in the rule. **Mr. Fick** said they are on page 71, 020 cost of disclosure. It does not specifically identify amounts. **Senator Goedde** responded at some point you will be putting into rules what you will charge for these disclosures fees. **Ms. Rolfsen** stated that under the Public Records Act they are required to publish the costs of disclosure in an administrative order made available for inspection by the public. **Senator Goedde** clarified that the Legislature has no oversight for any of these fees. **Ms. Rolfsen** stated that her understanding is that the Legislature does not have any authority over the setting of these fees.

**DOCKET NO.
09-0135-0801**

Unemployment Insurance Tax Administration Rules

This rule brings the Department's rules in line with legislation that was passed in 2005, HB 2. HB 4, 2005 was the over-haul of the Unemployment Insurance Program. HB 2 followed it and dealt with the State Unemployment Tax Act and included a small change in the language identifying businesses that change ownership but are essentially the same business. This identifies them for the purpose of maintaining their unemployment insurance tax rate.

MOTION:

Senator Goedde moved to approve Docket No. 09-0135-0801. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

Vice Chairman Coiner welcomed **James Szatkowsky, Deputy Director, Board of Professional Engineers & Land Surveyors**, to present Pending Rules Docket 10-0101-0801, 10-0102-0801, 10-0103-0801, and 10-0104-0801.

**DOCKET NO.
10-0101-0801**

**Board of Professional Engineers & Land Surveyors
Rules of Procedure**

Mr. Szatkowsky stated the Board engaged in Negotiated Rule Making and conducted meetings in July 2008 in Coeur d' Alene, Lewiston, Boise, Idaho Falls, Pocatello, and Twin Falls. After considering the input from the public meetings the Board published Proposed Rules in the October 1, 2008 Idaho Administrative Bulletin. Input following the publication of the Proposed Rules indicated the need for a public hearing which was held on November 20, 2008. The input from our hearings did not result in any change in this rule from the proposed rule.

The major changes were to: 1) comply with updated terminology as incorporated in HB 380 passed by the 2008 Session of the Idaho Legislature (throughout the docket); 2) include recognition of a Doctor of Philosophy degree as an exemption from the need to have an independent evaluation of engineering education obtained outside the United States (Commerce and Human Resources Committee, page 85,

2009 Pending Rule); 3) clarify that the Board will not ask another jurisdiction to proctor examinations (Commerce and Human Resources Committee, page 87, 2009 Pending Rule); and 4) clarify that an applicant who fails an examination a second or subsequent time must comply with the requirements contained in HB 380 passed by the 2008 session of the Idaho Legislature (Commerce and Human Resources Committee, Page 88, 2009 Pending Rule).

MOTION: **Senator LeFavour** moved to approve Docket No. 10-0101-0801. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

DOCKET NO.
10-0102-0801

Rules of Professional Responsibility

The major changes were to: 1) comply with updated terminology as incorporated in HB 380 passed by the 2008 Session of the Idaho Legislature (throughout the docket); 2) remove an ambiguity relating to sealing of documents (Business Committee Page 80, 2009 Pending Rule); 3) reflect that license and certificate holders must submit proposals in accordance with Section §67-2320, *Idaho Code*, (Business Committee Page 83, 2009 Pending Rule); and 4) allow the Board to take disciplinary action if a licensee surrenders their license in another jurisdiction for reasons or causes which would constitute a violation of Idaho laws or rules (Business Committee Page 83, 2009 Pending Rule).

MOTION: **Senator LeFavour** moved to approve Docket No. 10-0102-0801. The motion was seconded by **Senator Sagness**. The motion carried by **Voice Vote**.

DOCKET NO.
10-0103-0801

Rules of Corner Perpetuation and Filing

The major changes were to: 1) comply with updated terminology as incorporated in House Bill No. 380 passed by the 2008 session of the Idaho Legislature (throughout the docket); 2) correct the address of the Board office (Commerce and Human Resources Committee Page 102, 2009 Pending Rule); and 3) clarify the corner record must include a sketch of the marks on a found monument (Commerce and Human Resources Committee Page 102, 2009 Pending Rule).

MOTION: **Senator Sagness** moved to approve Docket No. 10-0103-0801. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

10-0104-0801

Rules of Continuing Professional Development

Mr. Szatkowsky said the major changes were to: 1) comply with updated terminology as incorporated in HB 380 passed by the 2008 Session of the Idaho Legislature (throughout the docket); 2) include professional engineers in the requirement of continuing professional development as a condition of license renewal (Commerce and Human Resources Committee Page 106, 2009 Pending Rule); 3) revise some qualifying activities for continuing professional development (Commerce and Human Resources Committee Pages 107, 108 and 109, 2009 Pending Rule); 4) allow a licensee to opt for a two calendar year period of compliance rather than a renewal biennium; 5) reflect that seminars

and courses registered with the Registered Continuing Education Providers Program of the National Council of Examiners for Engineering and Surveying are preapproved (Commerce and Human Resources Committee Page 109, 2009 Pending Rule); 6) reflect that a time card or expense sheet relating thereto shall be an acceptable log of continuing professional development activities (Commerce and Human Resources Committee Page 109, 2009 Pending Rule); 7) reflect that a photocopy of pertinent parts of the material studied, annotated with the date the activity occurred and the number of professional development hours claimed, shall be deemed to meet the requirements for documentation of self-study (Commerce and Human Resources Committee Page 110, 2009 Pending Rule); 8) provide for an exemption for a licensee on active military duty temporarily assigned to a location other than their normal home station (Commerce and Human Resources Committee Page 110, 2009 Pending Rule); and 9) provide for an exemption for professional engineers during their first renewal period or the two calendar year period closest to the renewal biennium following adoption of these rules as they are amended to include professional engineers (Commerce and Human Resources Committee Page 110, 2009 Pending Rule).

Senator Goedde said on Page 7 it states that an individual who is licensed to practice engineering and land surveying in some activities may qualify for continuing education, does the Board make that determination. The staff would look at the request and if they could evaluate as applying to both, then they would allow the continuing education request or if not, they would refer it to the Board.

MOTION:

Senator Goedde moved to approve Docket No. 10-0104-0801. The motion was seconded by **Senator Sagness**. The motion carried by **Voice Vote**.

ADJOURNMENT:

Chairman Andreason adjourned the meeting at 2:33 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: January 29, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED: Senator Goedde

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

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Andreason** called the meeting to order at 1:30 p.m. The **Chairman** turned the meeting over to **Vice Chairman Coiner** for rules review.

MINUTES: **Vice Chairman Coiner** welcomed **Roger Hales, General Counsel, Board of Registration of Professional Geologists**, to present Pending Rule Docket 14-0101-0801.

DOCKET NO. 14-0101-0801 **Board of Registration of Professional Geologists Rules of Procedure of the Board of Registration of Professional Geologists**
Mr. Hales said this rule is brought to you as a result of a law change that was approved last year. The law change basically facilitated moving the Board of Geologists under the Bureau. The Board then made a number of rules changes that support the law change. On page 36 you will see that they have eliminated the title "Secretary". The Bureau serves essentially as the secretary to the Board. The duties and responsibilities of the Board that have been struck and will be assumed by the Bureau. Even though this is noted as a fee rule, they are not changing fees. What the Bureau is doing is moving the fees from a sub-section under Rule 100 into their own section of rules. **Mr. Hales** walked the Committee through the fees that had not changed.

MOTION: **Senator Sagness** moved to approve Docket No. 14-0101-0801. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**.

Vice Chairman Coiner welcomed **Steve Keys, Deputy Administrator, Division of Building Safety**, to present Pending Rules Docket 07-0102-0801 and 07-0701-0801.

**DOCKET NO.
07-0102-0801**

**Division of Building Safety
Rules Governing Fees for Electrical Inspections**

Mr. Keys stated this docket changes the electrical permit fee basis for large residences (over 4,500 square feet) to a square footage based fee in lieu of a job cost basis. This change was requested by industry and is consistent with the fee basis for smaller residences. The fee shall be a base fee of \$325 plus \$65 for every 1,000 square feet or portion thereof beyond 4,500 square feet. The rule also clarifies that the square footage includes only living space.

This rule was held last week to allow for addressing the concerns of a stakeholder. We have resolved that issue by formulating an agreement with the Chairman of the Electrical Board to place the item on the agenda of the next Board meeting to allow contractors to voice any concerns that they may have relative to the current permit fee schedule. Mr. Redford, the contractor who brought the issue forward at last weeks meeting, is pleased with the solution.

**DOCKET NO.
07-0701-0801**

Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems, Division of Building Safety

Mr. Keys said this docket changes the HVAC permit fee basis for large residences to a square footage basis in line with the remainder of residential permit fees. The change was requested by industry.

MOTION:

Senator Sagness moved to approve Docket No. 07-0102-0801 and 07-0701-0801. The motion was seconded by **Senator LeFavour**. The motion carried by **Voice Vote**. **Senator Lodge** requested that she be recorded as voting **nay**.

Senator Lodge stated that in these hard economic times she cannot put increased costs on any building projects at this time.

Vice Chairman Coiner welcomed **Don Drum, Executive Director, Public Employees Retirement System - PERSI**, to present Pending Rules Docket 59-0103-0801, 59-0105-0802, and 59-0106-0801.

**DOCKET NO.
59-0103-0801**

**Public Employees Retirement System - PERSI
Contribution Rules for the Public Employee Retirement System of Idaho**

Mr. Drum stated this rule involves contribution rates for employers and employee rates for the base plan of PERSI. This docket rescinds contribution rate increases currently scheduled to take effect July 1, 2009 and July 1, 2010. The contribution rates will remain at the rate that became effective July 1, 2004. History: In 2003 the Board promulgated a series of contribution rates increases and they became effective March 4, 2004. The rate increases involved Rules 26 through 28 and Rules 100 through 101 in the contribution rules. The rate increases were scheduled to take effect July 1, 2004, 2005 and 2006. July 1, 2004 rate took effect and then through a series of temporary rules the Board and PERSI postponed the other two rate increases because the market and the fund were doing well and they did not put the two rate increases, scheduled for July 1, 2005 and July 1, 2006, into place. In 2008, a temporary rule was

brought before the Committee to take the rules off the books and this is the temporary rule that is before you today. The Board and PERSI are asking the Committee to delete these rate increases rather than postpone the two rate increases.

MOTION: **Chairman Andreason** moved to approve Docket No. 59-0103-0801. The motion was seconded by **Senator LeFavour**. The motion carried by **Voice Vote**.

DOCKET NO.
59-0105-0802

Separation From Service Rules of the Public Employee Retirement System of Idaho

Mr. Drum said this rule is a clarification to make them consistent with other rules and to comply with new Federal Legislation. This docket makes changes to Rule 126 to reflect the adoption of final Federal regulations regarding required minimum distributions of the base plan. It also adds a new Rule 127 to allow rollovers from the base plan to non-spouse beneficiary IRA's. Both changes are required to comply with Federal Statutes applicable to the base plan. This is a simple compliance to Federal Statutes that effect pension plans.

MOTION: **Senator Stegner** moved to approve Docket No. 59-0105-0802. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

DOCKET NO.
59-0106-0801

Retirement Rules of the Public Employee Retirement System of Idaho

Mr. Drum continued saying this docket makes a technical correction to Rule 132 to correlate the wording with statutes and other rules. Currently this rule reads "who is not a double employee" with "who is not an employee eligible with another employer." This also amends Rule 178 involving benefit compensation limits. Federal Law limits yearly amounts a person can receive under the base plan. This rule changes Rule 178.02 to clarify that the actuarial equivalent is not applicable to members with at least 15 years of service as a police officer or firefighter. (Police officers and firefighters are under the rule of 80 rather than the rule of 90 and they retire earlier because of their profession.) This Federal Rule is in place to keep from penalizing these employees because of their occupation.

MOTION: **Senator Lodge** moved to approve Docket No. 59-0106-0801. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

DOCKET NO.
07-0103-0801
07-0105-0801
07-0206-0801
07-0402-0801
07-0203-0801
07-0402-0802
18-0109-0801
18-0161-0801
18-0177-0801
18-0180-0801

Consent Agenda:
Rules of Electrical Licensing and Registration - General
Rules Governing Examinations Building Safety
Rules Concerning Uniform Plumbing Code
Safety Rules for Elevators, Escalators, and Moving Walks
Rules Governing Permit Fee Schedule
Safety Rules for Elevators, Escalators, and Moving Walks
Consumer Protection in Annuity Transactions
Credit Life and Credit Disability Insurance
Actuarial Opinion and Memorandum Rule
Pre-need Life Insurance Minimum Standards for Determining

24-1801-0801 Reserve Liabilities and Non-forfeiture Values
24-0701-0801 Rules of the Real Estate Appraiser Board
59-0102-0801 Rules of the Idaho State Board of Landscape Architects
59-0104-0801 Eligibility Rules of the Public Employee Retirement System
59-0105-0801 Disability Rules of the Public Employee Retirement System of Idaho
59-0105-0803 Separation from Service Rules of the Public Employee Retirement System of Idaho
Separation from Service Rules of the Public Employee Retirement System of Idaho

MOTION: **Senator Sagness** moved to approve Docket Nos. 07-0103-0801, 07-0105-0801, 07-0206-0801, 07-0402-0801, 07-0203-0801, 07-0402-0802, 18-0109-0801, 18-0161-0801, 18-0177-0801, 18-0180-0801, 24-1801-0801, 24-0701-0801, 59-0102-0801, 59-0104-0801, 59-0105-0801, and 59-0105-0803. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

Vice Chairman Coiner welcomed **Dennis Moberly, HR Program Manager, Division of Human Resources**, to present Pending Rule Docket 15-0401-0801.

DOCKET NO.
15-0401-0801

Rules Governing Workers Compensation and Disability Layoff After Twelve Weeks' Disability

Mr. Moberly stated that his Department did receive the questions from **Senator Sagness** and **Senator Goedde** concerning Docket 15-0401-0801 and responded to those questions in [Attachments 1, 2, 3,A, B, C, D, and E]. He introduced **Monica Young, HR Program Manager, Department of Health and Welfare**, who assisted in the presentation at the January 20, 2008 Committee meeting. **Ms. Young** guided the Committee through the disability process using the old rule of 6-months leave of absence before the employee is medically laid-off versus the proposed rule change to 12-week leave of absence before the employee is medically laid-off.

Chairman Andreason stated he had received far too many responses from State Employees through direct mail and phone calls asking that the six-month disability time not be reduced to 12 weeks. He voiced concern about passing a rule that would limit employees to 12-weeks of leave of absence versus the current rule that allows up to 6-months. He said he had not seen evidence from anyone to justify this change. He stated that he will vote against the rule.

Senator LeFavour said with the use of the word "may" in the beginning of the text does that mean if the department chooses not to make the position vacant after 12 weeks that they wouldn't have to medically lay-off the employee. They would not be forced to rehire a new employee and could choose to hold the position open longer than 12 weeks and even longer than the six months to allow the absent employee to return to their position. **Ms. Young** answered yes. The previous rule specified that the position shall be declared vacant at six months leaving the agency no discretion they had to medically lay-off the employee and rehire for the position. Under the proposed rule it says the agency may declare the

position vacant, which leaves it up to the agency to decide whether to rehire or allow the employee on medical leave more time to return to the vacant position. Under this rule it allows the director of an agency latitude to allow an employee, who might not be able to return to his old position because of his illness or injuries, to place the employee in another position to keep the employee employed.

Senator Sagness stated that the “may” in the text gives him some comfort in this new rule. My question would be are employees well aware of this change and have you received negative feedback?

Ms. Young said the Department of Health and Welfare is very aggressive about notifying their employees of potential rule policies that could effect their employment. We have provided extensive information to our employee base at Health and Welfare regarding all of the proposed temporary rules beginning in September 2008 and we have received very little feedback regarding the rule changes and less feedback regarding this particular rule. To summarize the feedback we received from managers and supervisors was in support of this rule. In fact, it was because of feedback from those managers, supervisors and also employees who are forced to carry the increased work load burden when someone is absent for such an extended period of time that Health and Welfare pursued a rewrite of this rule for the Division of Human Resources.

MOTION: **Chairman Andreason** moved to reject Docket No. 15-0401-0801. The motion was seconded by **Senator Smyser**.

SUBSTITUTE MOTION: **Senator Cameron** made a substitute motion to approve Docket No. 15-0401-0801. The motion was seconded by **Senator Lodge**. The motion carried with a **Roll Call Vote**. Vice Chairman Coiner, Senators Stegner, Cameron, Lodge, Smyser, Sagness and Lefavour voted aye. Chairman Andreason voted nay. The motion carried with 7 ayes and 1 nay. (See attachment F)

ADJOURNMENT: **Chairman Andreason** adjourned the meeting at 2:46 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 3, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED:

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

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Andreason** called the meeting to order at 1:30 p.m. The **Chairman** turned the meeting over to **Vice Chairman Coiner** for rules review.

MOTION: **Senator Sagness** moved to approve the minutes of January 20, 2009. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

MOTION: **Senator Smyser** moved to approve the minutes of January 22, 2009. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

MINUTES: **Vice Chairman Coiner** welcomed **William Deal, Executive Director, Department of Insurance**, to present Pending Rule Docket Nos. 18-0129-0801, 18-0139-0801, 18-0139-0802, 18-0143-0801, 18-0162-0801, 18-0173-0801, and 18-0144-0801.

DOCKET NO. 18-0129-0801 **Department of Insurance**
Restrictions on Discretionary Clauses and Maximum Benefit Limits in Health Insurance Contracts
Mr. Deal said this new rule has to do with discretionary clauses that are found in health insurance policies. A discretionary clause is a clause that purports to give the insurer the sole discretion to determine an insured's eligibility for benefits under the insurance contract. This rule applies to individual policies and does not apply to group health plans offered to employees by or through their employer. This is a consensus between the Department of Insurance and the health insurance carriers in Idaho.

MOTION: **Senator LeFavour** moved to approve Docket No. 18-0129-0801. The motion was seconded by **Senator Goedde**. The motion carried by

Voice Vote.

**DOCKET NO.
18-0139-0801
18-0139-0802**

**Rebates and Illegal Inducements in Title Insurance Business
Rebates and Illegal Inducements in Title Insurance Business**

Mr. Deal asked permission to present these two rules together because 18-0139-0801 is repealing the old rule and 18-0139-0802 will be implemented in its place.

An administrative hearing officer concluded that the existing Rule 18-0139-0801 went beyond the scope of Idaho insurance statutes by prohibiting producers of title insurance from having a financial interest in a title entity. The pending rule will replace the prohibition on financial interests in a title entity with a requirement that producers of title insurance provide disclosure of any financial interest they may have in a title entity to which they refer title insurance consumers.

MOTION: **Senator Goedde** moved to approve Docket Nos. 18-0139-0801 and 18-0139-0802. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**.

**DOCKET NO.
18-0143-0801**

Certification of Fire Code Officials

Mr. Deal stated that this rule implements HB 620, passed during the 2008 Legislative Session, which requires that the Fire Marshal establish a rule for uniform training and continuing education for all personnel acting as assistants to the State Fire Marshal.

MOTION: **Senator Sagness** moved to approve Docket No. 18-0143-0801. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**.

**DOCKET NO.
18-0162-0801**

Annual Audited Financial Reports

Mr. Deal said the rule is being renamed "Annual Financial Reporting" and revised to require that insurers comply with certain best practices related to auditor independence, corporate governance and internal control over financial reporting. This is to bring them into compliance with amendments to the National Association of Insurance Commissioners (NAIC) Model Audit Rule that are required to be in place by 2010 to meet NAIC Accreditation Standards.

MOTION: **Senator Lodge** moved to approve Docket No. 18-0162-0801. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**.

**DOCKET NO.
18-0173-0801**

**Rule to Implement the Individual Health Insurance Availability Act
Plan Design**

Mr. Deal explained this pending rule amends Rule 73, which sets forth the required benefits for health insurance products reinsured through the Idaho Individual High Risk Reinsurance Pool. The proposed changes include an increase in the lifetime maximum benefit for organ transplants from \$150,000 to \$250,000. There is a change in the section dealing

with cosmetic surgery to make it consistent with the minimum requirements for individual health benefit plans established by IDAPA 18.01.30. There are some wording changes for consistency and clarity, and changes to conform the rule to the Office Of Administrative Rules guidelines.

MOTION: **Senator Stegner** moved to approve Docket No. 18-0173-0801. The motion was seconded by **Senator LeFavour**. The motion carried by **Voice Vote**.

DOCKET NO.
18-0144-0801

Schedule of Fees, Licenses and Miscellaneous Charges

Mr. Deal stated this rule imposes a fee for rates and forms filings submitted in paper form. The insurer filing ten or fewer rates and forms per year will not be charged a fee; a fee of \$20 will be charged for each paper rate or form filed in excess of ten. The fee will not apply to any filings made electronically through the National System for Electronic Rates and Forms Filing (SERFF). The use of electronic filing provides conveniences to the insurer and eliminates the need for the Department staff to convert paper forms to an electronic format. This electronic format allows our staff to turn around a license issuance request in one business day.

MOTION: **Chairman Andreason** moved to approve Docket No. 18-0144-0801. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

Vice Chairman Coiner welcomed **Mindy Montgomery, Director, Industrial Commission**, to present Pending Rule Docket No. 17-0204-0801.

DOCKET NO.
17-0204-0801

Industrial Commission

Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Benefits

Ms. Montgomery said these are proposed rules that establish procedures on how to apply for reimbursement under the peace officer and detention officer Temporary Disability Act that was enacted in 2007. State, city and county government agencies that employee peace or detention officers may apply for salary reimbursement under this fund in the amount of that salary that is not covered by Workers Compensation. This program went into effect July 1, 2008 and Section, §72.1104, Idaho Code, requires that the Industrial Commission adopt rules governing reimbursement for this law. This was accomplished by temporary rules currently in effect and the Commission is now requesting that this rule become permanent.

This fund was established by the 2007 Legislature to provide full rate of base salary to employees that are in certain dangerous occupations and injured on the job and unable to work. The fund was established in the State Treasury and consists of fines collected on individuals found guilty of a felony or misdemeanor. The Commission has paid out of this fund on two separate claims a total of \$3,989 for salary reimbursement and \$959 for the Commission's administrative costs. The fund's current

balance is \$211,275 after a year and a half of fine revenue.

MOTION:

Senator Goedde moved to approve Docket No. 17-0204-0801. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

Vice Chairman Coiner welcomed **Tom Limbaugh, Commissioner, Industrial Commission**, to present Pending Rule Docket No. 17-0208-0802.

**DOCKET NO.
17-0208-0802**

Miscellaneous Provisions

Mr. Limbaugh said he is requesting a rejection of this rule.

The rule changes workers' compensation reimbursement regulations for hospitals and ambulatory surgical centers. The methodology used was developed by the Centers for Medicare and Medicaid Services (CMS). Early in 2007 the Commission contracted with a private consulting company, Ingenix, to study Idaho provider and hospital data. Financial reimbursement information was provided to the Commission by the State Insurance Fund.

The first step was to finish a provider medical fee schedule. That schedule is contained in this pending rule reflecting a 3% increase in reimbursements over the previous year. It is currently in force by temporary rule. If you reject the pending rule, we will adopt this updated medical fee schedule by temporary rule once again to keep it in force.

The second step was to adopt a hospital and ambulatory surgical center reimbursement method. Ingenix, utilizing 2006 data provided by the State Insurance Fund, developed several payment system methods for our review. The Commission preferred using the CMS Diagnosed Related Group (DRG) method for in patient reimbursement. This system classifies hospital cases into groups. Ingenix, using the DRG Version 24, grouped the State Insurance Fund 2006 data. Each group is assigned a factor (weight) that is multiplied by a base rate (dollar amount). Since 2006 payment data was being used, they selected a dollar amount for the base rate that resulted in a slight increase in reimbursements. CMS has since used DRG Version 25 and has now adopted Version 26, which is known as the Medicare Severity Diagnosed Related Group (MS-DRG). The MS-DRG was to result in less than a 1% increase in hospital in patient surgical payments. The State Insurance Fund recently purchased this new software and tested a number of 2008 bills. Their results are showing an 18% increase in the factor (weight) assigned by the MS-DRG compared to the DRG. This increase may be due to workers' compensation related procedures being assigned a higher severity factor when compared to the average.

On July 1, 2007 the Industrial Commission adopted rules requiring insurance companies to reimburse hospitals on a percentage of billed charges. Prior to this change, insurance companies broke down hospital bills capturing procedural codes and these were used in our analysis. The data needed today to further test our proposed method exists in

copies of bills. It will take time to compile these bills and study the results. For this reason, the Commission asks for your rejection of this pending rule.

Senator Goedde stated that he attended the hearing in Coeur D'Alene on this rule and there were a number of physicians that suggested that the Industrial Commission look at leveling the conversion factors to bring specialty physicians in line with general practitioners reimbursement for their procedures. Would that be something you could examine in the temporary rule this year? **Mr. Limbaugh** responded that given guidance the Commission might want to propose a rule with certain changes. Family practitioners that perform much of the evaluation management codes state that there is disparity in the reimbursement between the doctors. The Industrial Commission adheres to statute §72.803, *Idaho Code*. It states that the fees in the table shall be adjusted each year using the same methodology. The Commission does not have an answer as to how to mitigate this disparity unless there was a change in statute and the rule. As you increase the dollar amount in one specific area, that can increase hundreds of thousands of dollars that may put back into the system as costs. This would result in a higher charge to employers for premiums and it needs to be fair and equitable for the clients.

Senator Goedde stated one of the points made at the Coeur D'Alene meeting was the medical community is having a hard time tracking family doctors because they are paid so much less than specialists. Part of this is the Legislature's fault because of the conversion factors that are being used and also of health insurance carriers. Now is the time to start looking at those conversion factors and lowering those conversion factors for some of the specialties and raising them for the family doctors. Family doctors are the gatekeepers for worker compensation claims and those doctors are best able to determine which specialty doctor should treat the workman compensation patient's injury.

MOTION: **Senator Goedde** moved to reject Docket No. 17-0208-0802. The motion was seconded by **Senator Cameron**. **Senator Smyser** stated that pursuant to Senate Rule 39H, Idaho State Legislature, she has a conflict. The motion carried by **Voice Vote**.

DOCKET NO. **Department of Labor**
09-0108-0801 **Rules on Disclosure of Employment Security Information**
Senator Stegner asked for a unanimous consensus that Docket No. 09-0108-0801 be placed on hold today to allow for a meeting to discuss this rule before it is presented back in Committee on Thursday.

ADJOURNMENT: There being no further business, the meeting adjourned at 2:20 p.m.

Misinterpreted

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 5, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED: Chairman Andreason

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

GUESTS: See attached sign-in sheet.

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

MINUTES: **Vice Chairman Coiner** welcomed **Don Drum, Executive Director, PERSI**, to present RS18207.

RS18207 **Relating to the Public Employee Retirement System**
Mr. Drum stated that this legislation amends three of the PERSI statutes.

Statute 59-1351 (6), *Idaho Code*, regards optional retirement selections, provides that a retired member who marries has one year after the optional retirement selection before their spouse would become eligible to claim those benefits if the member died. This amendment would allow one year from the date of the marriage before the spouse is eligible for the benefits. This provides for calculating the member's benefit after the effective date of that election in subsection 59-13519 (3), *Idaho Code*, minimum monthly payments. This provides that certain options cannot be chosen if initial monthly payments of less than \$20.00 would result. This bill will replace the reference to \$20 with a reference to the statute (*Idaho Code*, Section 59-1343) pursuant to which that monthly minimum amount is set.

Statute 59-1352 (1) states a member with five years of membership service is eligible for disability retirement. To become eligible for a PERSI disability the Department uses a third party to evaluate the claim and make recommendation on whether the member is eligible for the disability claim.

Statute 59-1355 (1), *Idaho Code*, makes a technical correction by

including a cross-reference to subsection 59-1322 (4) (e) (v) that should have been included when subsection 59-1322 (4) (e) (v) was added to the Code.

Senator Cameron stated at the bottom of page 2 you have stricken the language “if a member becomes disabled after at least five years of membership service.” Then on page 3, under (2), line 3, it has a portion of the same language for police officers and firefighters that is being stricken on page 2, under general membership this definition should be consistent between traditional membership and police officers and firefighters.

Senator Cameron said making remarried retiree spouses wait a whole year after the marriage to be eligible to claim benefits, if a retiree should die, 30 days seems more reasonable. Only if the actuary is calculating a fiscal impact to the fund would that persuade him of the one year waiting period. He stated he would like the Department to shorten the waiting period to 30 days.

Mr. Drum stated the Department would clarify the language and bring RS18207 back before the Committee as a C1 with the discussed changes.

Vice Chairman Coiner asked for a unanimous consent by the Committee to reject RS18207 and instruct PERSI to correct the language and bring the RS back with said corrections as a C1. The Committee unanimously consented.

Vice Chairman Coiner welcomed **Blair Jaynes, Deputy Attorney General, Industrial Commission**, to present RS18198.

RS18198

Relating to the Industrial Commission

Mr. Jaynes stated this legislation is to correct some archaic language in Title 72. This correction will model it after the language that the Legislature has adopted for the Tax Commission in Title 63 to identify the kind of information that the Industrial Commission can share with other agencies.

MOTION:

Senator Cameron moved that **RS18198** be introduced to print. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**DOCKET NO.
09-0108-0801**

Department of Labor

Rules on Disclosure of Employment Security Information

Vice Chairman Coiner said that **Senator Davis, Senator Stegner** and myself met with **Mr. Bob Fick** to discuss the statutory authority of Rule 09-0108-0801 and found this fee rule to be in order.

MOTION:

Senator Goedde moved to approve Docket No. 09-0108-0801. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**.

ADJOURNMENT:

There being no further business, the meeting adjourned at 1:48 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 10, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED:

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

GUESTS: See attached sign-in sheet.

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

MOTION: **Senator Sagness** moved to approve Amended Minutes from January 15, 2009. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

MINUTES:

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** welcomed **Don Dietrich** gubernatorial appointment for **Director, Department of Commerce** to serve a term commencing April 10, 2008 and continuing at the pleasure of the Governor.

To Be Heard

Mr. Dietrich stated his qualifications of the past 30 years in the private sector with a strong background in agriculture, energy and technology making him uniquely qualified to carry out the crucial agenda of the Department of Commerce in these next few years. Commerce touches rural and urban communities and the Department needs to be thinking creatively each and every day of ways to manage the diverse growth of these two sectors. The Department runs very similarly to a private corporation and the staff must account for every dollar and cent to accomplish the goals before our Department. Due to budget cuts they must place the dollars where they will be the most effective for the State. They have great business plans in place that coincide with the budgeting process. The Department has a challenging job ahead and **Mr. Dietrich** believes he brings the energy and creativity to the table that will allow him and his team to get the job done for the State of Idaho. **Mr. Dietrich's** political affiliation was blank.

There was much discussion concerning how the Department would

function and attract and promote the business environment in the State amid budget cuts and the downturn in the economy.

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

Chairman Andreason welcomed **Michael Kane, Idaho Counties Risk Management** to the Committee.

RS18470

Mr. Kane stated that RS18470 is to repeal language in current law applying to domestic reciprocal insurers comprised exclusively of political subdivision of the State of Idaho. This language insures against risk pertaining to property and casualty claims to tie up no more than ten percent of their assets in real estate for their office. This rule also deletes language placed in the rule in 2000 on line five through seven, page two which is no longer necessary.

MOTION:

Senator Goedde moved that **RS18470** be introduced to print. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

ADJOURNMENT:

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

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 12, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, and LeFavour

MEMBERS ABSENT/ EXCUSED: Senator Sagness (Malepeai)

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

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Andreason** called the meeting to order at 1:35 p.m.

MINUTES:

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** welcomed **Terry Gestrin** gubernatorial appointment to the **State Insurance Fund Board** to serve a term commencing August 4, 2008 and expiring April 30, 2012.

Terry Gestrin stated that he had attended Idaho State and acquired a degree in finance and business administration. Then he sold insurance for a period of time in the City of Emmett but then moved back home to Donnelly, Idaho. He has served on many varied positions in Valley County such as County Commissioner, EMT, Fire Chief, and Chairman of the Board of Fireman. He comes from a long family history of community service and that is why he has agreed to serve on the State Insurance Fund Board. **Mr. Gestrin's** political affiliation is Republican.

Senator Goedde stated that the positions on the State Insurance Fund Board are usually designated by areas of expertise and he believed **Mr. Gestrin** represents the business community of Donnelly. **Mr. Gestrin** responded that he is appointed to represent small business in Idaho.

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

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** announced that the Committee was ready to take action on the appointment of **Don Dietrich** as the Director of the Idaho Department of Commerce. **Mr. Dietrich** had appeared at the

February 10, 2009 Committee meeting and had been appointed to serve a term commencing April 10, 2008 and continuing at the pleasure of the Governor.

MOTION: **Senator Cameron** moved to approve the appointment of **Don Dietrich** as Director of the Idaho Department of Commerce. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Senator Cameron** will be the sponsor of the candidate.

RS18420 **Relating to the Mufflers and Prevention of Noise**
Chairman Andreason stated that **RS18420** has been brought before the Committee by various neighborhood associations and law enforcement officers. This legislation states that motor vehicles equipped with a glass pack muffler adapted with a butterfly valve in the core can be opened and closed by either manual or electronic means from the vehicle's cabin. This causes the muffler noise to become progressively quieter as the valve is closed and progressively louder as the valve is opened and is not lawful to be operated on the highways of this State. These mufflers were originally designed for race cars in order to diagnose problems with the engine. The legislation will prohibit the use of "glass pack" mufflers from operating on the highways of this State.

MOTION: **Senator Stegner** moved that **RS18420** be introduced to print. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

RS18561 **Relating to Insurance and Public Safety Officers**
Chairman Andreason stated that **Senator Jorgensen** asked that **RS18561** be placed on hold in the Committee.

RS18579 **Relating to Payday Loans**
Senator Keough stated that the purpose of **RS18579** is to make certain that all payday loan entities operating in Idaho whether they have a physical presence or through the internet comply with our laws and operate under Idaho law. The consumer has the option of exploring payday loans in businesses within their community but also have the opportunity to seek a loan from a payday lender on the internet. The internet operations are currently not licensed within our State. The State has no recourse on the part of the consumer to hold those internet loan providers to the State standards of the businesses in the community.

Senator Goedde asked, "If Idaho has any authority to restrict internet commerce?" **Senator Keough** replied the language that other states have utilized for the consumers in their states has provided protection.

MOTION: **Senator Cameron** moved that **RS18579** be introduced to print. The motion was seconded by **Senator LeFavour**. The motion carried by **Voice Vote**.

RS18480C1 **Relating to the Director of the Department of Insurance**
Vice Chairman Coiner stated that this legislation provides that the compensation of any officer, director or employee of an insurance

company be included in annual statements filed with the Department of Insurance and they be available as public records.

MOTION: **Senator Stegner** moved that **RS18480C1** be introduced to print. The motion was seconded by **Senator LeFavour**. The motion carried by **Voice Vote**.

RS18575 **Relating to Worker's Compensation**

Vice Chairman Coiner stated that this legislation will revise the manner in which certain fees shall be adjusted each year by the Industrial Commission. In statute they are mandated to give an increase every year based on methodology as set forth in section 56-136, *Idaho Code*, by the Commission.

Senator Goedde stated in attending the Industrial Commission's rule making hearing in Coeur D'Alene, he heard legitimate complaints made by many of the general practitioners. The general practitioners explained that they were being severely underpaid by the resource based relative value system (RBRVS) conversion factor for workers compensation versus the compensation paid to specialists. This legislation will be an opportunity for the Industrial Commission to research the conversion factors in our State and explore the factor calculations in our sister states. Idaho ranges from 46 to 144 which is the largest disparity of any state that is using RBRVS.

MOTION: **Senator Goedde** moved that **RS18575** be introduced to print. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

RS18642C1 **Relating to Bail Agents**

Mr. Kiiha, on behalf of Aladdin Bail Bonds, stated this legislation clarifies that the Department of Insurance be the State agency vested with the sole regulatory authority of bail bond agents and the services they provide to the public. Five out of the seven Judicial Districts in the State have established rules that have duplicated the Department of Insurance existing rules and in other cases have usurped their exclusive authority. This causes a costly and duplicative process forcing agents to become double licensed.

Senator Stegner stated it appears that you are asking the Legislature to give you relief from judicial rules.

Mr. Kiiha stated that in a lawsuit this year it was decided that the Legislature, as part of its inherent police power not the judiciary branch, has the authority to regulate the fashions of businesses including the bail bonds business. Although the judiciary may make rules relating to the regulation of bail agents, it cannot substantively go past what is listed in the statute. We are asking that the regulatory authority be vested exclusively in the Department of Insurance.

MOTION: **Senator Goedde** moved that **RS18642C1** be introduced to print. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**.

RS18550

Relating to Procurement Requirements

Mr. Norman Semanko, on behalf of Idaho Water Users Association, said this legislation clarifies the ability of irrigation districts and their boards of control to purchase used personal property for the acquisition of goods and services without the competitive bidding process which originally existed in *Idaho Code*, §43-901B.

Senator Goedde inquired as to why we are limiting this purchasing practice to irrigation districts. **Mr. Semanko** stated the reason this purchasing practice is limited to irrigation districts is in the language of §43-901B, *Idaho Code*, which only applied to irrigation districts. There were no across the board exemptions for other political subdivisions to purchase used personal property. The irrigation districts are unique in the equipment items that they use and why they are purchased under this used personal property legislative umbrella.

MOTION:

Vice Chairman Coiner moved that **RS18550** be introduced to print. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

RS18344

Relating to the State Personnel System

Senator Werk stated this legislation would add medical, dental and optical (MDA) leave into statute. The Division of Human Resources removed the employee benefit (MDA) appointment leave for state employees in the summer of 2008 because it is not provided for in the State statute.

Senator Cameron said he wished **Senator Werk** would have had the benefit of the Committee's discussion on this MDA rule. The Committee unanimously agreed with the rule. The Committee directed Human Resources to give directives to supervisors and managers to allow personnel to take time off for medical, dental or optical appointments. It also allowed employees to work alternative hours to make up for the time for these medical appointments. The productivity is not lost allowing the time to be made up whereas with the MDA this productivity was lost.

Senator Werk said he was unaware that this MDA rule had been dealt with in this Committee.

Senator Cameron said if the Division of Human Resources decides they would like to implement the MDA policy they could bring the legislation forward. This would put state law in a contradictory position for the Administrator of Human Resources because there are no financial resources to move forward with this legislation even if they deemed it was appropriate.

Senator Werk said he would withdraw **RS18344**.

MOTION:

Vice Chairman Coiner moved to return **RS18344** to **Senator Werk**. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

S1075

Relating to Industrial Commission

Ms. Montgomery, Director, Industrial Commission, stated that the Commission has proposed the changes to *Idaho Code*, Section 72-517 in S1075. These changes will clarify the Commission's authority to enter into cooperative agreements with other agencies and to identify the specific information that they can share with those agencies. The Commission's day to day responsibility is to ensure that Idaho workers and their families are protected by insurance from economic loss due to on the job injuries or death. They often need to gather corroborating information from another agency. That agency will sometimes want reciprocal access to the information from their investigations in order to carry out their statutory duties. This amendment spells out those limited pieces of relevant information that can be shared with other agencies. It was modeled on the information which the legislature authorized be shared between the Tax Commission and the Industrial Commission several years ago. The bill will enhance the Industrial Commission's ability to ensure that Idaho workers are not exposed to uninsured injuries and enable the Commission to perform their duties in a more cost efficient manner.

MOTION:

Senator Goedde moved that **S1075** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Goedde** will sponsor of the bill.

ADJOURNMENT:

There being no further business, the meeting adjourned at 2:25 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 17, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Goedde, Lodge, Smyser, and LeFavour

MEMBERS ABSENT/ EXCUSED: Senators Cameron and Sagness

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

GUESTS: See attached sign-in sheet.

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

MINUTES:

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** welcomed **Steve Landon** gubernatorial appointment to the **State Insurance Fund Board** to serve a term commencing April 30, 2008 and expiring April 30, 2012.

Mr. Landon said he started working for J.R. Simplot Company in 1970 as a laborer and worked his way up to a maintenance rebuild specialist position. In the early 1970's he became involved in representing employees through the Chemical Atomic Workers Local 632 as a steward and worked his way through almost every position. Since 1993 he has held the position as the President of Local 632. He has been involved in the political side, financial, international politics and representation for the last 25 years. In the process of trying to help expand the Smoky Canyon Mine which supplies the phosphate ore that keeps the Don Plant in Pocatello running, he wrote a letter solicitating the Governor's support to help with the permit to continue the mine. The Governor then asked **Mr. Landon** if he would be interested in applying for the **State Insurance Fund Board**. **Mr. Landon** said that he has attended four meetings of the board and assured the Committee that the members are outstanding professionals. They do an exemplary job of administering the fund to the individuals that are the recipients of that insurance. **Mr. Landon's** political affiliation is Independent.

Senator Goedde said he has served on the board for the past year with **Mr. Landon**. He brings to the board a great perspective and is deliberative in the discussions and the decisions that have been made

for the Board. **Senator Goedde** said he will support voting for his appointment. **Mr. Landon's** affiliation is Independent.

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

**GUBERNATORIAL
APPOINTMENT:**

Chairman Andreason announced that the Committee was ready to take action on the appointment of **Terry Gestrin** to the State Insurance Fund Board. **Mr. Gestrin** had appeared at the February 12, 2009 Committee meeting and had been appointed to serve a term commencing August 4, 2008 and continuing to April 30, 2012.

MOTION:

Senator Goedde moved to send the appointment of **Terry Gestrin** to the State Insurance Fund Board to the Senate floor with the recommendation of do confirm. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**. **Senator Goedde** will sponsor **Terry Gestrin's** appointment on the floor of the Senate.

Chairman Andreason welcomed **Dave Curtis, Executive Director, Board of Professional Engineers and Land Surveyors**, to present H1.

H1

Mr. Curtis said under current law, when an individual applies to the Board of Professional Engineers and Land Surveyors for assignment to an examination for either certification as an intern, or licensure as a professional, they pay an amount which includes an administrative fee plus the cost incurred by the Board for the examination. The administrative fee is intended to pay for the costs the Board incurs in evaluating the credentials. If the credentials are deemed to meet the requirements of law, then the applicant is assigned to the exam and the Board passes on the portion of the fee which was collected from the applicant to the third party examiner. Since fees are not refundable, if the applicant does not possess the credentials required for assignment to the examination, they lose not only the administrative fee but the cost of the examination and its administration.

This bill would separate the administration fee (to be called an "application fee") and the cost of the examination. The application fee would be submitted by the applicant at the time of the application. If the applicant possesses the credentials required for assignment to the exam, the applicant would then be directed to pay the third party directly for the examination.

The new process will solve a budgeting problem for the Board. The Board has appropriated a fixed amount of operating expense money which currently includes the cost of the examinations and all our other operating expenses. Since we have no way of knowing how many individuals will apply for examinations, we can only budget for an average number. If we receive an above average number of applicants who are assigned to the examination, we have to pass on a larger-than-budgeted amount of our operating expense appropriation to the third

party, leaving us less to pay for other operating expenses. By having the applicant pay the third party directly for the exam, the uncertainty of budgeting for the cost of the examinations is eliminated. The operating expense appropriation to the Board can be reduced by approximately \$70,000.

The new process will reduce the amount of money forfeited by an applicant who does not possess the credentials required by law for assignment to the exam. By only paying to the Board an application fee, and not the exam fee, the applicant has less at risk.

Senator Goedde said he was having trouble reconciling the fiscal note. If the Board is collecting an examination fee how do you come up with a \$70,000 savings to the operating expenses? **Mr. Curtis** clarified that the Board is currently collecting the application and examination fee. Then if the applicant is assigned they pass on the examination fee to a third party. In the future, if this bill passes, they would collect only the application fee. The applicant would pay directly to the third party vendor to take the examination. If the Board is not collecting the exam fee, then they do not have to spend it then it would reduce their expenses by around \$70,000 per year the amount passed through from the applicant to the third party. If we collect the money, then the money comes out of our operating expenditures. **Senator Goedde** asked for further clarification. For example, you have 100 individuals sitting for this exam and they pay you the examination fee which you then send to the third party vendor. If the Board deposits the money that they receive into an operating account and then the Board draws on the account it should have a zero impact.

Mr. Curtis stated that from an appropriation standpoint the Board would not be paying directly for the examinations. The candidate would be individually paying the vendor for the exam. Therefore, the Board would need \$70,000 less operating expense because it would not be a payment that would be paid nor would they collect the funds. There is an appropriation for all of our expenses whether we pass them through or not.

Senator Stegner said the fiscal note did not need correction on this bill. All the note states is that the Board use to collect \$70,000 and then they would get the appropriation from the Legislature to pay the expense and now they will not need the appropriation because they will not collect exam fees. The exam fees will be paid directly to the third party vendor by the applicant to take the exam.

MOTION:

Vice Chairman Coiner moved that **H1** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**. **Vice Chairman Coiner** will be the sponsor of the bill.

ADJOURNMENT:

There being no further business, the meeting adjourned at 1:53 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 19, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, and LeFavour

MEMBERS ABSENT/ EXCUSED: Senators Smyser and Sagness

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

GUESTS: See attached sign-in sheet.

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

MINUTES:

MOTION: **Senator LeFavour** moved to approve the minutes of January 27, 2009. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** announced that the Committee was ready to take action on the appointment of **Steve Landon** to the State Insurance Fund Board. **Mr. Landon** had appeared at the February 17, 2009 Committee meeting and had been appointed to serve a term commencing April 30, 2008 and expiring April 30, 2012.

Senator Goedde moved to send the appointment of **Steve Landon** to the State Insurance Fund Board to the Senate floor with the recommendation of do confirm. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Goedde** will be the sponsor of the candidate.

PRESENTATION: The **Idaho International Office Annual Update Presentation** was given by **Armando Orellana, Manager, Guadalajara, Mr, Eddie Yen, Manager, Taipei, Asia and Dr. Cao Guoli, Manager, Shanghai, China**.

Mr. Orellana stated that the key Idaho exports in sectors that will not be severely affected by the recession would be agriculture and mining equipment, environmental, and forest products.

They host an intern program for Idaho students to serve for a three to

four month period at their trade office in Mexico.

Mr. Yen stated the items that Taiwan is presently importing from Idaho are wheat, canned corn, semi-conductors, mineral products, beef, cherries, peaches, apples, and organic grapes. The agricultural products are all items that Taiwan does not produce and they eat more wheat than rice.

Mr. Yen passed out a tour brochure of Idaho that had been photographed by Dennis Chen.

Dr. Guoli stated that in 2008 the bi-lateral trade between China and the United States grew by 17.4%.

China's imports of Idaho's products are potato and sugar beet harvesters, lumber products, creamery machinery, geo-thermal generating facilities, and log homes.

Vice Chairman Coiner thanked **Mr. Orellana, Mr. Yen** and **Dr. Guoli** for their informative presentation on Idaho International Trade.

ADJOURNMENT: There being no further business, the meeting adjourned at 2:28 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 24, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED:

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

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Andreason** called the meeting to order at 1:29 P.M.

MOTION: **Senator Smyser** moved to approve the minutes of January 29, 2009 and February 3, 2009. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

MOTION: **Senator Sagness** moved to approve the minutes of February 5, 2009, February 10, 2009 and February 12, 2009. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

MINUTES:

S1080 **Relating to Real Estate Investments**
Michael Kane, representing Idaho Counties Risk Management, stated that S1080 is a litigation of an applier of language that was designed ten years ago to help Idaho Counties Risk Management Program (ICRMP) which had too much real estate versus assets. Last year they came before the Committee and had a bill passed that allowed them to invest like any private insurer. At that hearing it was pointed out that the language in Section 41-728 was unnecessary regarding real estate investments. **Mr. Kane** is before the Committee today to ask that they repeal the language in Section 41-728, which effects only ICRMP and no other insurer in the State.

MOTION: **Senator Cameron** moved that **S1080** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Sagness**. The motion carried by **Voice Vote**. **Senator Stegner** will be the sponsor of the bill.

S1093 **Relating to Payday Loans**

Senator Keogh said that S1093 provides that payday loan business in the State of Idaho be licensed by the Department of Finance and follow the laws of the State of Idaho. The loan businesses not licensed within our State will not be able to collect on the loans that they make. This bill would regulate internet payday loan businesses which are not licensed to engage in business within the State.

Gavin Gee, Director, Department of Finance, stated that the Department is seeing the number of payday loans over the internet proliferate. The proposed language that the Department would insert into the bill would strengthen the legislation and add clear statutory authority for the Department to seek restitution consistent with this law on behalf of Idahoans. It would also provide a private right of action to Idahoans in the event that the Department does not take action on their behalf. It will allow an Idaho resident that took out a payday loan the ability to bring a private right of action on their behalf. More states are going to this type of format to address the growing problem of unregulated and licensed payday lenders.

Senator Goedde asked, "What authority does the Department of Finance have to regulate internet based commerce?" **Mr. Gee** responded that most of the businesses that they license and regulate at present have internet operations. It has been well tested in courts that states do have jurisdiction over any internet business that operates in Idaho whether it be by internet, mail or a physical presence. Companies doing business with Idaho residence triggers the State's jurisdiction. The Department licenses approximately 133,000, 95% of those businesses are located out of State.

Senator Sagness asked if there are regulations in Idaho Statute that deal with fees or interest rates. **Mr. Gee** replied that the State does not have usury rates in Idaho relative to loans. Idaho repealed usury statutes many years ago and the State allows the marketplace to set interest rates.

Senator Cameron said currently this section defines who is required to have a license. By adding subsection 3 states anyone who lends money, deposits the consumers check, withdraws funds electronically, and collects interest fees or charges would be subject to a payday loan license. **Mr. Gee** answered that you cannot deposit the check, cannot collect principle or interest if you are not licensed in the State. **Senator Cameron** stated his concern with this bill is a private person who lends money for mortgages or business ventures by a case on case basis might be swept up in the language of this bill. **Mr. Gee** clarified that this section is part of the payday loan section and it is limited to payday lenders. The private lenders you mentioned would not be subject to this legislation.

Senator LeFavour stated that the Committee should hold the bill for a time certain then withdraw the bill at the time **Senator Keough** presents a new version.

MOTION:

Senator LeFavour moved to hold S1093 for a time certain until the return of a sponsor with substitute legislation. The motion was seconded by **Chairman Andreason**. **Senator Smyser** stated pursuant to Rules of the Senate 39 (H), of the Idaho State Legislature, she has a conflict but still wishes to vote on **S1093**. The motion carried by **Voice Vote**.

S1095

Relating to Worker's Compensation

Vice Chairman Coiner stated that in the process of rule hearings of the Industrial Commission it was brought to the Committee's attention that there was some disparity in the fee schedule especially for the family practitioners. During those hearings it was stated that in the statute there is a percentage adjustment to the fee schedule across the board. This bill will revise the manner in which certain fees shall be adjusted each year by the Industrial Commission.

Tom Limbaugh, Commissioner, Industrial Commission, stated this bill is to change how the Industrial Commission will come up with an annual adjustment. Currently they utilize the Department of Health and Welfare directive 72-803 which refers to 56-136 which during each fiscal year adjustments shall be determined by the Director of Health and Welfare Department. It shall equal the year inflation rate or pass it as the mid-point of the fiscal year by the all-items fields services index in the Pacific Northwest as published by Data Resources, Inc. Data Resources, Inc. does not exist any longer. The Department uses another consultant so the statute is incorrect and should be changed. The Industrial Commission would like to look at the Consumer Price Index, Medicare Economic Index, Percent Change in Idaho State Average Weekly Wage and Regence Blue Shield of Idaho Reimbursement, surrounding states and the market before they determine what the annual adjustment would be. The annual adjustment is all that this bill addresses.

Ken McClure, Attorney for the Idaho Medical Association, spoke to testify against S1095. This proposed bill was presented at the Board of Trustees meeting and spoke to the net effect which would be to allow the Industrial Commission to make additional adjustment to those physicians at the low end of the pay scale which would be paid from the physicians at the top end of the schedule. The Board of Trustees unanimously voted against this proposed bill. When the change to the legislation was made by the Commission from the old med-data for reimbursement system to the Resource Based Relative Value System (RBRVS) the physicians understood the system.

When the fee schedule legislation was set a few years ago the principle concern was that the patients in Idaho who need access to physicians for workers comp care maintain the ability to access those physicians.

Senator Goedde inquired in this legislation if they suggested the Industrial Commission consult other factors, would that address the concerns that you see with this bill?

Mr. McClure stated when you are trading an unknown for a known there

is anxiety, to the degree that the Industrial Commission would limit itself only to medical indices. Using broader indices may not be the best indices to use and there is nothing in the legislation that gives guidance to the Commission on which indices should be sought to acquire their factor adjusters.

Senator Goedde said if there were specific indices in the legislation that limited the factor to medical adjusters only would that make the Association feel more comfortable.

Mr. McClure spoke for himself and not the Association. He thought this would make the Association more comfortable with those indices.

Senator Goedde said he looked into conversion factors and there are 23 states that use RBRVS or something similar. Out of the 23 states, nine have one conversion factor that applies across the board. Idaho's conversion factors go from \$46 to \$144, \$144 being surgery. Of the 14 other states from which he pulled conversion factors for surgery the lowest listed was West Virginia at \$46 and the highest was Nevada at \$182. Idaho is second at \$144 and he thinks that indicates that the State is out of touch with where it should be for these factors. It addresses what **Chairman Andreason** said that maybe the other end should be bumped at the expense of some of the high conversion factors. In prior discussions your Association has suggested to let the system work for awhile and it has now been in place two years. **Senator Goedde's** recommendation is that it is time for the Industrial Commission to research the conversion factors once more.

Mr. McClure responded that the combination of Idaho's geographical concentration to the exclusion of less populated cities of the State coupled with the low number of physicians per patient ratio means that Idaho is in a marketplace that is a seller's market for some of these services. The commercial carriers have found the same thing. They have the disparity in reimbursement the same order of magnitude difference that is what it took to get the services delivered in this State for this State's patients.

Vice Chairman Coiner asked if it gave **Mr. McClure** ease that the Industrial Commission would deal with the adjustments in rule, not in temporary rule and any adjustment would be in July of 2011.

Mr. McClure stated that the administrative procedures act makes the adjustment through the rules process at least an opportunity for input. They still do not have a complete set of reimbursements out of the Industrial Commission after four years and the rules for the facility reimbursement are not resolved as of yet.

Larry Benton, representing the Idaho Orthopedic Society, said that the group of doctors he represents is in the higher paying category. The Society has strong concerns about this proposed piece of legislation. The system that is in place for these reimbursements has not been in place long enough to allow any comfort as to how well the system is

working. The Orthopedic Society is in opposition to this bill because of the negotiation process that they thought had already been achieved. The concern does not lie with the context of the bill but rather placing the decision of factors back in the hands of the Commission.

Dr. Keith Davis, President of the Idaho Academy of Family

Physicians stated he was here today because he was excited about this bill which has potential to give the Industrial Commission more flexibility in changing the disparity of RBRVS codes in their payment structure. The Idaho Academy of Family Physicians supports the single conversion factor method for the future health of primary physician care in Idaho. The single conversion factor method would help retain physicians already in the State and assist with recruiting new physicians into the State. The disparity in the payment that is seen by the family physicians places the physicians in a difficult position for having a practice and recruiting physicians. To the extent that Industrial Commission can have flexibility in how they change the factors it could be helpful to the State. The materials before you (attachment A) point out many states have a single conversion factor for their Industrial Commission. Washington State has single conversion factor for all commercial insurances, Medicare, Idaho Medicaid, and Blue Shield.

Senator Goedde asked if the bill references certain medical indices to be consulted by the Industrial Commission, would that give the Association any degree of comfort?

Dr. Davis replied in terms of increasing or decreasing pay, the indices could be helpful particularly if they involve health care. The Academy membership is most interested in the \$46 and \$144 disparity and we have no interest in pulling down the \$144 but bringing up the \$46 for the services that we provide. **Dr. Davis** stated that the bill would give the Industrial Commission flexibility in the future to lean toward a single conversion factor he can state unequivocally that the Academy would be in favor of that factor.

Senator Sagness stated the bill does not address how this factor would be adjusted; it is left up to the Commission. There seems to be a disparity and how the Committee should address the high end and low end of that disparity should it be shifted or corrected. We then have a responsibility to address the correction. The bill does provide a mechanism for correction if the Committee is willing to accept that solution.

Senator Cameron stated his concern is that it is important that they retain a viable workers compensation system in this State. That system is designed to protect our employees and requires that they have adequate access to physicians and providers for the system. Causing disruption in the marketplace for people to go to an appropriate physician might turn the workers compensation system on its head. He urges caution about the approach on adjusting the system rather than throw it wide open.

MOTION:

Senator Goedde moved that **S1095** be referred to the 14th order for amendment. The motion was seconded by **Senator Sagness**. **Senator Smyser** stated pursuant to Rules of the Senate 39 (H), of the Idaho State Legislature, she has a conflict but still wishes to vote on **S1095**. The motion carried by **Voice Vote**. **Senator Cameron** voted nay.

S1096

Relating to Procurement Requirements

Norman Semanko, Executive Director, Idaho Water Users

Association, said this is a pre-existing provision that was contained in *Idaho Code*, Section §43-901b since the Idaho Water Users Association procurement laws came on the books. The Association would like to move that provision over to *Idaho Code*, Section §67-2803 consistent with the consolidation of all the purchasing provisions that were completed a few years ago. In response to a question at the print hearing, he looked into setting a \$25,000 limit on this provision and the answer he received from the irrigations districts is that it already exists in *Idaho Code*, Lines 14 through 17 of the bill and states that contracts or purchases where expenditures are less than \$25,000 are exempted from the procurement requirements in the statute. **Mr. Semanko** spoke with many of the irrigation districts in the State and asked about this provision for purchasing used equipment for the district. All the districts stated that they use this provision, although infrequently, it allows them to purchase used loaders which are in excess of \$25,000. The provision was originally placed in the statute because it is impossible to write specifications for the purchase of a used loader. The only specifications that can be written up would be for a new loader and it has to be written up by competitive bid. They believe it would cost three to four times as much to buy a new loader as the used loader.

Senator Goedde stated Part A only applies to those purchases over \$25,000.

Mr. Semanko stated the \$25,000 line of demarcation, less than \$25,000 under a pre-existing code provision that is now §67-2803, they do not have to deal with the competitive bidding process for used personal property. Anything under \$25,000 but certainly anything over \$25,000 for a used loader to try to save the patron's monies. It is the language verbatim out of §43-901b.

Senator Goedde stated he wanted to get this clearly on the record. He heard **Mr. Semanko** say that you cannot write a set of specification for a piece of used personal property. Is that correct?

Mr. Semanko stated when he went back after the print hearing and talked with the irrigation district managers, he asked them if they can write a competitive bid process for used personal property such as a used loader. It might be a 1982 loader; how do you write the specifications for such a bid? The managers said that it is impossible to write up the specifications for the used loader without ending up buying a new loader.

MOTION:

Vice Chairman Coiner moved that **S1096** be sent to the floor with a do

pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Vice Chairman Coiner** will be the sponsor of the bill.

ADJOURNMENT: There being no further business, the meeting adjourned at 3:00 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 26, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED:

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

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Andreason** called the meeting to order at 1:30 P.M.

MINUTES:

RS18618 **Relating to Worker's Compensation and Related Laws**
Lyn Darrington, representing Employers Insurance Group, stated that the legislation before them would allow public entities school districts, irrigation districts, cities, counties and state agencies to go out to the private market for worker's compensation insurance.

MOTION: **Senator Lodge** moved unanimous consent to send **RS18618** to Judiciary and Rules Committee for print. The motion was seconded by **Senator Sagness**. The motion carried by **Voice Vote**.

S1107 **Relating to Insurance Contracts**
Senator Bair stated it was brought to his attention that a certain constituency, namely children, in our State who are born with or they acquire after their birth food allergies and related disease that prevent them from digesting mother's milk, formulas or virtually any food in order to get proper nutrition. These children, whom comprise only about one-tenth of one percent of all the children in our society are left with very few options in order to get sustenance to sustain their lives. The allergic reaction to the mother's milk, formula or milk causes persistent diarrhea, bloody stools, poor weight gain, persistent vomiting, skin rashes, respiratory distresses and a failure to thrive. The intestinal track becomes like hamburger raw and sore and the children suffer a great deal of pain whenever they take anything into their mouth. What they are allergic to is the protein in the foodstuffs. There is a special dietary formula called amino-acid based elemental formula that allows these children to become healthy and thrive. Their digestive tracks often times

within several weeks will heal themselves and the children will begin to grow. Some children stay on it for a few weeks, some a few months, and some for quite a few years. Overtime the children seem to outgrow the severe allergy to food proteins. A very small percentage do not outgrow the allergy and lasts through their entire lives.

The problem with the formula is it costs a fortune. Depending on what kind of formula the child will tolerate the cost of this formula ranges from \$600 to \$2400 a month, Insurance companies have not covered this health claim because it is classified as a food product, even though these formulas are critical to a child's survival. If the family qualifies for Medicaid or the Women's Infants and Children's Program (WIC) they cover the product for these children.

If the Legislature mandates the insurance companies to cover these formulas, how much will it raise the premiums? **Senator Bair** did not have an answer to the question, but did have some data from the State of Ohio. A State Senator, Dean Crebbs, testified before his Ohio Legislative Committee that the formula legislation would raise the premiums 1.6 cents per year for the average family. **Senator Bair** stated that the Committee will hear testimony today from a couple of families whose children require this formula and how the lack of health coverage has affected their livelihoods. These families have sacrificed tremendously for their children. Cars have been sold, homes have sold, parents have taken second and third jobs, and still the parents cannot generate enough money to cover the high costs of the formula.

Most of our surrounding states cover these formulas such as Montana, Utah, Oregon, Nevada, Arizona and California. At some level they assist families through their insurance policies to cover the cost of the formula.

The American Academy of Pediatrics issued a statement of policy of 2003 which is reaffirmed in 2006. "Foods for special dietary use are recommended by physicians for chronic diseases or conditions of childhood including inherited metabolic diseases. Although many states have created legislation requiring reimbursement for foods for special dietary use legislation is now needed to mandate consistent coverage in reimbursement for foods for special dietary use."

Bill **S1107** before you requires private insurance companies to cover the dietary formulas for this condition.

Senator Sagness stated, "Are you aware of how many other circumstances out there that would fall into this category?" **Senator Bair** explained that there are a few other diseases that would fall under this category and are listed in the legislation lines 15 through 19. **Senator Sagness** said could he assume that the other diseases specified on lines 15 through 19 are also not covered under health claims for the formula. **Senator Bair** responded that this was correct and it is not the diseases that the insurance companies are not covering. When the individuals go to the doctor, the office calls, hospitalization and if they require medication, it is covered. The food formula to get them healthy is

not covered.

Senator Stegner asked, "Where do the families purchase the food formula?" **Senator Bair** replied that they are purchased from medical supply businesses and those businesses add 50-60% onto the price. Eventually, the families learn to circumvent these businesses and buy direct from the factory. **Senator Stegner** asked, "Does the purchase of these food formulas require a prescription?" **Senator Bair** replied they do not but in the legislation they have had specific language added on line 14 that states "when ordered by a physician and when medically necessary."

Julie Taylor, Director of Governmental Affairs, Blue Cross of Idaho, asked to offer an alternative to the passage of this bill. Their company is prepared to provide better outreach to physicians across the State of Idaho and also to parents who have children with these diseases. Also, they are willing to have a greater transparency of how the processes work internally for these claims. Blue Cross does not cover these formulas as a benefit in their insured products. What happens in their electronic claims system is the CPT code kicks out the claim and denies the benefit electronically and then a letter is included with the denial that explains to the insured how to appeal the claim. Once the insured files an appeal then the medical management staff accesses the appeal. They check to see if the claim meets certain criteria and then Blue Cross would make an exception and pay for the formula. Six months to a year after the claim is processed they will reevaluate it to determine if the child still needs the formula.

Vice Chairman Coiner inquired about the time period that this procedure takes from the time of the appeal to the exception to pay for the formula. **Ms. Taylor** replied from the time they receive the appeal just a few days. **Senator Cameron** stated that would depend on how quickly the insured appealed. **Vice Chairman Coiner** stated that if a family has a child that is in stress and has been denied the claim, this denial process could take weeks with a family who has a severely sick infant.

Ms. Taylor explained the following are what Blue Cross is prepared to offer in lieu of this legislation: 1) better physician outreach; 2) better job of reaching out to the families; 3) flag CPT codes and the diagnoses codes for these particular illnesses so it will go to the medical management staff.

Chairman Andreason asked, "What time frame will it take to put this in motion?" **Ms. Taylor** replied that they could have a team together by April. **Ms. Taylor** also assured the Committee that they were prepared to ask the Idaho Association of Health Plans, which is a coalition of seven insurance companies who cover most of the insured population of the State of Idaho, to present the Blue Cross plan to the Board and ask them to adopt their proposal.

Senator LeFavour stated that she was not quite sure what this proposal

will achieve for the families that need this formula for their children.

Ms. Taylor stated Blue Cross is covering the formula now for certain families when they meet the criteria and it is shown to be a medical necessity.

Senator Cameron stated by the insurance company identifying the claim and the CPT code immediately they can eliminate much of the delay. The companies working with the physicians will help the insured meet the criteria by which they will qualify the claim for payment.

Senator Stegner stated are you talking about putting in legal code for the State of Idaho medical technology that none of the Senators are adequately prepared to take action on. This legislation should be reviewed by the Healthcare Task Force which is a body that has historically evaluated and recommended this type of legislation.

Karia Stockdale, Kayden Stockdale, Christie Koger, Jacob Bernhardt, and Paul Terhaar testified in support of **S1107** and gave a brief history of their families dilemma after being denied coverage for the formula. (Attachment A)

Dr. Henry Thompson stated he is a pediatric gastroenterologist and there are three practicing in the State of Idaho. The time required to meet eligibility to get the formula covered is too long. What he sees in the office is when you can start the formula in children before they are critically ill you can stop the progression and get them healthy so that they can become normal two year olds. How do you identify eosinophilic gastroenteritis? Clinical history. When you have a baby that is breast fed who comes in and is passing blood in their stools you know the child is not going to get better unless you put them on an elemental diet. There is scientifically based evidence that shows within two weeks of being on an elemental formula 30% of them will be able to go to a more normal formula while the other two-thirds will not. If you catch these patients early and you hit them hard early they get better.

What he has seen is early intervention is absolutely critical. The claim process is not weeks it is months. We give patients all the samples we can get and we call representatives and have it shipped to their house. When they are on formula I can get the patients better fast. What he does not understand is parents who are trying hard to work and do not want the State to pay their way, but they can't get help from their insurance and have to figure out how to pay out of pocket for the formula. **CPT codes are inadequate right now to flag these out fast enough a better procedure needs to be developed. Only recently is there a code for eosinophilic disorder. Before this code they had to use vague terms such as diarrhea, blood in stools, abdominal pain, fussy infant and failure to thrive. Prior to these codes the patient would not meet the criteria of the insurance company. The only way to help the patients meet the criteria was for the him to perform an invasive procedure of placing the child under general anesthesia in the operating room and to perform an endoscope on them. Most of the time he does**

not need to do this invasive procedure if the patient symptoms are that they are young not thriving and wake up, are irritable, spit up blood, or has blood in the stool. Patients after being placed on the formula are usually well within four to six months. They are then able to introduce individual foods and the child is on to being cured. The procedures to treat these patients needs to be fast, early and the formulas available so the patient will not need these formulas as long.

Tim Olson, Vice President, Regence Blue Shield of Idaho, said in the attempt to respond to the marketplace their company has two new policies that cover these formulas because of guaranteed insurability and other products that have been developed in the past that met the needs of the consumers. However, we also have within the Department of Insurance our old products which exclude the medical food benefit. Blue Shield does not cover the food except when the condition is considered a congenital metabolic disorder. In those cases we will provide coverage as outlined by our plan. In 2008 we had one appeal for this food product and in 2009 we have had another appeal. In both cases we covered the food.

Senator LeFavour said people might choose one of your products and then have the baby and not know that they would need this particular coverage in an insurance product. The baby would then have a preexisting condition and ineligible for coverage under another policy.

Mr. Olson said that would be correct and would be covered eventually under the nine month standard.

Lyn Darrington representing, Blue Shield of Idaho, clarified when HIPPA passed in 1996 pre-existing conditions went away as long as a patient had previous qualifying coverage.

Senator Cameron said **Senator Bair** has had an opportunity to hear the proposals from Blue Cross and Blue Shield and their commitments to work with the other insurance providers within the State. They will identify these patients with CPT codes that come to the forefront of their claims procedures. Do these offers meet the goals of this legislation? If these goals and conditions are satisfactory, **Senator Cameron** would be willing as the Chairman of the Health Care Task Force to work with the Committee and other carriers over the summer to have a similar procedure to improve the outcomes for these patients.

Senator Bair stated he would be very grateful if the Health Care Task Force were willing to monitor this issue and make sure that indeed the health insurance community performed as they have proposed in this meeting. **Senator Bair** reminded them that this is a germane committee and has the right to bring a bill before them. In his opinion he does not have to go through an interim committee to have a bill heard. He would be very disappointed if the bill got referred to the Health Care Task Force Committee.

Senator Cameron said the offer that the companies have made would

make it faster by which a patient may qualify for the formula. His fear is even with the passage of this bill, there will be several entities that are not effected by the bill such as self-funded plans, large employer plans that are regulated outside of the State, and the uninsured. The procedure will remain essentially the same unless the malady is found to be medically necessary right of front. The CPT code will still kick the claim out and must go through the appeal process. It would be far better if the carrier identifies this patient through the CPT code and not deny the claim. The carrier will then inform the patient what they need to qualify for the formula.

MOTION: **Senator Cameron** moved to hold the bill in Committee and that it be placed in the record what Blue Cross and Blue Shield are offering in lieu of this legislation. 1) Better physician outreach; 2) Better job of reaching out to the families; 3) Flag CPT codes and the diagnoses codes for these particular illnesses so it will go to the medical management staff. The Health Care Task Force will monitor and review the progress and work with Blue Cross and Blue Shield and the other carriers throughout the remainder of the year. The motion was seconded by **Senator Lodge**.

SUBSTITUTE MOTION: **Vice Chairman Coiner** moved to hold the bill in Committee subject to the call of the Chair. The motion was seconded by **Senator Sagness**. A **Roll Call Vote** was requested. Senators LeFavour, Sagness and Vice Chairman Coiner voted aye. Chairman Andreason, Senators Smyser, Lodge, Goedde, Cameron, and Stegner voted nay. The substitute motion failed.

MOTION: **Chairman Andreason** then call for a **Roll Call Vote** for **Senator Cameron's** motion. Chairman Andreason, Senators Sagness, Smyser, Lodge, Goedde, Cameron, Stegner and Vice Chairman Coiner voted aye. Senator LeFavour voted nay. The motion carried.

Senator LeFavour requested a debate against the motion. She said this piece of legislation covers admittedly a very small segment of the population and just pulls in a small exception to what are standard practices for covering medications and medically necessary procedures that patients would take to be cured of an illness. This is the bare minimum of what we could do for these individuals. In voting for this motion we are allowing Blue Cross and Blue Shield to reserve the right to deny people coverage of these claims. What it indeed does, as what other individuals on this Committee have expressed, is delay the process and make it more complex and harder for this group of patients that we could help with this legislation. I will be voting against holding the bill in Committee.

Vice Chairman Coiner stated that this iniquity has come to the attention of the insurance companies in the last few months because of this legislation. They have had an opportunity to address the situation for a long period of time and they have chosen not to take action. We now have a piece of legislation addressed to the iniquity and he does not see that there is a lot in their offer. By holding this legislation in Committee they will postpone any remedy for sometime and looking at it over the summer drags the problem out further. I can't support this action.

Senator Smyser stated that it is her understanding that it will allow the insurance companies to be more thorough on the bottom line so the Committee will not have to come back to address the legislation.

Senator Smyser said she was confused. She understood that they would do a thorough investigation and look at all the alternatives available to them to help these families not prevent them from getting coverage.

Senator Sagness said he did not see why it takes a year to set something in place to help these families. Consequently putting some sideboards on this makes a lot of sense. Since the sideboards aren't there I am going to oppose the motion. He would like to see them have the opportunity to work this out and he believes has a possibility for resolution. He has seen a lot of delays on similar issues and this situation before us today just cannot be put off.

Senator Lodge said she heard the insurance companies say they would step up and try to get something done as soon as possible. Another concern she has is if the individuals do not have the insurance coverage and they don't choose a policy that has this coverage in it, they are not going to be covered anyway. Through medical management these insurance companies have stood up to try to help these families. She was encouraged by Dr. Thompson's testimony stating that if these children can get the formula quickly they could be healed quickly and be on their way to becoming healthy children. She will support what the insurance companies have proposed which would be immediate response.

Senator Goedde said he would point out to the Committee that there is not an emergency clause on this piece of legislation so it could not go into effect until July 1, 2009. He thinks the Committee has the opportunity for Blue Cross and Blue Shield to get their program up and running prior to that date.

Senator Cameron stated he thought Regence should be commended because they were coming out with a product that offers this coverage and being proactive. The only portion that is not covered are old products which our laws have prevented them from dropping. Blue Cross should be commended for being willing to identify CPT codes on the front end. We should let the marketplace correction system work. They seem to be working well and hopefully it will not take a year. No further action will be needed and the Committee won't have to pass the mandate and force them to do the right thing. By their commitment they are moving forward in a positive manner.

Senator Stegner stated we have been struggling with a problem that is larger than this issue. We are talking about the tragedy of having some families that make too much money to qualify for Medicaid and not enough money to pay for this formula themselves. The Committee is trying to solve that problem by mandate insurance that only covers so many of the people in the State of Idaho. It does not cover the Uniform Reciprocal Enforcement of Support Act (URESAs) plans that are not

subject to Idaho Law. This legislation would not be a complete solution. We should be talking to the Health and Welfare Committee about asking the Appropriations Committee for money for a repository of formula for doctors to use immediately. We have a bill with some very specific information in it that we have not talked about in two and one-half hours of discussion. The motion before us is to hold it in Committee that is no different than the motion that some of you voted to support to have it recalled subject to the Chair. We can bring this bill back if the Committee sees anything in the next 30 days that will significantly improve the situation by reconsideration of this bill. Here we are at 4:00 p.m. talking about things that are really not relevant to the consideration of this bill by Committee.

Senator LeFavour stated that it is all a question about what an individuals experience is with insurance companies. Mine like a lot of other individuals is not that good. The trust level is not there and she has to ask what kind of a nation does this to people.

Chairman Andreason stated his experience with insurance companies has been extremely satisfactory.

ADJOURNMENT: There being no further business, the meeting adjourned at 4:00 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 3, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED:

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

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Andreason** called the meeting to order at 1:33 P.M.

MOTION: **Senator LeFavour** moved to approve the minutes of February 19, 2009. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

MOTION: **Senator Smyser** moved to approve the minutes of February 17, 2009. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

MINUTES:

H40: **Relating to the Idaho Life and Health Insurance Guaranty Association Act**
John Mackey, representing United Heritage Financial Group, stated **H40** will amend the current code to align it with the provisions of the National Association of Insurance Commissioners Life and Health Insurance Guaranty Model Act. This will benefit Idaho policyholders of life and health insurance in the event their insurance company should become insolvent.

The Association was created in 1977 by the Idaho Legislature. Its purpose was to establish a method by which life and health insurance policyholders could be protected from loss in the event their life or health insurer became insolvent by providing for an association of life and health insurers to assume the insured risk of the insolvent insurer.

Idaho Code requires all licensed life and health insurance companies doing business in the State to be members of the Association. As members, they are both covered by the Guaranty Association and provide

the funding needed by the Association.

Under the current Idaho code, coverage limits are \$100,000 of life insurance cash value, \$300,000 of life insurance death benefit, \$300,000 health insurance claim, and \$300,000 aggregate for all benefits for any one life. Annuity coverage limits are \$100,000 cash value and \$300,000 pay out.

The H40 amendment expands coverage to include structured settlement annuities on page 1, lines 27 and 28. Idaho is the only state that does not cover structured settlement annuities. It clarifies that the Medicare Part C and D plans are not covered by the Guaranty Association, page 2, lines 33, 34, and 35. In the event a Part C or D provider should become insolvent, the Center on Medicare Medicaid Services (CMS) would quickly move those insured back to traditional Medicare or a new Part C or D provider.

Amendment 4308 increases the coverage limits for annuities from \$100,000 to \$250,000 present value. For annuities on payout mode, this change is from a maximum \$300,000 pay out to \$250,000 present value.

Senator Stegner said on page 2, line 36 to 38, you indicated this was specific language coming from the model acts. **Mr. Mackey** replied that it is model language. The lines that you refer to speak specifically to structured settlement activity. States differ in how they pay structured settlement claims. Some states have chosen to pay directly to the beneficiary and other states prefer to pay to the service organization that is managing the pay-out to the beneficiary. The State of Idaho pays the servicing corporation. If Idaho gets involved with a beneficiary and the servicing corporation are in different states then that is when these lines would be relevant in our procedures.

MOTION:

Senator Cameron moved that **H40** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**. **Senator Cameron** will be the sponsor of the bill.

S1126

Relating to the Unfair Sales Act

Pam Eaton, representing Idaho Retailers Association, stated this bill repeals Section §48-405A, *Idaho Code*, under the unfair sales act. Under current law retailers are prohibited from limiting how many of any one product can be sold. This law has not been enforced or followed for the last couple of decades. The common practice of retailers during the holiday season, when a hot new game system or toy becomes available on the market (cabbage patch kids and Wee's), they will limit the amount that a customer can purchase so they do not wipe out their entire inventory.

This law was brought to the Association's attention during the rice shortage this last year when retailers were trying to limit the rice purchases. One of the retailers had a customer point out the law to them.

This law does not work in today's marketplace and was put into place in the 1960's to protect consumers. Today's market with on-line auction sales and resell items makes the bill antiquated and no longer protects the consumer.

MOTION: **Senator Goedde** moved that **S1126** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**. **Senator Goedde** will be the sponsor of the bill.

S1122 **Relating to the Public Employee Retirement System**
Don Drum, Executive Director, PERSI, reminded the Committee that they had seen this legislation in RS form a few weeks previously and had asked for some amended language. This bill will amend three PERSI statues 59-1351, 59-1352 and 59-1355. Currently 59-1351 provides that a retired member who marries has a one year period during which he or she can make the optional retirement selection. The law provides that the election will become effective one year after the election. Under current law, if you were to marry and make the selection, you would have to wait two years before the selection became effective. Under the new language the election will become effective 90 days from the date of the election. Another change is on lines 17 through 19 of the bill and is intended to create consistency with the code. We will replace the reference to \$20 with the reference §59-1343 of *Idaho Code*. The bill amends subsection 59-1342 to clarify that a member with five years of membership service is eligible for disability retirement. Police officers, general members, firefighters are eligible on the first day. If a member was injured on the first day of their employment due to an occupational cause, injured or diseased, they would immediately be eligible for disability. The bill makes a technical correction to subsection 59-1355-1 to include a cross-reference to subsection 59-1322 4e and b.

MOTION: **Senator Sagness** moved that **S1122** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Sagness** will be the sponsor of the bill.

ADJOURNED: There being no further business, the meeting adjourned at 2:00 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 5, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED:

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

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Andreason** called the meeting to order at 1:32 P.M.

MINUTES:

GUBERNATORIAL APPOINTMENT: **Representative Max Black's** gubernatorial appointment to the State Insurance Fund Board will be rescheduled to be heard March 10, 2009.

RS18533A1 **Relating to Amendments to Section 1, H76** was removed by the sponsor.

RS18816 **Relating to Fire Protection Board**
Gary Rohwer representing, Idaho State Fire Commissioners Association, stated this is a housekeeping bill addressing two issues for the fire protection district. The first amendment will remove the county line representation requirement as the sub-districts are set-up. This will allow the Association to choose whether to become a three or five member district to balance the commission to meet the one man, one vote rule. The second amendment is to replace the oath of office requirement which stipulates it must be administered by the second Monday of January. The amendment will allow the oath to be administered in the month of January for smaller districts to comply with those meeting irregularly.

Joe Stear, Kuna Fire District, said their fire district encompasses Ada and Canyon County and the population balance is 5% Canyon with two commissioners and 95% Ada with three commissioners. This type of disparity is why we have asked for the amendment.

MOTION: On request by **Senator LeFavour**, granted by unanimous consent,

RS18816 was sent to a privileged committee for a print hearing.

S1116

Relating to Insurers and Organizations Offering Health Care Contracts

Senator Broadsword stated this legislation concerns orally administered chemotherapy medication. There are new treatments on the market that treat cancer differently than the old intravenous treatment. With the advent of the new medication it is causing more out of pocket expense for our citizens than they should have to undergo. Individuals buy an insurance policy assuming they have cancer coverage. When a physician prescribes one of the oral chemotherapy medications it is handled as a prescription benefit rather than a major medical benefit. The patient begins the oral course of treatment and it could cost them as much as \$3,000 or \$4,000 out of pocket a month. In some cases there are less expensive drugs and many patients pay only \$300 to \$900 out of pocket per month. If a patient has a health plan that covers chemotherapy medication it should cover that medication whether it is given orally or intravenously. No less favorably between the two is what the legislation specifically states and **Senator Broadsword** has provided the Committee a study from the American Society of Clinic Oncology for further documentation. The conclusion at the bottom compares IV administration versus oral. Oral chemotherapy drugs should provide a savings to the payers by avoiding costs associated with IV administration.

Senator Cameron said one of the issues of the oral medication is the overall cost of that medication. **Senator Broadsword** replied it is not the cost of the medication that is the issue, it is what is best for the patient. If the patient can take the medication from home and not have to go to the treatment center and subject themselves to all the other illnesses that come through the hospital it is better for the patient.

Senator Cameron stated in some cases, where it is deemed medically necessary, the insurance company is covering the medication as a major medical benefit, if it is better for the patient and less expensive. **Senator Broadsword** responded that she is aware that insurance companies do cover some of the oral treatment now under major medical. If the insurance companies are already covering some of these procedures having it in statute will clarify the practice.

Senator Cameron said some insurance companies contract out the pharmacy benefit so if a patient is buying a particular product they are really dealing with two companies. One handles the pharmaceutical and the other is handling the major medical. If this Committee makes a decision on what should be covered under major medical or pharmaceutical, at what point does the body draw the line on which medications should be covered. **Senator Broadsword** clarified what is addressed in this legislation is that the insurer treat these drugs no less favorably so that the patient themselves have no more out of pocket expenses for one method of treatment over the other.

Tim Olson, Regence Blue Shield, stated that their position is they are

opposed to the legislation as it is written. **Mr. Olson** introduced **Dr. Raulo Frear, Director of Pharmacy Services for Regence Blue Shield**, stated Regence must oppose S1116. In Oregon, after passage of a similar bill, in order to meet the intent of the bill some plans chose to move oral chemotherapy medication from prescription benefit over to the major medical benefit. In some cases members in Oregon lost good prescription benefits and when the oral chemotherapy drugs were moved over to the medical benefit they experienced higher out of pocket costs.

There are known unintended consequences based on Oregon's experience with this law, the bill language is ambiguous, and the benefit mandates such as this fail to take into account the regular changes in science and outcomes that should drive medical policy.

1. Unintended consequences. A similar law passed in the State of Oregon in 2007. Implementation of the legislation (SB 8) created confusion, in that the language allowed for different interpretation among plans as to how it would be administered. In some cases, as an unintended consequence, the patient cost burden actually increased for these medications. The State of Idaho can expect to see the same problems for patients that Oregon has experienced.

2. "No less favorable" language is ambiguous, undefined and problematic. Accompanying this text a chart was included showing an example of treatment options for patients with a particular type of breast cancer. Patients are typically administered three intravenous medications for the "first line" therapy of this cancer. For patients who do not respond, or relapse, a "second line" option of two oral drugs is typically used. How can "no less favorable" be defined under these circumstances, when different drugs, with differing routes of administration, administration schedules, and ingredient costs be used for the same patient?

3. Advances in science and outcomes should drive medical policy, not legislative action.

Heidi Low, Director of Government Relations, American Cancer Study, stated she was before the Committee in support of S1116. It is imperative that cancer patients are able to access the most appropriate and effective chemotherapy treatments available. When there is a significant disparity in cost, a patient is left with a difficult decision on whether they should take the medication that is most effective for the best treatment outcome and quality of life issues. For patients in rural areas it can take a significant amount of time to get into the treatment center and spend the day in treatment.

Joie McGarvin, representing America's Health Insurance Plans (AHIP), said that AHIP opposes S1116. This legislation addresses a very complicated issue because there are many treatment procedures for different types of cancer. The costs and clinical issues that underline this bill are complicated and they request that the bill be

further vetted through the Health Care Task Force.

Julie Taylor, Director of Governmental Affairs for Blue Cross of Idaho, stated S1116 is parity of coverage for orally administered chemotherapy drugs and is in opposition to this mandate. This bill interferes with the Individual Benefit Management Program. Under this program Blue Cross currently administers what this legislation requires. Where necessary and where a person does not have appropriate coverage under a drug benefit then they handle it under their medical management side.

There are unintended consequences with this legislation concerning how do deal with the emerging issue of cancer drugs. There are over 100 types of cancer caused by the malfunction of genes that control cell growth and division. There are approximately 750 drugs in the research and development pipeline to address the cancers. How does the medical field and the insurance companies deal with the huge emergence of these new drugs and high costs? Blue Cross has a physician leadership advisory panel and this was on their last agenda. Their job will be to determine how these drugs will be administered to assure that their members are getting cost effective, medically necessary, and evidence based coverage.

Senator Sagness stated having looked at the bill and then listening to the testimony he does not understand the problem that the legislation is addressing. It seems that the issue is far more complex then the bill addresses. This Committee should allow some time to address the legislation to deal with these complexities and whether the legislation is adequate to deal with the issues.

Senator Goedde said it was indicated that Blue Cross and Blue Shield were taking care of this problem. There is a vast majority of the uninsured, Medicare, etc. where this legislation would not apply.

Senator Goedde inquired about the percentage of the population this bill might address?" **Ms. Taylor** said in 2008 the Idaho population was 1.5 million and if you take out the population that is on Medicare, Medicaid, self-funded and uninsured that would leave you with a population of 922,000 and Blue Cross and Blue Shield insure 57% of this population.

Senator Stegner said how do you administer the appropriate treatment with the old model of insurance policies. These emerging drugs may need to be evaluated in the future in terms of being able to distinguish in policy what is and what isn't covered. **Dr. Dammrose, Physician, Blue Cross**, said the requirement is already in the Blue Cross policies. They cover major medical illnesses and whether that is treated as an in or out patient the coverage is there to treat the disease. The challenge is how to treat the disease most cost effectively based on science.

Lori Watts, St. Alphonsus, Social Worker in Cancer Care Center, stated she was testifying in favor of S1116. She sees the discrepancy between the oral and the intravenous medication costs daily. Patients

have insurance policies and think they are covered for cancer treatment but find that if the best treatment is oral medication either the coverage is not there at all or their co-pay is extremely high. There are some cancers that there is not a choice whether the patient can have intravenous treatment versus oral. Oral agents are becoming more state of the art evidence based and they want the patients to have access to appropriate treatment. Direct the insurance industry to support the treatment decisions being made by physicians for their patients. Rather than the reverse of being influenced or dictated by access to coverage for treatment.

Kurt Stembridge, Government Affairs Manager, Glaxo Smith Kline stated the no less favorable legislation was negotiated with the insurance lobby in Oregon. Glaxo Smith Kline is involved in support of this legislation for three reasons: 1) They make one of the oral medications; 2) They make a significant financial contribution to a philanthropic organization to help patients who cannot afford their medication and this fund is almost exhausted; 3) Patients bought medical insurance to cover major medical expenses and through this loop hole they are getting charged an exorbitant amount of money for access to these medications. There should not be a difference in the coverage of cancer treatment between oral and intravenous medication.

Senator Cameron asked **Mr. Stembridge** to tell the Committee about his company. **Mr. Stembridge** stated that Glaxo Smith Kline is a research based pharmaceutical company. They spend about \$5 billion every year researching diseases and medications. The average cost to bring a new drug to market is \$1 billion. **Senator Cameron** stated that the companies gross annual sales last year were \$49 billion. Could you tell us the name of your drug that would benefit by the passage of this legislation? **Mr. Stembridge** said Tykerb and it costs the patient about \$3,600 monthly.

Senator Cameron said in an Oncology Report article on oral chemotherapy they referred to whether these new oral drugs were necessarily, appropriate and safe. The article described some of the side affects and toxicity of some of the oral medications were compared to other treatment drugs. A report issued by the Journal of Managed Care Pharmacy speaks to the overall spending of oral chemotherapy drugs stating they are cost prohibitive causing insurance providers to raise their rates up to 24%. **Mr. Stembridge** responded these are costs that are built into the insurance plan. They can take oral cancer medication off the market today and everyone could get injectable therapy and the insurance plans would pay. These medications are prescribed by physicians and we expect physicians to make the best choices for their patients.

ADJOURNED: There being no further business, the meeting adjourned at 3:00 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 10, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED:

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

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Andreason** called the meeting to order at 1:31 P.M.

MINUTES:

RS18784 **Relating to Payday Loans, Senator Keough** stated the Committee had suggested amendments and **RS18784** before you today has incorporated those recommendations. The goal of this legislation is to make certain that any payday loan business operating outside of the State, within Idaho or over the internet adheres to State laws when engaging in business with Idahoans. The legislation provides a private rate of action for recovery of monies paid by borrowers to unlicensed payday lenders and enforcement methods for the Department of Finance.

MOTION: On request by **Senator Sagness**, granted by unanimous consent, **RS18784** was sent to Judiciary and Rules Committee for print and returned to Commerce and Human Resources for hearing. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Senator Smyser** stated pursuant to Rules of the Senate 39 (H), of the Idaho State Legislature, she has a conflict but still wishes to vote on **RS18784**.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** welcomed **Representative Max Black**, gubernatorial appointment for **State Insurance Fund Board** to serve a term commencing February 11, 2009 and expiring April 3, 2010.

Representative Black stated he moved to Boise in 1968 with USF&G insurance company and then purchased several small insurance agencies becoming an independent insurance agent. He then sold the businesses in 1991 and a few years later was elected to the Legislature

and has chaired the House Business Committee for the past eight years.

Vice Chairman Coiner asked **Representative Black** to give him his impression of the State Fund, the percentage of business it does per year and what it offers to the State of Idaho as opposed to private carriers. **Representative Black** explained the State Fund was created to be the insurer of last resort for individuals who could not find insurance through the private carriers. The State Fund has been a very stable fund for years because it insures all of the State, county and city entities. The type of risk the State Fund covers is workers' compensation.

H76

Relating to Employment Security Law

Pam Eaton, representing Idaho Retailers Association, said this bill clarifies and places in the statute the definition of direct sellers as independent contractors. For future legislation coming up that direct sellers do not get mistakenly misclassified.

Dean Heyl, Director of Government Relations, Direct Selling Association, stated the language proposed in this amendment has already been adopted in 37 other states. The amendment exempts direct sellers from the definition of "employment." The proposed amendment is almost identical and is based on Internal Revenue Code Section 3508, which gives direct sellers independent contractor status.

Senator Stegner asked for examples of who would be direct sellers. **Mr. Heyl** responded the standard direct sellers are Mary Kay, Avon, Amway, Pampered Chef, Kirby Vacuum, Melaleuca, Shaklee to name a few. **Senator Stegner** said there are two basic groups one would be selling in their home and another group would be selling in other people's homes and visiting door to door. The amendment is asking for a clarification of the status of individuals who have this occupation in the State of Idaho stipulating that they are not employees of a specific company. **Mr. Heyl** explained the independent contractor status is already established for the direct sellers. They are asking for a specific exemption to clarify that these individuals are not classified as employees. Many times there will be a misclassification of independent contractor legislation which looks at construction and common carrier trades. If there is a specific exemption they can refer back to this section and see that these individuals are not covered.

Senator Stegner said by passing this legislation what are we exempting these individuals from, is it unemployment insurance or worker's compensation. **Mr. Heyl** said the specific goals of this legislation is to exempt the direct seller from unemployment compensation. Idaho has never had direct sellers classified as covered under workers compensation insurance.

Senator Goedde stated he had a question for **Barbara Jorden, representing Idaho Trial Lawyers Association**, as he understood that the language in the amendment came from the Trial Lawyers. Under

the bill's current language some individuals were inadvertently being drawn into the bill. **Ms. Jorden** responded individuals that have a regular job. For example: a lawn treatment employee who in the process of treating a customer's lawn might put an advertisement flyer for their service on the door of neighbors. **Ms. Jorden** stated that there was a court decision in 1985 Burnekey vs. Thorton which was a process to determine whether people were performing direct sales. This is already in place in the law of Idaho, it is just not in the code. The amended language that is being added to the bill will codify that which is already in existence and eliminate some of the difficulties for the insurance companies in the application.

MOTION: **Senator Goedde** moved that **H76** be referred to the 14th order for amendment. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

H88 **Relating to Morticians**
Roger Hales, representing Bureau of Occupational Licenses, stated in order to be a funeral director or mortician individuals must meet certain qualifications one of them would be servicing an internship. Currently the code limits the internship status to two years. This bill proposes to give the Board the discretion to extend that two-year period for good cause. Good cause could be an individuals medical condition or active duty in the military. There are a number of reasons that someone might need a little more time to complete the internship portion of the training.

MOTION: **Vice Chairman Coiner** moved that **H88** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Smyser** will be the sponsor of the bill.

H89 **Relating to Barbers**
Roger Hales explained that this bill stipulates that when you get your haircut you have to use a licensed barber and that service has to be performed in a licensed facility. This bill provides certain exceptions to that licensed barber and facility requirement to encompass inmates who are incarcerated to extend that exception so the inmates do not have to have their haircut by a licensed barber. In the language they are giving control over inmates and their haircuts to the discretion of the correction department.

MOTION: **Senator Lodge** moved that **H89** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator LeFavour**. The motion carried by **Voice Vote**. **Senator Lodge** will be the sponsor of the bill.

H90 **Relating to Liquefied Petroleum Gas Public Safety**
Roger Hales stated this bill contains a new cap for facility licensing. Presently there is a general cap that deals with all licenses which are set at \$200. Currently in order to get a license for a large facility storing in excess of 10,000 gallons of liquefied petroleum gas that license fee is \$200. The major expense that this Board incurs is inspecting the

commercial facilities. The Board is amending language to allow them to raise the cap for the facility license only so that at some point in the future they can come back with a rule to raise the fee for that particular license.

MOTION: **Vice Chairman Coiner** moved that **H90** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**. **Vice Chairman Coiner** will be the sponsor of the bill.

H91 **Relating to Geologists**
Roger Hales stated this bill will open up qualifications for board members. The original language stated that geologists could not practice for twelve years and now they are setting the standard at seven years. They are including an additional power of the board on line 31 to allow the Board to enter into a mutual aid agreement and interstate contracts to help facilitate the practice and regulation of geology in the State. Clarifying the Boards power in the area of issuing subpoenas only in the context of a disciplinary matter and adding additional power where the Board seeks a civil injunction from the court. Setting forth certain requirements for the Board in terms of maintaining information about its applicants, date of application, place of business, qualifications, exam results, and other information that the Board deems necessary. The section that will be repealed is facilitated by the Bureau serving as the secretary for the Board maintaining all of the records. There are additional options for the Board concerning revoking a license including language that they may discipline the licensee requiring that they get additional education, may practice under supervision or levying a fine on the individual for up to \$1,000.

Senator Stegner said the appeal process for appealing any administrative fine is spelled out in the proceedings is covered in standard policy throughout to appeal a decision of the Board.

Mr. Hales stated any decision by the State Board of Governmental Agencies is subject to appeal under the Administrative Procedures Act; which allows any individual to appeal any decision of the Board.

MOTION: **Senator LeFavour** moved that **H91** be sent to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**. **Senator LeFavour** will be the sponsor of the bill.

H92 **Relating to Architects**
Roger Hales said the bill is clarifying language to establish when an applicant can start the exam process and the internship. Idaho is unique that there are two ways to acquire an architectural license. An individual can graduate with a degree, complete a three-year internship and then take and pass the exam. An individual can bypass the degree and get eight years of architectural experience equivalent to the degree approved by the Board as an equivalent to a degree, an internship and then take the exam. Individuals must graduate, have started or completed the internship then they are qualified to take parts of the

exam. The eight-year experience equivalent, have started or completed the internship and they are qualified to take parts of the exam.

Senator Stegner inquired if there have been any experience equivalent applicants for the exam in the past ten years. **Mr. Hales** said there are a few that apply each year, but they are in the minority.

MOTION: **Senator Sagness** moved that **H92** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**. **Senator Sagness** will be the sponsor of the bill.

H109 **Relating to the Idaho Contractor Registration Act**
Mr. Hales stated that this bill accomplishes three things: 1) it makes a technical correction to the name of the policy that contractors are obligated to possess and maintain for registration; 2) this makes available certain insurance information to insurance companies and claimants; 3) allows the Board to seek information from other states to confirm whether a contractor has surrendered their registration or license.

MOTION: **Senator Goedde** moved that **H109** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Goedde** will be the sponsor of the bill.

MOTION: **Senator Goedde** moved to approve the minutes of February 24, 2009. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

MOTION: **Senator Sagness** moved to approve the minutes of February 26, 2009. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

MOTION: **Senator LeFavour** moved to approve the minutes of March 3, 2009. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

Adjourned: There being no further business, the meeting adjourned at 2:17 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

- DATE:** March 12, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 117
- MEMBERS PRESENT:** Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour
- MEMBERS ABSENT/
EXCUSED:** Chairman Andreason
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENED:** Due to illness of **Chairman Andreason, Vice Chairman Coiner** called the meeting to order at 1:32 p.m.
- GUBERNATORIAL
APPOINTMENT:** **Vice Chairman Coiner** announced that the Committee was ready to take action on the appointment of **Representative Max Black** to the State Insurance Fund Board, to serve a term commencing February 11, 2009 and expiring April 3, 2010.
- Senator Goedde** made a motion, and **Senator LeFavour** seconded, that the Gubernatorial appointment of **Representative Max Black** to the State Insurance Fund Board be reported out with the recommendation that the appointment be confirmed by the Senate. The motion carried by **Voice Vote. Chairman Andreason** will be the sponsor of the candidate.
- H 41** **William Deal, Director, Department of Insurance**, presented **H41** relating to individual accident and health insurance policies (attachment #1). **Director Deal** introduced staff members **Shad Priest**, Deputy Director, and **Marcia Moer**, Consumer Affairs Officer, and **Tom Donovan**, Deputy Attorney General. He advised that the Department currently has oversight of individual limited benefit health plans. This amendment to *Idaho Code*, Section 41-4201, will give the Department authority to regulate limited benefit health plans marketed as group plans, making them subject to the same requirements as individual policies. He stated that these supplemental limited benefit plans include the type of plans that pay benefits for hospital confinement, physician only medical plans, and cancer plans.
- MOTION:** **Senator Goedde** made a motion, seconded by **Senator Smyser**, that **H41** be sent to the floor with a do pass recommendation. The motion carried by **Voice Vote. Senator Smyser** will sponsor the

bill.

H 75

Director Deal also presented **H75** relating to Life Settlements (attachment #2). He stated that the primary purpose of this Act is to provide protection to Idaho consumers who are interested in transferring their life insurance policies in exchange for compensation. This legislation was drafted using two model acts – one from the National Association of Insurance Commissioners (NAIC) and the other from the National Council of Insurance Legislators (NCOIL) – with the goal in mind to have a bill that would work in Idaho. He mentioned that some of the provisions of the NAIC and NCOIL model laws were not included in this act because Idaho has a very good existing anti-fraud statute and regulations that allow the Department to deal with Life Settlement transactions.

Director Deal stated that the Department worked closely with representatives from the Life Insurance Industry and Life Settlement Industry to develop this legislation. There are two parts to the bill. One relates to Stranger Originated Life Insurance Sales (STOLIS). STOLIS is a practice or arrangement that initiates solely for the sale of a life insurance policy that benefits a third party investor who, at the time of policy origination, has no insurable interest in the insured. **H75** defines this practice and prohibits it in Idaho.

The other practice regulated in **H75** is Life Settlements. Simply stated, a Life Settlement is an arrangement where an agent/investor offers to buy a life insurance policy generally from a senior citizen. This bill puts protections into place that require licensing and examination for Life Settlement providers or brokers. The agent will be required to keep detailed records and file disclosure statements with the Department. The Act requires that a policy must be in effect for two years before a Life Settlement can be entered into, and disclosure statements must be provided to consumers.

Director Deal noted that this legislation does not eliminate Life Settlements, but it does provide for the transparency that is needed in these transactions to protect Idaho consumers.

MOTION:

Senator LeFavour made a motion, seconded by **Senator Cameron**, that **H75** be sent to the floor with a do pass recommendation. **Senator LeFavour** will sponsor the bill.

H 192

Elwood Kleaver, CEO, Primary Health, presented **H192** relating to Health Insurance. His position as President of the Idaho Association of Health Plans brings him to the Committee to speak in support of H192 (attachment #3). This bill will create a new Chapter under Title 41, *Idaho Code*, to be known as the Idaho Health Carrier External Review Act. The Act will provide persons covered by health insurance plans a right to an outside independent review of a health carrier's decision to deny an insured's claim on the grounds the service is not medically necessary or is investigational. The new Chapter defines key terms, sets forth procedures and timeliness governing the external review process, including procedures for

expedited review in urgent care cases, and sets forth standards for qualifying independent review organizations (IRO).

The cost of the external review will be borne by the health plan and a decision by an IRO will be binding on both the health plan and the covered person, unless the covered person has a right to further review under federal law. If the covered member elects not to utilize this option, they retain all the rights that they have to pursue judicial remedies available to them.

Mr. Kleaver, advised that the increasing number of complex medical procedures, drug treatments and protocols make it almost impossible for any health insurance company to have all the knowledge on staff to make timely and expert decisions. An IRO engages board certified physicians, dentists, and other licensed professionals who are in active practices from many of the most prestigious medical centers throughout the country.

Currently, when a health plan utilizes an IRO the results are non binding; it is informational, and it is private to the health plan. Under this proposed Act, the decision by the IRO will be binding on the health plan and the covered member, unless the covered member has extended rights under the Employee Retirement Income Security Act (ERISA).

A covered member first must exhaust the administrative procedures that govern the relationship between a covered member and a health plan before utilizing the **H192** process. Once those procedures are exhausted, if a claim is denied on the basis that the procedure is investigational or not medically necessary, the covered member would be notified in writing that they may request an external review, by a team of experts, by contacting the Department of Insurance. The Department will then randomly assign an IRO to review the case. The legislation also sets forth the time allowed an IRO in rendering an opinion.

Mr. Kleaver took several questions of the committee related to the requirement of **H192** that the IRO's decision be binding on both the health plan and the covered member. The concern of the Committee was that those covered members with plans not subject to ERISA regulations (generally individual plans) would not have the same rights as those covered members with plans that are subject to ERISA regulations (generally a group issued plan).

Mr. Kleaver explained that plans subject to ERISA regulations are governed at the federal level and Idaho cannot limit the remedies granted under those regulations. Thus, the requirement that the IRO report becomes part of the administrative record in any subsequent lawsuit.

Additional concerns were expressed by the Committee that a covered member with a plan not subject to ERISA regulations might

not be aware that by choosing the IRO option they are waiving their rights to any further judicial review. **Senator LeFavour** pointed out that people who are facing a health care crises and have exhausted their appeal options, might not fully consider the consequence of choosing the IRO option. **Mr. Kleaver** advised that he is confident the specific language of the proposed legislation will ensure that the Department of Insurance make certain that the individual who chooses the IRO option is aware that they are waiving their right to further judicial remedy.

In response to questions of the committee, **Mr. Kleaver** stated that he would object to removing the language that makes the IRO decision binding on both parties. He noted the health plan will bear the burden of the cost of the IRO and will be bound by the decision of the IRO, and he believes the individual should also be bound by the decision. If the individual prefers not to pursue this IRO, there are judicial remedies available.

Mr. Kleaver advised the committee that currently the process of using an IRO takes two to three weeks. Under the proposed legislation there are specific provisions that will provide much faster decisions in life and death situations.

TESTIMONY:

Brad Eidam, attorney, representing the **Idaho Trial Lawyer's Association**, spoke in opposition to **H192**. He stated that the Idaho Trial Lawyer's Association applauds the efforts of the insurance industry to provide an expedited process to someone who has been denied a particular medical benefit. The problem that they have with this bill is the price that the person is being asked to pay for choosing the option of an expedited review. He is being asked to give up his or her rights to have a jury trial which is guaranteed by the Seventh Amendment of the Constitution. No judicial action or proceeding arising out of the IRO or the issues determined by the IRO shall be permitted if the plan is not subject to ERISA regulations. The covered member could not even ask the court to review whether the procedures were properly followed under this law.

Mr. Eidam stated that an insurance policy is a contract between the insurance company and the consumer who pays the premium and in return they expect coverage. He suggested that it would be more appropriate to put this language into the contract than enact legislation. He questioned the statement that there would be no cost to the covered individual, while on page 18 of this bill it indicates that a greater fee may be assessed by the Department of Insurance to be paid by the covered person at the time he makes the request for external review.

In response to several questions from **Senator Cameron** on constitutional law, **Mr. Eidam** advised that he does not practice constitutional law, and could not say whether the Seventh Amendment of the Constitution protects all citizens of this State

equally regardless of the type of policy they hold. He could not state a case where state law has trumped constitutional law; and could not cite a case where a person was allowed to give up their constitutional rights.

Senator Goedde noted that when you enter into binding arbitration you give up your right to judicial review. **Mr. Eidam** responded that depending upon the circumstances under which the contract was entered into, yes, you can.

Senator Stegner observed that this legislation is not mandating that anyone use this remedy; it is a voluntary option. If elected, it would create a contract between the insurance company and the individual, and the State court system would be bound to agree to it. **Mr. Eidam** indicated that is correct.

Senator Sagness indicated it had been his experience when a medical claim is denied the statement of denial clearly set forth the procedure required for appeal. He further stated he felt this kind of process is not uncommon and actually results in a substantial cost savings over traditional litigation. **Mr. Eidam** responded that his concern was for the individual who may not be familiar with appellate procedure, who may be suffering from a life threatening condition, and who may not understand what they are giving up. With regard to this process being a common one, he again applauded the efforts to try to expedite the review of a denial of a claim. He stated that this process will be very enticing to people who believe they need medical care immediately. The problem comes with the binding nature, and making sure individuals know what they are giving up when they elect the IRO process.

TESTIMONY:

Director Deal presented testimony in support of **H192**. He stated that this legislation has been prepared from a model act. There are 44 states that now use external review for claims resolution. The only states that do not have this type of legislation are Idaho, Mississippi, Nebraska, North Dakota, South Dakota, and Wyoming. He advised that in 6 of the 44 states legislation specifies that the IRO report is binding on both parties.

Director Deal emphasized the role the Department would have under this legislation. He stated that it is very important to the Department that the covered individual knows that this IRO process is an option, and if they want to seek legal remedy they can hire an attorney and pursue their claim through the legal system. It is also very important to the Department that if an individual elects the IRO process they know exactly what the process is, and that the report of the IRO will be binding, unless their policy is subject to ERISA regulations.

The Department will prepare the booklet outlining the external review process which will be attached to each policy. Trial attorneys have been invited to review a draft of that booklet. In response to a

question from the Committee, **Director Deal** indicated the Department would also make a draft of that booklet available for the Committee's review.

Vice Chairman Coiner asked **Director Deal** to address the language on page 18 of the bill which indicates that a greater fee may be assessed by the Department of Insurance to be paid by the covered person at the time he makes the request for external review. **Director Deal** advised that language was added as a safety valve in the event costs to administer the IRO process increase more than anticipated. He stated that there had only been three cases among the three major insurance carriers in this area over the last five years that would fall into this category. This language would allow the Department to seek additional funding from the Legislature if necessary.

In response to questions from **Senator Stegner**, **Director Deal** advised that the binding nature of the IRO process was requested by the insurance companies. He further stated that he agreed that if the insurance companies are going to the time and expense of the IRO process, then it should be binding. If it is not binding, then this legislation is not needed. He advised at the current time the insurance companies have an option for review which is non binding. If that review is adverse for the covered individual, the Department usually ends up with a complaint that they can't do too much about because the process has already been carried through.

TESTIMONY:

Steve Thomas, attorney, appearing on behalf of his client, Idaho Association of Health Plans, spoke in support of **H192**. Because the bill had been fully discussed by the Committee, **Mr. Thomas** stated he would confine his remarks to the Seventh Amendment question. He stated that arbitration is perhaps the most famous and well regarded technique commonly used today whereby disputes are resolved absent a jury trial. **Mr. Thomas** cited the Federal Arbitration Act and also advised the committee that State laws governing arbitration are found in *Idaho Code*, Sections 7-901 through 922. He quoted from Section 901: "A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable save upon such grounds as exist at law or in equity for the revocation of a contract."

Mr. Thomas indicated that as a matter of public policy arbitration is favored. He cited two Idaho Supreme Court cases:

1. Loomis v. Cudahay, 104 Idaho 106, holding that: "Under the Uniform Arbitration Act, arbitration and agreements to arbitrate are encouraged and given explicit recognition as effective means to resolve disputed issues."
2. Cady v. Allstate, 113 Idaho 667, holding that: "Due process does

not necessarily require judicial action but may be satisfied by fair arbitration proceedings.”

He stated that the process provided in **H192** is fast, easy and affordable for those not wishing to hire an attorney and spend two to four years chasing through the court process. He noted that trial lawyers are complimentary about how quick the process is under this bill. He stated from his perspective the insurance companies are taking on additional burdens with this legislation and the binding requirement is necessary.

MOTION:

Senator Cameron made a motion, seconded by **Senator Smyser**, to send **H192** to the floor with a do pass recommendation.

In support of the motion **Senator Goedde** stated he felt a review panel, composed of a group of professionals selected by the Department, would have a better ability to provide a decision than a group of people sitting on a jury. **Senator Sagness** stated he believes in the jury system, but the matters being discussed here are highly technical matters that might be better decided by people with direct expertise in the field. He has seen this process work, thinks it does save time and money, and in his experience does not deprive the individual of their rights. **Senator Cameron** stated that he sees this external review process as a benefit to the constituent and consumer. It gives them, through the Department, a party to go to without going through the litigation process. He encouraged the Committee not to get caught up in the concept that someone can give away their rights. He stated from his perspective the IRO findings needs to be binding; otherwise, there is no end to the process.

In opposition to the motion, **Senator Stegner** stated that he sees the value of an external review and it should be encouraged, but he feels a non binding mid-step would be to strengthen the external review process. This would put Idaho in line with the majority of the states in the nation. **Senator LeFavour** stated she cannot support the binding requirement of this legislation. She does not feel comfortable enough with the process to ask an individual to give up all rights to judicial recourse.

The motion carried by **Voice Vote**, with **Senator Lefavour** requesting her “Nay” vote be recorded. **Senator Cameron** will sponsor the bill.

H 169

Gavin Gee, Director, Idaho Department of Finance, presented **H169** relating to the Residential Mortgage Practices Act (attachment # 4). He introduced **Mike Larsen**, Bureau Chief, Consumer Finance Bureau, and the principal drafter of **H169**. **Director Gee** reviewed the history of The Housing and Economic Recovery Act of 2008, which included a provision that mandated state licensing or registration of all mortgage loan originators. Title V of the new law, The Safe and Fair Enforcement Mortgage Licensing Act of 2008

(The S.A.F.E. Act), requires states to implement a system of licensure by July 31, 2009, meeting the federal minimum standards of The S.A.F.E. Act.

The purpose of **H169** is to implement the federally mandated minimum standards of The S.A.F.E. Act. It repeals existing law and replaces it with the new Idaho Residential Mortgage Practices Act. This bill preserves existing regulatory oversight language while incorporating the requirements of The S.A.F.E. Act. This bill also establishes, as authorized by The S.A.F.E. Act, a state mortgage recovery fund in place of a surety bond requirement for mortgage brokers, mortgage lenders, and mortgage loan originators. The bill closely follows model legislation developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, which has been approved by HUD as meeting the federal standards of The S.A.F.E. Act.

Director Gee advised that the Department has worked with Idaho financial institutions and the Idaho mortgage industry in preparing this legislation. It has also worked closely with the members of the Idaho Mortgage Industry Advisory Board, representing both the Idaho Mortgage Lenders Association and the Idaho Association of Mortgage Brokers. Both of those Idaho mortgage industry associations have expressed support for this legislation.

In response to a question from **Senator Goedde**, **Director Gee** identified the Mortgage Recovery Fund as a fund in lieu of a surety bond that is funded by the industry. The industry pays fees into this fund that are similar to what they would pay for a bond. This fund is capped at \$1.5 million. He estimated, based on the current number of licensees, that this cap should be reached within three years. Once the cap is reached, the Department, at its discretion, may reduce or adjust those fees.

MOTION:

Senator Goedde made a motion, seconded by **Senator Lodge**, that **H169** be sent to the floor with a do pass recommendation. The motion carried by **Voice Vote**. **Senator Goedde** will sponsor the bill.

ADJOURNMENT:

There being no further business, the meeting adjourned at 3:00 p.m.

Senator Charles Coiner
Vice Chairman

Carol Deis
Secretary

Lois Bencken
Assistant Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 17, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour

**MEMBERS ABSENT/
EXCUSED:** None

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

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

**GUBERNATORIAL
APPOINTMENT:** **Chairman Andreason** welcomed **Thomas P. Baskin**, gubernatorial appointment to the **Idaho Industrial Commission** to serve a term commencing March 13, 2009, and expiring January 13, 2015.

Mr. Baskin stated he is an Idaho native, born and raised in Lewiston. He attended the University of Idaho, both as an undergraduate and as a law student, graduating in 1981. Shortly after graduation he moved to Boise and joined the law firm of Imhoff & Lynch, which at that time was a defense firm in town. He began practicing in the area of worker's compensation more by accident than by design, but by 1987 his practice was almost exclusively devoted to the defense of Idaho worker's compensation claims and it has remained so ever since. He stated that he has tried over 50 cases in front of the Industrial Commission, and argued 11 or 12 appeals of Industrial Commission cases to the Idaho Supreme Court.

Mr. Baskin advised that his clients include a number of private sureties and a number of self insured private employers in the State. He stated he is conscious that there may be some concern about the fact that he has worked primarily as a defense attorney and has done very little claimant's work. He explained that generally in insurance law an attorney practices in either defense work or plaintiff's work and that there are not many attorneys who do an equal amount of both. He stated that he believes that the worker's compensation laws are crafted by the Legislature, that they are construed by the Supreme Court, and they are to be applied by the Industrial Commission. He is aware

of the admonition in those laws that in doubtful cases, workers' compensation laws are to be construed in favor of a finding of compensation, and that the laws are to be applied in a simple and summary fashion. He assured the Committee that he does not have an agenda or philosophy that would favor employers at the expense of injured workers.

In response to several questions from the Committee, **Mr. Baskin** advised the Committee that his wife, Nancy, is also an attorney and has worked for a number of years as a law clerk for senior Federal District Judge, Ed Lodge. He has two sons, Sam and Jim, ages 13 and 11, who are both active in scouting. He has a strong tie to the community and an interest in making sure that laws, including worker's compensation laws, apply to the benefit of all Idahoans.

Mr. Baskin responded that he agreed that the worker's compensation laws should be as simple and summary as possible and that settling a case short of litigation is preferable. He advised, with respect to the current fee schedule in the worker's compensation statute, he believes the imposition of the fee schedule is necessary to control the worker's compensation cost for the State. He feels the reimbursement schedule for physicians is adequate, but acknowledges that there are challenges within the fee schedule for hospitals that will need to be worked through.

Mr. Baskin discussed the recent Supreme Court decision requiring a surety to pay statutory rates for all medical services for a claimant if the claim is first denied and then upon appeal the Industrial Commission finds in favor of the claimant. He explained when a claim is first denied the injured worker may have access to private insurance, or perhaps makes a deal with providers for a reduced rate. Whatever deal the injured worker makes with that provider is unknown to the worker's compensation system. If the Industrial Commission determines a claim to be compensable and was wrongfully denied by the surety, the claimant is entitled to receive 100 percent of the invoiced amounts of the medicals that were incurred prior to that date of compensability. The reasoning being, the worker's compensation carrier should not have a right to impose the fee schedule where it had denied the claim and left the claimant on his own to make whatever arrangement he could to obtain care.

Mr. Baskin reviewed the responsibilities of the members of the Commission, stating one Commissioner is expected to represent the interest of labor, another is expected to represent the interest of employers and sureties, and he will be the attorney representative; which role he sees as looking at both sides of an issue.

Chairman Andreason thanked **Mr. Baskin** for appearing before

the Committee, and announced that a vote would be scheduled for the next Committee meeting.

H 108

Representative John Rusche, District 7, relating to insurance, presented **H108**. The purpose of this revision is to allow individuals who are unmarried, are under the age of twenty-five years, and are financially dependent to remain under their parents' health insurance coverage. This will allow health insurance coverage for those who are part-time students or laid off from work and cannot afford health insurance on their own. He advised that with more Idahoans losing jobs, this is a small attempt to prevent uninsurance in that young adult population. Health insurance carriers have pointed out that it may bring younger, healthier individuals into the insurance pools, possibly lowering the cost for those purchasing premiums. This bill has been reviewed by Blue Cross, Blue Shield, The Idaho Association of Health Plans, and the Health Care Task Force. All of those entities are in support of this legislation.

MOTION:

Senator Goedde made a motion, seconded by **Senator Lodge**, that **H108** be sent to the floor with a do pass recommendation. The motion carried by **Voice Vote**. **Senator Goedde** will sponsor the bill on the floor.

RS18857

Senator Lodge presented **RS18857** relating to telework. This Legislation is proposed to encourage government and private agencies to develop telework/work-at-home policies and programs for their employees.

**UNANIMOUS
CONSENT REQUEST:**

Senator Cameron asked unanimous consent that **RS18857** be sent to the Senate Judiciary and Rules Committee for printing, with the request that it be referred back to the Senate Commerce & Human Resources Committee for further action. **There were no objections to the request.**

H 110, H111, H112

Steve Keys, Deputy Administrator, Division of Building Safety (DBS), stated that he would be presenting three bills before the Committee to establish a five-year registration interval for apprentices in the plumbing, electrical, and HVAC trades. They also establish either three or two-year registration intervals for specialty apprentices and trainees. The registration intervals, as established are adequate for most apprentices and trainees to complete their training and achieve journeyman status (attachment A).

Mr. Keys stated that currently annual registrations are required, and many apprentices fail to accomplish their renewals in a timely manner. This results in the apprentice losing credit for work experience, and puts a great strain on DBS staff to expedite renewals. The five-year registration fee is \$50, which replaces annual fees of \$5, \$10, or \$15 depending upon the trade. The current cost to issue a license or registration at the Division of Building Safety has been pegged at \$20 to \$25, which, in the

absence of a multi-year registration, would require an increase in the annual registration fee. The goal of these three bills is to establish uniformity in the fees for apprentice registrations, while avoiding the need to increase fees to cover the cost of issuing annual registrations. These bills are widely supported by the industries affected.

H 110

Mr. Keys stated that **H110**, relating to plumbing and plumbers, would establish a five-year registration interval for plumbing apprentices and a three-year registration interval for specialty plumbing apprentices. The current annual registration fee of \$5 is replaced by a five-year registration costing \$50, while the specialty apprentice fee goes to \$30 for three years to encompass the two-year experience requirement.

MOTION:

Senator LeFavour made a motion, seconded by **Vice Chairman Coiner**, that **H110** be sent to the floor with a do pass recommendation. The motion carried by **Voice Vote**. **Senator LaFavour** will sponsor the bill on the floor.

H 111

Mr. Keys stated that **H111**, relating to electrical contractors would establish a five-year registration interval for electrical apprentices along with a three-year registration for specialty trainees to cover the two-year experience requirement. The differences between **H110** and **H111** include the addition of language stipulating that the DBS maintain all verification of employment files and completion certificates from educational providers in the apprentices file, which will be accessible online by the apprentice. This is a specific concern because DBS has traditionally tracked such data in the electrical apprentice's file. The legislation also prorates the unearned portion of an apprentice registration towards the purchase of a journeyman's license. The other boards did not include these provisions in their legislation. The current annual registration fee for electrical registrations is \$10.

MOTION:

Senator LeFavour made a motion, seconded by **Senator Sagness**, that **H111** be sent to the floor with a do pass recommendation. The motion carried by **Voice Vote**. **Senator LaFavour** will sponsor the bill on the floor.

In response to a question from **Senator Goedde**, **Mr. Keys** advised that traditionally the apprentices hold on to their verification of employment forms and submit them with their application for a journeyman's license. If they are submitted earlier, the agency will include them in the file.

H 112

Mr. Keys stated that this bill establishes a five-year apprenticeship registration for HVAC apprentices with a two-year registration interval for specialty apprentices, in line with the one year experience requirement for HVAC specialties. The current annual fee for HVAC registrations is \$15.

MOTION:

Vice Chairman Coiner made a motion, seconded by **Senator Goedde**, that **H112** be sent to the floor with a do pass

recommendation. The motion carried by **Voice Vote. Vice Chairman Coiner** will sponsor the bill on the floor.

**UNANIMOUS
CONSENT REQUEST:**

Senator Stegner asked unanimous consent that **H110, H111, and H112** be sent to the consent calendar. **There were no objections to the request.**

H 113

Mr. Keys stated that **H113** would allow the Idaho Plumbing Board to establish, via administrative rule, continuing education requirements for journeymen and contractors. The plumbing industry has voiced strong support for the establishment of continuing education requirements.

Senator Goedde inquired whether the issue with compliance bond claims being made to the State rather than to the surety was addressed with this legislation. **Mr. Keys** responded that although there has been extensive discussion on this, to date the proposals to change the requirement had not gained support. He stated that one claim had been settled in the past year, and the claimant received the proceeds

MOTION:

Vice Chairman Coiner made a motion, seconded by **Senator Goedde**, that **H113** be sent to the floor with a do pass recommendation. The motion carried by **Voice Vote. Senator Lodge** will sponsor the bill on the floor.

H 115

Mr. Keys stated that **H115** would establish qualification requirements for inspectors of modular buildings separate and distinct from the multiple requirements currently encompassed in *Idaho Code*. Currently DBS must dispatch a minimum of three inspectors, often with multiple trips by each, to complete required inspections of modular buildings. All modular buildings are required to go through an extensive plan review process before permits are issued for their construction. This change will facilitate the use of inspectors with multiple certifications to complete the inspections, which in turn will result in cost savings to DBS, and will facilitate the assembly line approach being utilized to construct modular buildings. Inspectors verify that all work conforms to the approved plans and specifications. The bill will also facilitate inspections of Idaho-tagged modulars constructed in out-of-state plants, where the requirement that plumbing and electrical inspectors be experienced journeymen has proven unworkable.

Senator Goedde inquired whether the cost of education of these new modular building inspectors had been taken into consideration in the fiscal note. **Mr. Keys** advised that the process has already begun and there is very little cost involved.

MOTION:

Senator LeFavour made a motion, seconded by **Senator Stegner** to send **H115** to the floor with a do pass recommendation. The motion carried by **Voice Vote. Senator LeFavour** will sponsor the bill on the floor.

H 188

John Eaton, Government Affairs Director, Idaho Association of Realtors, presented **H188** relating to Idaho Real Estate License Law (attachment B). This legislation clarifies that a brokerage and its licensees may represent two or more buyers who wish to make an offer for purchase on the same real property, provided that the brokerage or its licensees have advised the buyers in writing of the same. Further, this legislation clarifies that the duties owed to clients do not result in imputed knowledge between licensees of the brokerage, when they have no reason to have such knowledge.

Mr. Eaton emphasized that this legislation does not change any current practices regarding real estate transactions in Idaho, but is proposed in response to a recent Montana Supreme Court decision ruling that Montana statute was written in such a way to imply that if a brokerage represented two individuals looking for similar types of property it could be a conflict of interest. Idaho's statute is similar to Montana's, and this is an attempt to clarify Idaho's statute to avoid a potential problem. In addition, this legislation seeks to clarify that if a client sues a broker, agents in the office that have not had contact with the client, or who may not be aware of an agreement between a broker and a client, are not deemed to have knowledge of that agreement simply because they work in the same brokerage.

In response to a question from **Senator LeFavour**, **Mr. Eaton** advised that if an agent is acting on behalf of a broker in a transaction with a client, the broker would be deemed to have imputed knowledge of the actions of the agent in his capacity as the principle. However, other agents in the brokerage that are not involved in the agreement would have no reason to have such knowledge.

MOTION:

Senator Goedde made a motion, seconded by **Senator Lodge**, that **H188** be sent to the floor with a do pass recommendation. The motion carried by **Voice Vote**. **Senator Lodge** will sponsor the bill on the floor.

H 189

Mr. Eaton presented **H189**, relating to Idaho Real Estate License Law (attachment C). This legislation clarifies that parties involved in a real estate transaction may instruct a broker or a licensee to deposit moneys into a trust account with a third party, provided that the broker maintains a record of the transaction. The legislation removes the need for a real estate broker to deposit funds into its trust fund account if the parties to the transaction instruct the broker to deposit the funds with a third party such as an escrow company. He advised that the Real Estate Commission and the industry believe this additional ability will allow agents to better serve their clients, while continuing the necessary oversight of the funds.

MOTION:

Senator Smyser made a motion, seconded by **Senator Goedde**,

that **H189** be sent to the floor with a do pass recommendation. The motion carried by **Voice Vote. Senator Smyser** will sponsor the bill on the floor.

H 190

Mr. Eaton presented **H190**, relating to Idaho Real Estate License Law (attachment D). He stated that current law requires that, for purposes of a brokerage representation agreement, the agreement contains a “legally enforceable” description of the property. In situations where a land owner hires a brokerage to represent it regarding land that is in development, legal descriptions are often changing. This legislation would change that requirement to provide that such agreements contain a general description of the land which sufficiently identifies that property and evidences the agreement of the client and the real estate broker. Such a description is not a metes and bounds description. This change will only affect agreement for professional brokerage services. All contracts for the sale of real property will continue to require an enforceable legal description.

Mr. Eaton noted that this simply eliminates the requirement when a seller contracts with a brokerage to put a piece of property up for sale which does not yet have a legal description, such as condos under development. He emphasized that a legal description will still be required on a purchase and sale agreement, so no property can change hands without properly identifying the property.

MOTION:

Vice Chairman Coiner made a motion, seconded by **Senator Goedde**, that **H190** be sent to the floor with a do pass recommendation. The motion carried by **Voice Vote. Vice Chairman Coiner** will sponsor the bill on the floor.

H 191

Mr. Eaton presented **H191**, relating to Liens and Foreclosures (attachment E). This legislation removes the requirement that a Property Foreclosure Disclosure Form be printed on canary yellow paper. The Idaho Association of Realtors and Real Estate Commission want to help protect consumers, but feel the requirement that the form be yellow creates an additional step in the process that does not provide any additional protection for the consumer. He also pointed out that current industry practices often include the electronic signing and transmission of documents. This form is the only form of the 26 forms maintained by the Association that is mandated to be on a specific color of paper.

Mr. Eaton advised that this notice is actually aimed at alerting the consumer about a particular type of mortgage rescue scheme whereby a person will search for homeowners that are close to being foreclosed on, and offer to rescue or save the home. This is commonly called “equity stripping” and is a fraudulent practice. Often times the equity stripper will offer to pay the amount needed to prevent the property from going into foreclosure in exchange for the owner signing over their deed to the property.

The former owner is then usually granted a lease with an option to buy on the property. Shortly after the new owner takes possession, they will find a way to make sure the occupant violates the lease agreement and evict them from the property. The end result is that equity stripper now owns the property and all of the equity the prior owner had in the property.

The Committee held a lengthy question and answer session with **Mr. Eaton** regarding the foreclosure process, the paperwork required, and just how and at what time the Property Foreclosure Disclosure Form is used. **Mr. Eaton** advised that if a homeowner uses a realtor in the transaction they will see a reference to the Disclosure both in the Seller Representation Agreement, and the Purchase and Sale Agreement. They will see the Disclosure for the third time with the foreclosure process. He stated the yellow Disclosure Form is mostly a problem with the Purchase and Sale Agreement, which is commonly transmitted by fax or e-mail and the proposal to eliminate the yellow Disclosure Form at the time of foreclosure is mainly for consistency.

TESTIMONY:

Senator Elliot Werk, District 17, spoke in opposition to **H191**. **Senator Werk** asked the page to distribute copies of a Property Foreclosure Disclosure Form which he indicated was printed on yellow paper, then faxed, and copied, to support his position that text on yellow paper could be copied and faxed without noticeable problems (attachment #6). He stated that the intent in requiring the Disclosure Notice be on yellow paper was so that it would stand out to the homeowner, and he felt this was particularly important at the time of foreclosure.

Senator Werk stated that getting rid of the requirement for yellow paper on contract documents seems reasonable, but he would propose the Committee consider sending **H191** to the 14th Order for an amendment requiring the use of yellow paper for the Property Foreclosure Disclosure Form sent to the homeowner at the time foreclosure is initiated. Also, to make this form more robust by requiring that it be printed using a 16-point font.

The Committee continued its discussion with **Senator Werk** and **Mr. Eaton** relating to the protection of the consumer from equity strippers, legal ramifications should the statute require the use of yellow paper and white paper is actually used, and the pros and cons of increasing the font size on the Disclosure Form. **Senator Werk** stated that he did not think the accidental use of white paper rather than yellow paper would be actionable, because the homeowner would have to prove that they had not received the Disclosure Form on yellow paper.

MOTION:

Senator Goedde made a motion, seconded by **Senator Cameron**, that **H191** be sent to the floor with a do pass recommendation.

SUBSTITUTE

Senator LaFavour made a substitute motion, seconded by

MOTION: **Senator Sagness**, that **H191** be sent to the 14th Order for Amendment.

Chairman Andreason requested the secretary take a roll call vote: **Chairman Andreason** - Nay; **Senator LeFavour** - Aye; **Senator Sagness** - Aye; **Senator Smyser** - Nay; **Senator Lodge** - Nay; **Senator Goedde** - Nay; **Senator Cameron** - Nay; **Senator Stegner** - Aye; **Vice Chairman Coiner** - Nay. The substitute motion was defeated six to three.

MOTION: **Chairman Andreason** requested the secretary take a roll call vote on the original motion: **Chairman Andreason** - Aye; **Senator LeFavour** - Nay; **Senator Sagness** - Nay; **Senator Smyser** - Aye; **Senator Lodge** - Aye; **Senator Goedde** - Aye; **Senator Cameron** - Aye; **Senator Stegner** - Aye; **Vice Chairman Coiner** - Aye. The motion carried Seven to Two. **H191** will be sent to the floor with a do pass recommendation. The motion carried by **Voice Vote**. **Senator Goedde** will sponsor the bill on the floor.

ADJOURNMENT: There being no further business, the meeting adjourned at 3:00 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

Lois Bencken
Assistant Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 19, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED: Senator Goedde

GUESTS: See attached sign-in sheet.

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

CONVENED: **Chairman Andreason** called the meeting to order at 1:31 P.M.

MOTION: **Senator Sagness** moved to approve the minutes of March 5, 2009. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

MOTION: **Senator Smyser** moved to approve the minutes of March 10, 2009. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

MINUTES:

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** announced that the Committee was ready to take action on the appointment of **Thomas Baskin** to the Idaho Industrial Commission. **Mr. Baskin** had appeared at the March 17, 2009 Committee meeting and had been appointed to serve a term commencing March 13, 2009 and expiring January 13, 2015.

Vice Chairman Coiner moved to approve the appointment of **Thomas Baskin** to the Idaho Industrial Commission be reported out with the recommendation that the appointment be confirmed by the Senate. The motion was seconded by **Senator Sagness**. The motion carried by **Voice Vote**. **Senator Lodge** will be the sponsor of the candidate.

S1152 **Relating to Worker's Compensation**
Senator Davis stated the bill before you deals with the exempt ability of workman's compensation benefits. Historically, Idaho has provided that worker's compensation benefits are not assignable and are exempt from all claims and creditors. The policy behind this is the individual could receive periodic or lump sum benefits that are intended to provide for

compensation for wages and, in addition, for the payment of ongoing anticipated medical obligations. When Congress modified the bankruptcy code under 11USC 522 A(3)(a) the legislation is written that makes it more difficult for individuals who have become substantially impaired to be able to claim those benefits if they had the benefits paid to them from another state. For example: if an individual moves to the State of Idaho from another state and if they have to file bankruptcy they will lose all of their workers' compensation benefits. The court will allow attorneys' if they specifically recognize in *Idaho Code*, §72-802, that the compensation benefits are payable to a resident of the State under a plan from another state.

MOTION: **Vice Chairman Coiner** moved that **S1152** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**. **Senator Smyser** stated pursuant to Rules of the Senate 39 (H), of the Idaho State Legislature, she has a conflict but still wishes to vote on **S1152**.

S1151 **Relating to Payday Loans**
Senator Keough stated this bill is to make sure that payday lenders that lend to Idaho residents follow the same regulation whether they have a business establishment in the community or the internet. This bill will provide a private right of action for a resident that may have borrowed money from an unauthorized lender and allows the Department of Finance authority to enforce cease and desist orders.

MOTION: **Senator LeFavour** moved that **S1151** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

H159 **Relating to Insurance**
John Mackey, representing United Heritage Financial Group, stated that this bill will expand the availability of economical group life insurance coverage beyond the traditional groups defined in the current code.

The bill will add National Association of Insurance Commissioner language to *Idaho Code*, Section §41-2002, establishing the criteria by which the Director of the Department of Insurance determines eligibility of non-traditional groups for group life insurance coverage.

Traditional groups as defined by the Code are limited to employee groups, labor union groups, debtor groups, public employee groups, and credit union member groups.

The bill will expand eligibility groups at the discretion of the Director, to include, but not limited to, non-traditional groups such as, church member groups, adult student groups, bank account holder groups, and community volunteer groups such as emergency first responders. Twenty-three other states have already adopted similar legislation (Attachment A).

Senator Sagness noted that the bill be extended to include certain

groups in the legislation. Does the bill make provision for the addition of others without having to change the statute. **Mr. Mackey** responded that on page 1, line 25 through 29, states the criteria that a group must have in order for the Director to approve them as a group eligible to apply for group life insurance.

Senator LeFavour said the bill appears to regulate anything that proposes healthcare benefit. **Mr. Mackey** stated that the Code narrowly defines who qualifies as a group for group life insurance. **H159** simply is passing on discretion onto the Department of Insurance by the Director. If the group meets the criteria in 3a, I, ii, iii, then the Director would have the authority to qualify the group as a group eligible for group life insurance.

Senator Stegner said on line 24, of the bill it states “that the Commissioner shall find” and he believes that there is a Director over the Department of Insurance. **Senator Stegner** asked **William Deal, Director, Department of Insurance**, if he would like the bill to refer to him as the Director in place of Commissioner. **Mr. Deal** responded that the bill should be amended to reflect his correct title.

Senator Stegner noted for clarification a group makes application to the State Department of Insurance and the Director would handle the issue of findings that the criteria are met, and then if they qualified they would be authorized as an eligible group in the State. **Mr. Mackey** responded that was correct.

MOTION:

Senator Cameron moved that **H159** be referred to the 14th order for amendment. The motion was seconded by **Senator Lodge**. **Senator Cameron** stated pursuant to Rules of the Senate 39 (H), of the Idaho State Legislature, he has a conflict but still wishes to vote on **H159**. The motion carried by **Voice Vote**.

H217

Relating to Motor Vehicles

Trent Wright, representing Idaho Automobile Dealers Association, stated that he represents the franchise dealerships for the State of Idaho, but not the used car dealerships. This legislation was drafted by the Association to deal with franchise agreements in the event that an agreement has to be terminated either by the dealer or manufacturer. The bill addresses who would be responsible for the repurchase of the current inventory on the dealership floor and would include the specialty equipment, tools, parts and other current supplies that are offered for sale by the manufacturer. The bill establishes the time frame for reimbursement by the manufacturer to the dealer. The statute excludes any allowances already paid to the dealer by the manufactures. They have worked with the Alliance of Auto Manufacturers and General Motors to craft the legislation (Attachment B).

This legislation has never been needed for the Association. It has only been drafted because of this unusual economic time that the industry finds itself caught up in. In the past, if a dealer wanted to exit the industry, there were at least at dozen potential investors by the weeks

end ready to take over that dealership. While the manufacturers are receiving Federal Bail-Out Assistance, our dealers have not received any assistance and are struggling to stay in business weekly.

This legislation goes forth to establish a set of guidelines in the event that a dealer needs to exit the industry because it is not viable to be in the dealership business. The manufacturer would come in and repurchase the inventory on the floor and use their dealership distribution system nationwide and reallocate those cars to other dealerships.

Chairman Andreason inquired if the sales are getting any better? **Mr. Wright** responded that in February that approximately 25% of the State's entire dealer network of 1,700 new and used did not sell a single new vehicle in the month of February.

Senator Cameron inquired how many dealerships are going out of business on a monthly basis. **Mr. Wright** responded on the franchise side they have lost five franchise dealers to date and they expect another four to six percent of the States 123 franchise dealers to do so by mid-summer. On the used car side of the business they are losing anywhere between four to six used car dealers a week, but at the same time we are signing up anywhere between four to six used car dealers who are looking at this as an opportunity to get into the industry at a low point.

Senator Cameron observed that this legislation has a standard effective date. The Senator asked **Mr. Wright** would he care to amend the bill and place an emergency clause on the bill which will change the effective date to begin immediately. **Mr. Wright** responded that he would be very appreciative if that would be the will of the Committee.

MOTION:

Senator Cameron moved that **H217** be referred to the 14th order for amendment to include changing the effective date. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

ADJOURNED:

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

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 24, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED:

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

GUESTS: See attached sign-in sheet.

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

MINUTES:

RS18877C1 **Relating to the State Insurance Fund**
Senator Goedde advised that a couple of weeks ago the Supreme Court handed down a decision involving a state insurance plan and the way dividends are paid. The bill before you will provide a retroactive repeal of Section 72-1915, *Idaho Code*, which is one of two pieces of *Idaho Code* that deals with dividends for the State Insurance Fund. The Fund complies with Section 41-2044 which is the insurance part of the code. A section of code was missed when the bill was originally drafted.

UNANIMOUS CONSENT REQUEST: **Senator Cameron** asked unanimous consent that **RS18877C1** be sent to a privileged Committee for printing. **There were no objections to the request.**

H163 **Relating to Scrap Dealers**
Michael Kane, representing Idaho Sheriff's Association, presented **H163** relating to the modernization of the buying and selling of scrap metal. **Mr. Kane** advised that the entire chapter on buying and selling be repealed because it is inadequate and antiquated.

Scrap metal theft has become an increasingly large problem in the State of Idaho and elsewhere. Individuals are stealing catalytic converters, bronze plaques, funeral urns, etc. and selling them. This bill is not designed to make it difficult for the scrap metal dealers to do business. It is designed to catch the individuals that are stealing the scrap metal.

The bill defines what scrap metal is and how it can be sold and what cannot be sold. On page 1, line 27 defines commercial property and a series of items that would belong to a state or governmental agency, private entity, agriculture and Idaho Power. These items cannot be sold at all unless it can be proven that they are the actual owners of the metal. Page 3 defines the rules on what you have to do if you are going to sell scrap metal. The language creates a pawn shop ordinance context. Identification must be provided, address, and the seller must sign a form stating that the metal is not stolen. This would allow law enforcement to follow-up on a case of investigation of scrap metal that has been stolen. Commercial businesses that sell scrap metal would have a designated seller from their company that was allowed to process their scrap.

There is a five-day period to report to law enforcement if you have reason to believe that scrap metal has been stolen and the dealer has to hang onto the metal for ten-days before they may sell the metal. The bill sets forth misdemeanors for scrap metal dealers knowingly selling scrap metal that is stolen. If the crime is committed twice, it is a five-year felony.

Rich Hahn, representing Idaho Power, stated their company has helped draft this bill before you because of the losses that they have incurred. In 2008 with replacements of materials that was stolen and labor to replace the material it cost the company \$100,000. The major concern of the company is the safety of their employees in the theft of this metal. The theft of wiring from power poles takes away the grounding of the distribution line to provide safety if there is a problem with the system and for the employee's protection in repairing the power pole. Control devices on some pieces of equipment that has to be read, the thieves cut the grounding wire off again putting the safety of our employees in jeopardy and forcing the control device to operate improperly. A substation site is a secure area with a fence surrounding it which has grounding wire on the fence for safety. The thieves cut the grounding wire off the fence parameter causing employee safety risks. If the employees go to the installation they have to do a walk around inspection before they can enter the property to make sure everything is safe. Idaho Power has supplied a picture description of their commercial property to the scrap metal recyclers. If the thief goes to a metal recycler and does not have a commercial account as a utility representative or an electrical contractor, there would be no reason why the individual would have the defined commercial property in their possession.

Senator Sagness inquired are there enhanced penalties for theft of this equipment and the compromised safety of the individuals working with the equipment. **Michael Kane** advised that there are no enhanced penalties in this legislation, it is not automatically a felony to steal wire or grounding most of the cases often turn into grand theft cases.

MOTION:

Vice Chairman Coiner moved that **H163** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator**

Cameron. The motion carried by **Voice Vote.** **Senator Smyser** will be the sponsor of the bill.

H222

Relating to the Juvenile Corrections Act

Teresa Baker, Deputy Prosecuting Attorney, Ada County

Prosecuting Attorney's Association, presented **H222** relating to the worker's compensation coverage for juveniles who are performing community service work. This bill would allow the premiums that are collected by Ada County or any other self-insured county to apply those funds toward the worker's compensation self-insurance. Currently Ada County has been sending the funds that have been collected to the State's Insurance Fund and they have been returning them to the Association because we are not insured by them. Last year there were 1500 juveniles performing community service under this program paying the 60 cents per hour, which converts to \$12,660. These funds plus future funds would be pooled into Ada County's reserves that they use for their own self-insurance.

Ms. Baker took several questions from **Senator Cameron** inquiring on how the juveniles performing the community service for Ada County will be insured for workers' compensation under the county's self-funded plan. **Ms. Baker** advised that Ada County has sought a third party insurer to cover these juveniles.

Senator Goedde stated he presumed that when the State Insurance Fund sends back the funds to the Association it goes into the pool for your worker's compensation premiums. **Ms. Baker** replied that this is correct. **Senator Goedde** stated are you aware of any State Insurance Fund payments for claims for injured juveniles under your program. **Ms. Baker** stated there have been no claims.

MOTION:

Vice Chairman Coiner moved that **H222** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Lodge.** The motion carried by **Voice Vote.** **Vice Chairman Coiner** will be the sponsor of the bill.

H220

Relating to the Division of Building Safety

Chairman Andreason stated that the sponsor has asked him to hold the bill for further consideration before being heard by the Committee.

H173

Relating to the Department of Administration and Group Insurance

Teresa Luna, Chief of Staff for Department of Administration,

presented **H173** relating to retiree health care and covered the four main points of the legislation: 1) freezes the State's subsidy to early retirees; 2) it removes Medicare eligible retirees and dependents from the State's Health Care Plan; 3) it requires that non-Medicare eligible retirees retire directly from State service in order to qualify for the plan; 4) any new employee hired after July 1, 2009 will no longer be eligible for any retiree medical benefits. The rest of the bill will go into effect January 1, 2010 to allow the retirees to find other health care benefits.

The House made some amendments which included: raising and freezing the stated subsidy in the legislation from \$100 to \$155 per

month; and adding language regarding the advisory committee.

Senator Sagness asked that **Ms. Luna** clarify the amendments. **Ms. Luna** said the amendments were made at the request of Idaho Public Employee's Association (IPEA) and included language on Section 2, line 15, did read "an advisory committee may include" now reads "an advisory committee will include" one active and one retired employee. Other language which was added in sections that the Department of Administration would consult with an advisory committee before making major decisions on these plans.

Senator Sagness stated that during the legislative process of this bill there was discussion of providing assistance to individuals on Plan D that have very high prescription costs and will fall into the donut hole. He does not see the language in the bill before the Committee. **Ms. Luna** replied that the "donut hole" which equals the coverage cap in Part D which is the prescription drug plan. Because of this cap they do have a rule bracket and intent to promulgate rules that will allow the State to reimburse retirees up to \$2,000 for two years for out of pocket costs toward the donut hole. This will not solve the problem for every individual that will fall in the donut hole, but it does help some of the individuals. The Administration Department has a drafted rule and intends to pursue the two-year up to \$2,000 reimbursement.

Senator Sagness inquired what the State's plans are in providing assistance to retirees' who have moved to Medicare Advantage Programs, and expected these health insurance benefits in their retirement and Congress may either adjust the subsidies on the Advantage Programs or get rid of them. **Ms. Luna** said they have a process in place to work with the retirees to make sure the individuals that are currently on the State's plan do not fall through the cracks. The Department will be working with Blue Cross on a regular basis when the 2,200 retirees move to a private plan in the next nine months. The Department has held meetings around the State and seen more than 50% of the retirees that will drop off the State's plan. They will swing around the State one more time with a benefit fair asking vendors to accompany them at these meetings.

Senator Goedde inquired if the Department had advised the retirees of the Senior Health Insurance Benefits Advisors (SHIBA). **Ms. Luna** stated that they had advised the retirees of this assistance and it is on their website. As they traveled the State and held the meetings they had a SHIBA representative accompanying them at every meeting.

Donna Yule, Idaho Public Employee's Association (IPEA), spoke in opposition to **H173**. She stated that when this bill was introduced in the House two representatives on the House side met with IPEA and the Department of Administration to negotiate changes to the legislation. IPEA's major concern about the legislation is the 200 to 400 State retirees who will fall into Medicare's donut hole and they were advised by the Department of Administration that this was off-limits to this negotiation. After the House bill passed, **Ms. Yule** met with a few

members of this Committee and as a result IPEA was asked to draft an amendment to address the donut hole retirees. The amendment was rejected out of hand. Another amendment postponing the date retirees would be required to transition off of State insurance from January 2010 to January 2011 to allow more time for retiree's to seek other avenues of medical coverage was denied.

IPEA believes it is important to put together a plan to reach every State retiree over the age of 65 with a face to face meeting, even in their home if necessary, to transition them to a private plan. This will take some time and this is why we believe an extra year would be a good compromise for the bill. The Department of Administration refused to consider the change that had been proposed by **Chairman Andreason**. If the Committee will not allow the extra 12 months to make sure all the retiree's are contacted and helped in the transition to an individual health insurance plan, then IPEA will oppose H173.

Chairman Andreason stated he had proposed the 12-month transition amendment to the Department of Administration.

Chairman Andreason said in the Statesman Newspaper, Idaho Treasurer Ron Crane, said he is not concerned about the liability now, but it could hurt the States credit rating in the future. It is also fair to say that up to this point the rating agencies have not expressed a great amount of concern for the size of our liability. Based on that statement **Chairman Andreason** felt that there was good reason to change the date from January 1, 2010; which allows only nine months to educate and change over these elderly retirees to a private plan. By changing that date to January 1, 2011 it would give the retirees an additional 12 months for the transition. With the additional 12 months the Department would be able to meet with every retiree that will fall into the donut hole and help them switch over to the private sector. If some of these retirees are not helped, they might lose their homes or die because of the increase in out of pocket prescription costs.

Senator LeFavour questioned how much a retiree might pay out of pocket for prescription drugs a month if they fall in the donut hole. **Ms. Luna** responded that currently out of pocket is \$4,300 of the gap. The Part D Plans cover the first \$2,500 and then the retiree would fall into the coverage gap or the donut hole which is \$4,300 wide and then Medicare catastrophic coverage picks back up. The Department's intent with the \$2,000 rule is that we know that by moving to these private plans the vast majority of our retirees will save about \$155 a month in premiums or \$1,800 per year. If the retiree has high prescription drug usage that savings is going to cover the first piece of the gap and for those who go further into the donut hole the \$2,000 reimbursement would cover the other end of the gap. The problem that lies within this is that Medicare says that if you are reimbursed for any of your out of pocket coverage it is not actually out of pocket. The small numbers of retirees who would go all the way through that gap this \$2,000 reimbursement just extends how long it takes them to get to the catastrophic coverage. The Department knows that there are between

200 and 400 retirees that will fall into the \$4,300 hole, only about 8% of the retirees have the claims to get them through it. Most of them will fall into the donut hole and they will never get out of it. They will never spend more than about \$2,000 and most of that will be offset by the premium savings.

Senator LeFavour said so this is a retiree living on a fixed income and under this proposal will have to cover a couple thousand dollars of additional costs. **Ms. Luna** replied for the 8% that would be correct. **Donna Yule** replied the \$4,500 and the donut hole however that does not include the out of pocket that they will be spending before they get to the donut hole which would be close to \$6,000. **Ms. Luna** stated that was incorrect. Any money that the retirees spend for co-pays for prescriptions leading up to that donut hole do count. For instance, a high prescription drug user spends \$500 to \$600 toward co-pays before they hit the first \$2,500 maximum, that \$500 does count toward the \$4,300 gap.

Vice Chairman Coiner inquired as to what other savings retirees may have by being covered on a private plan which might cover glasses, hearing aids, and dental. **Ms. Luna** stated that the vast majority of the retirees, approximately 80%, will save about \$150 per month by moving onto these private plans. These private plans offer extra benefits that the State currently does not provide. They will get some dental, vision and hearing on these plans. These plans also work on a co-pay system rather than a coinsurance system which is what the State currently offers. The Department has calculated the savings based solely on premiums but there are other savings to be realized by moving to the private plans.

Senator Goedde asked if **Ms Luna** had tried to calculate what the fiscal note might have been if **Chairman Andreason's** amendment had been adopted. **Ms. Luna** stated it costs the State \$5.1 million a year to run the retiree's program for the Medicare eligible retirees and would be a \$5.1 million impact to the general fund.

Dede Shelton, Associate State Director for Advocacy with AARP, said that AARP was asked to provide a statement regarding **H173** which could have an impact on many AARP members who are retired from state employment. AARP has more than 189,000 members in Idaho with almost half of them being retired. **H173** changes the State's commitment to state workers and is of great concern to AARP and those members who are State Retirees. AARP does understand the pressures put upon the State by the current economic climate knowing they are significant. The State must address these challenges but they must be addressed in a thoughtful way. AARP's greatest concern is the State's provision for those State employees' who were promised health care benefits throughout their dedicated careers only to discover that they are losing this promised benefit. State workers choose to work in the public sector for many reasons, including the promise of a stable retirement. Changing this simply breaks a promise. If retroactive changes are going to be made to retirees, who are 65+ every effort

should be made to address the financial needs of those individuals who will be severely impacted as those facing major expenditures because of their prescription drugs. Many Idahoans are faced with deciding whether to pay for their prescription, mortgage/rent, utilities, gas in their vehicles or buy food. Their dollars are not stretching as far as they use to do.

AARP understands reasons for this legislation but would like to see keeping the promises made to State employees as the State's top priority for those public servants recognized for their commitment to the State of Idaho and its citizens.

Don Brennan, member of the IPEA and a retired State employee, stated he worked for the State of Idaho through the Division of Vocational Education for 25 years and was proud of that service. **H173** will not do anything to help at least 200 to 400 retirees who fall into the donut hole. There are 52 supplemental Medicaid plans and they do little to assist the retirees with their medications. Let me use myself as an example. His health has not been good. He has had non-Hodgkin's lymphoma, a heart attack with a five-way bypass, prostate operations and still has prostate cancer. As a result of his afflictions he takes ten different medications per day and one of the medications costs nearly \$350 for a 30-day supply. The current state insurance plan has a \$18 deductible charge. **Mr. Brennan** stated with his drug prescriptions he will fall into the donut hole in early April and then he will be paying \$1,000 per month for prescriptions (this dollar amount provided by SHIBA). Under the supplemental plans there is a \$40 deductible on most prescription drugs, making out of the pocket expenses even higher. The supplemental plans push generic drugs, which some doctors will not prescribe. He would pay his fair share of the State Plan if the present State Insurance Program could be continued.

Mr. Brennan said this is a human problem, one that can be fixed by this Committee and he requests that if they should pass this bill that the effective date be amended to January 1, 2011 to allow more time for transition.

Senator Goedde inquired as to why would giving you another year fix the problem. All it would provide is \$2,000 to \$4,000 savings in prescription costs. **Mr. Brennan** replied it will not fix much for him because he understands the legislation but there are still around 50% of the retirees that have not been notified and do not understand what action to take in selecting a private plan.

Senator Sagness clarified there are about 13,000 retirees and approximately 1300 retirees attended the Department of Administration hearings around the state would mean 10% have been informed.

Richard Rogers, retiree, stated that he will fall into the donut hole because he has rheumatoid arthritis. He worked for the State for 27 years and the reason he worked there was the benefit package. He is an engineer and could have made a better salary in the private sector

but chose the State's benefit package for the future. The Department of Administration has had a year to get out information on this change and it is still confusing. **Mr. Rogers** has estimated his out of pocket costs annually for prescription medication will be approximately \$6,000. One of his medications is \$1,800 per month. There are many retirees out there that do not have the resources to pay for the donut hole. He would like the bill amended to allow the retirees that will be affected by the donut hole be allowed to stay on the State's Health Insurance Plan.

Pete Peterson, retiree, said he worked for the Department of Transportation for 20 years. He finds the projection of an \$800 million shortfall by 2016 to be totally bogus. As rapidly as health care costs are rising he feels the shortfall of \$800 billion or even a trillion by 2016 to be a more realistic figure. To be honest he did not know that anyone can predict what the shortfall will be by 2016. He has no faith in long range projections. He asked the Committee to jump into his imaginary time machine and move ahead to the Idaho of March 2013. This Idaho is much different then the Idaho of today. The unemployment rate is at 2% instead of 8 or 9%. Taxes are stable and the State coffers are full. The millennium fund is brimming over and there is not a single pothole to be found on any of the state highways. Butch and Mr. Gwartney are preparing to saddle up and ride off into the sunset and only now can you see the effects of **H173** which was passed back in March 2009. State employees have only major benefits and their pay now lags 20 to 25% behind the private sector. What little morale State Employees once had has been completely stomped out. Many vacancies in State Government cannot be filled because there are no applicants. The applicants that the State gets are not worth hiring. If government were the same as the private sector, you would just increase State salary by 20 to 25% to match the salaries of the private industry. Somehow he is a little doubtful that there will be a huge number of legislatures who will rush forward to propose a gigantic surge in pay for State Employees. The bottom line is that the Legislature in trying to solve an imaginary problem with **H173** in its current form has created a myriad of problems that will take decades to unravel. Finally, he does not buy the mantra of running government like a business. If government was the same as business then there would only be one word not two. He believed that **H173** would have very bad consequences.

Chairman Andreason stated that he has pushed to get the bill amended and has not been successful.

MOTION:

Vice Chairman Coiner moved that **H173** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Stegner**.

Senator Stegner stated this Committee has been working on this issue for a very long time. This represents one of the truly difficult positions that individuals in the Legislature are placed. We have to make votes that we don't like to make but this one, for the second year in a row, is an extremely difficult decision to make. We are reducing the health benefit for the most vulnerable individuals who have devoted a tremendous amount of service to the State of Idaho. The problem is

that we are in the same boat as every employer in the entire nation. The State is faced with the critical decisions that are facing every employer and family which is the rising health care costs and how we fit those costs into limited resource budgets. If this bill fails, the Joint Finance Appropriation Committee (JFAC) will have to find another \$4.9 million this year to pay the cost of this bill not passing. The Committee is not making arbitrary decisions here that we haven't gone over in minute detail for a long time. The Legislature has asked the Department of Administration to continually come up with strategies to interact with the retirees and provide the leadership on how this transition will proceed. **H173** must go forward. It might be an easy solution to add another year to the effective date of this bill but it means real dollars to the State of Idaho right now.

Vice Chairman Coiner said this bill would be a horrible decision if you did not have the Medicare and Medicare Advantage alternatives for the retirees. Making this decision helps our current employees and helps our retirees. They will be better off and will have cheaper insurance than if we don't make this decision. There are retirees that are not Medicare eligible because of the joint rating and the subsidy they will be receiving. Non-retirement age employees will not have the Medicare eligibles on top to raise the cost of insurance for everyone. For the Medicare eligibles they will have better coverage outside then with the State Plan. Many of the plans will give them dental, vision, hearing aids and some advantages that the State Plan does not include. When we look at the greater good, the majority of the retirees will be far better off with this legislation. Unfortunately, there will be retirees that will fall in the donut hole, the 200 to 400, and we will see how that happens. The majority of the 200 to 400 will still be better off that go into the donut hole because their needs are not enough to take them through it. They will have savings through the other advantages of the private plans and will be at worst even. He will be personally following up with the Department of Administration to make sure that SHIBA will be available to help with the transition of these retirees. We will be making every effort we can with the retirees that will be in the donut hole. We will work with the drug manufacturers, if they cannot afford their medication, to enroll them on programs to get them their medication.

Senator LeFavour stated why did we create a retiree health plan in the first place. The only answer that came to mind is the State did not want to place the retirees in a position of insecurity or uncertainty when they would be living on a fixed income. The plan that is before us today does not do this. There are retirees that will suffer badly under the proposed bill. If it was a different plan and it didn't have the donut hole problem she could support the legislation. When there is a bill that leaves individuals with such potential costs this is a serious problem. The one year delay would allow some extra time for these individuals to select the proper course of action. The Committee cannot in good conscience throw this many retirees off of what we have promised them in terms of security. The plan is not fair.

Senator Sagness stated he is a retired State Employee and he

chooses not to recuse himself. He had faculty and staff that reported to him and he knows how hard they worked. He watched them progress through the early 1980's when the budget times were more difficult than they are now. The supervisors for the state would say "you are not making as much money as the private sector. The State provides good benefits and will continue into retirement and the State will meet their commitments." This bill before us bothers him greatly with this issue and I know the economic situation the State is in now but every possible effort should be made to assist the 200-400 donut hole individuals.

Senator Sagness said that he wanted to lecture the Department of Administration concerning their communication. The dismal results of the meetings around the State this summer that only reached approximately 10% of the retirees' population to inform them that the State was in the process of dropping them off the plan is appalling. Human Resource Departments around the State should have been briefed with information and then passed that onto their employees. **Senator Sagness** reported that he had checked with some of his colleagues around the State to see if they had been informed and they did not know about transitioning the retirees off the State's Insurance Plan. They didn't even know about the meetings and **Senator Sagness** would have been one of the employees not informed because he is not on the State plan; but knew of this legislation from last session. There is no reason why State Agencies cannot work together in terms of providing information to the retirees. **Senator Sagness** advised that **Vice Chairman Coiner** will make every effort to see that the retirees are informed. **Senator Sagness** encouraged the Department of Administration to work on their communication skills and do a better job in relationship to getting the retirees informed and assisting them in seeking private insurance.

MOTION:

Chairman Andreason requested a **Roll Call Vote**. Vice Chairman Coiner, Senators Stegner, Cameron, Lodge and Smyser voted **aye, total of five**. Chairman Andreason, Senators LeFavour and Sagness voted **nay, total of three**. The motion carried five to three.

Senator LeFavour requested to make a substitute motion and she is torn as to which motion to make because there is no magic promise if we hold this bill off a year that the 200-400 individuals in the donut hole will not be affected. **Senator LeFavour** said she would like to see a better proposal but we are not ready to put this in place now.

SUBSTITUTE MOTION:

Senator LeFavour moved that **H173** be referred to the 14th order for amendment. The motion was seconded by **Senator Sagness**. **Chairman Andreason** requested a **Roll Call Vote**. **Chairman Andreason, Senators LeFavour and Sagness** voted **aye, total of three**. **Vice Chairman Coiner, Senators Stegner, Cameron, Lodge and Smyser** voted **nay, total of five**. The motion was defeated five to three. **Vice Chairman Coiner** will be the sponsor of the bill.

Chairman Andreason stated that he would hope that the Department of Administration can make a tremendous headway in educating and moving the retirees into the private sector so they will not be left in the

donut hole when this transition is complete. The Chairman asked **Ms. Luna** if she could accomplish the smooth transition? **Ms. Luna** responded the Department will work toward that Mr. Chairman.

ADJOURNMENT: There being no further business, the meeting adjourned at 3:04 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 26, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED: None

GUESTS: See attached sign-in sheet.

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

CONVENED: **Chairman Andreason** called the meeting to order at 1:34 P.M.

MOTION: **Senator Sagness** moved to approve the minutes of March 17, 2009. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

MOTION: **Senator Smyser** moved to approve the minutes of March 19, 2009. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**.

H170 **Relating to the Sale of Lead Acid Batteries**
Representative George Eskridge, District 1, advised with fluctuations in lead pricing the value of battery cores in the market has increased significantly. As a result, the distributors of automotive batteries have increased their battery core charge to \$10.00 and passed the charge along to the wholesalers and retailers. *Idaho Code* restricts core charges at the retail level to a \$5.00 deposit amount. The retailers charge a \$10.00 deposit but they can only charge the purchaser the \$5.00 deposit. **H170** addresses the inequity under Section §39-7003, line 21, it states when any new lead acid battery is purchased an additional fee of \$10.00 will be charged unless a used battery is returned for a refund within 30 days. If the purchaser brings the used battery into the retailer when he purchases the new battery, he does not pay the \$10.00 deposit. He just leaves the used battery with the retailer. This deposit charge of \$10.00 is more of an incentive for a consumer to recycle the battery and reclaim their deposit money.

MOTION: **Vice Chairman Coiner** moved that **H170** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Vice Chairman Coiner** will be the

sponsor of the bill.

SCR110

Supporting and Encouraging All Employers to Implement Telework Policies and Programs

Senator Lodge stated the legislation before you is about telework. Reasons for consideration of telework in today's work place are high gas prices, disability concerns, work-life balance demand, aging population in the workforce, pollution, non attainment concerns, and traffic congestion just to name a few. Encouraging Idaho to continue to explore and develop available resources to assist in the improvement and availability of the appropriate technology infrastructure which will aid employers and the employees in maximizing the full potential of telework within the State of Idaho. At the present time, many government agencies, such as the IRS, US Courts, and Bureau of Reclamation are using telework. The employees that use telework can enjoy the benefits of increased leisure time, more participation in their children's activities, higher morale and productivity. Employers find that there is less absenteeism during the cold and flu season. It is easier for special needs employees to continue to be productive workers and this would also include individuals who are recovering from surgery or illness. Telework could cut the business costs by 90% in real estate savings for physical office space. This would encourage businesses to relocate in Idaho or have employees in Idaho work for them.

Senator Lodge advised that she would like to tell a short story about Amanda, one of her students. Amanda got married and the marriage did not work out and she had two small children to support. She had gone to college and was a CPA. Amanda wanted to home school her children so she sought employment that would allow her some flexibility. She now works from Caldwell, Idaho as an accountant for a firm in Colorado and Arizona. She teaches her children during the day and participates in their activities. In the evening she telenetworks into those companies and performs their accounting. This is a real benefit for someone in a rural area to be able to have a good paying job and yet be able to spend time with their children. Work-life balance is the real cost savings included in telework.

Senator Lodge expounded on the statistics of telework stating that the State of Arizona estimates their employees who telework drive 5.25 million fewer miles and endure 181 fewer hours of stressful driving each year, that alone is a good reason. Traffic congestion wastes 2.9 billion gallons of gas in the United States each year which is a \$78 billion annual drain on the economy. A teleworker can save more than 2,000 gallons of gas a year plus the reduction of emissions and pollution and the wear and tear on public roads and reduction of traffic congestion. The average five day commuter dispenses eight tons of pollutants into the environment each year.

The rural employment opportunity's telework encouragements are numerous. Jet Blue Airlines hires mothers in Utah to do their reservations. These are some of the reasons the Nampa Chamber of Commerce asked about this resolution. It would be a zero minute

commute and a new mind set which would bring the work to the employee rather than the employee to work. Technology improvements are the key to telework which will include teleeducation and telemedicine. Improvements allow for virtual face to face interaction crucial to building relationships.

Senator Lodge has seen North Idaho's network that connects the State Hospital in the north and Boise. You would think that you were right in the room. Broadband per mile is less expensive than roads and who knows what technology holds for the future. By encouraging the business community and agencies to develop a telework policy this will allow us to get a head start on the future.

Senator Sagness responded that he strongly supports telework policies within the business community and the State. The education field has used teleeducation extensively and it has allowed students to enter a classroom anywhere in the State without a commute. He would like some emphasis placed in the resolution that communication and cooperation occur among all of these agencies as it relates to the development of an infrastructure for telework. In many state governments there are procedures occurring that would tie directly together with similar agencies and communication of the innovations are not forthcoming. **Senator Lodge** replied if you can get your agencies and businesses behind the legislation then the information gets out and spreads. The ability to do broadband access into the rural communities and our homes gets out to individuals and they are more willing to accept the technology that is in place to give them this access. Think of what we can do for our rural health clinics through this broadband access. We need to emphasize the telework piece of the resolution so we can get the businesses and agencies behind this so they can help promote the idea.

MOTION: **Senator Goedde** moved that **SCR110** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Sagness**. The motion carried by **Voice Vote**. **Senator Lodge** will be the sponsor of the bill.

H220 **Relating to the Division of Building Safety**
Jeremy Pisca representing Idaho Building Contractors Association, ran through the history and background of the issue dealing with the implementation and adoption of State Building Codes. In 2002 there was legislation that put together a State Building Code Board that would evaluate all of the building codes, make recommendations for adoption, and then adopt them for the State. Since that time there has been a number of discussions and concerns between the parties involved in the State Building Code Board and the Association has been involved in negotiations to try and fix the process. It has taken the Association three years to get to this point but all of the parties that have worked on this have come together to bring you a consensus piece of legislation. Earlier this week Sun Valley was opposed to the legislation, but since yesterday has withdrawn their opposition.

There is a nine-member building code board in the statute today. The

make up of that board is one member from the general public, a local fire official, engineer, architect, two building officials, contractor, disability's community advocate and modular building industry. As part of the compromise the group has agreed to allow one more contractor onto the Board. They will add an additional building contractor so there will be representation and expertise in residential construction and expertise in commercial construction.

The legislation adopts the most recent versions of the International Building Codes. To adopt the building codes they have adopted an enhanced rule making process for that purpose. They must have two public hearings not less than 60 days apart and then they would provide written notice to all of the entities that are at the table. There is a current provision in the code that allows the local jurisdictions to amend the code if they are more restrictive. We will allow the cities to have the authority to amend those codes in a manner that makes them more restrictive through a public hearing process.

Senator Goedde questioned the language on the bottom of page 2, line 44 you are inserting "existing" as amended language. **Mr. Pisca** advised that this amendment was placed in the bill by the attorney for the Association of Idaho Cities. **Leon Duce, Association of Idaho Cities**, clarified there is a document that exists that provides guidance in terms of how we apply building safety standards to existing buildings. This protects older buildings from having to be brought up to new building standards. It is specific to existing buildings and that is why the language was added.

Senator Stegner asked **Mr. Pisca** to run through the language that is being inserted in the code. **Mr. Pisca** replied that right now local jurisdictions have the ability to amend building codes, but only in a manner in which they are more stringent than those adopted by the State. There is a presumption that building codes should not be amended locally. The idea in having a uniformed building code is that there is uniformity amongst the cities in the State but there are reasons why local jurisdictions would need the ability to amend the code. The most cited reasons are jurisdictions like Coeur d'Alene, Sun Valley and McCall that have a lot of snowfall. They would want the ability to make the building codes more stringent for snow load purposes. On line 14 "provided however, that, after a finding by the local jurisdiction that good cause exists for such an amendment to such codes and that such amendment is reasonably necessary, a local jurisdiction may adopt such provision by ordinance in accordance....shall conduct a public hearing and will publish notice in the official newspaper that they are going to have a hearing." If they follow all of the steps, provide notice, and adopt an ordinance amending those codes then they will have the ability to amend the codes in a manner that is more strict than is required by the State.

Representative Jaquet advised that yesterday they were on the phone with the Division of Building Safety, Kelly Pierce and two representatives from the Attorney General's Office, Mr. Pisca, Association of Idaho Cities, Director Mr. Harwood an attorney from Coeur d'Alene, Nancy Stricklen

and the City of Sun Valley's Building Official. After the conference call the City of Sun Valley withdrew their opposition to this bill.

Sun Valley still has some concerns about the legislation, but they want the bill to go forward. They recognize the time that has been put into negotiation of this legislation, three years, and it is built on compromise and consensus. They are willing to expand in those procedures and hold the public hearings. The Association of Idaho Cities will work on the lists for our cities so it will not be as complicated. Sun Valley wishes to preserve their ability to be able to put forth more restrictive codes if called for by their community. They are not just snow loads but include radon and fire danger. Sun Valley believes this is compromise legislation and they would ask that you send it forward.

In response to questions by **Senator Stegner** concerning the Attorney General's opinion on this legislation, **Representative Jaquet** stated that Sun Valley's main concern with the legislation was the barrier in regards to the additional notice. **Representative Jaquet** represents Sun Valley and her reason for the Attorney General's opinion was to determine how the bill could go forward and if it could be modified so that Sun Valley could be accommodated.

Dennis Davis, Director of Building Safety, City of Nampa, stated it has been quite a feat to have the consensus that has gone into the bill with all the interested parties. Building contractors, cities and counties have made some concessions in terms of notifications. They will now have a board that is made up of individuals in the building trades.

MOTION: **Senator Goedde** moved that **H220** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Goedde** will be the sponsor of the bill.

HCR29 **Vice Chairman Coiner** said that during rule making the Industrial Commission came before the Commerce Committee and asked the Committee to reject their rules, which we did. The House drafted this legislation to deal with the rejected rules.

MOTION: **Vice Chairman Coiner** moved that **HCR29** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Vice Chairman Coiner** will be the sponsor of the bill.

H230 **Relating to Publication of Personal Service Contracts**
Teresa Baker, Deputy Prosecuting Attorney for Ada County, spoke to **H230** regarding personal service contract publication elimination under *Idaho Code* §59-14. Currently after a personal service contract is awarded by the County through the bidding process they are required that within 15 days to publish in a local publication (newspaper) the award of the contract. These contracts include architectural engineers, conflicts counsel, engineers, and any other professional service contracts that are required under statute. Ada County enters into approximately 20 of these contracts per year. The cost for the 15-day publication for the award of

the bid costs the County \$60 per publication, in addition *Idaho Code* §31-819 requires the counties also to publish a summary of their activities and minutes every month. In this monthly process they would also include the awarding of these contracts. Ada County is requesting that they may do away with the separate 15-day contract award publication and just include the information in the monthly activity's publication. The monthly publication costs are between \$900 to \$1200 per month.

Senator Stegner inquired about the language in Code Section 59-514 which starts off with the statement "the State of Idaho and all taxing entities within the State shall publish within 15 days" then you have added language that starts on line 14 "exempts out counties" why are we exempting out counties and not all the other taxing districts that have to publish within 15 days under 59-514.

Ms. Baker clarified counties are the only taxing entity to publish such an extensive publication from their statement of activity. The code has counties publishing information twice in the same publication. The Idaho Cities, along with other taxing districts are not required to publish such an extensive list of the statement of activities. 31-1819 also requires a statement of the current fund balance and financial information as determined by the board. The audit preparations, a statement of expenditures and revenues, or a change of status for a parcel of property, approving the minutes, awarding of a contract hence an extensive detail of information per month.

MOTION: **Vice Chairman Coiner** moved that **H230** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**. **Senator Lodge** will be the sponsor of the bill.

MOTION: **Senator LeFavour** moved to approve the minutes of March 12, 2009. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

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

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: April 2, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED:

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

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Andreason** called the meeting to order at 1:33 P.M.

MINUTES:

HCR23 **Women's Pay Equity**
Senator Bock presented this resolution to acknowledge that pay disparity in Idaho is genuine and 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 as Equal Pay Day. The statistics taken from the Bureau of the Census reports that women's pay in Idaho has only increased by 5% since 1992. Currently women are paid on the average of 60% of what men are paid for the same work.

Senator Goedde stated you mentioned women's pay had gone up 5%. Do you have a percentage for men's pay in the State for that same time frame. **Senator Bock** replied he did not have that percentage.

Chairman Andreason stated there were five people to testify to this bill all in favor of the passage of **HCR23**.

Marty Durand, member of Idaho Women Lawyers (IWL), presented statistics from an IWL survey conducted in the spring of 2007 that women lawyers answered in support of this resolution (Attachment A). **Ms. Durand** concluded that women lawyers have made tremendous progress, but inequities continue to limit their earnings and career opportunities. Idaho Women Lawyers support Representative Pasley-Stuart's work in bringing attention to the economic challenges women face and the need for pay equity.

MOTION: **Senator Cameron** moved that **HCR23** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**. **Senator Bock** will be the sponsor of the bill.

H218

Relating to Building Codes

Representative Phil Hart stated that the purpose of this legislation is to exempt single family dwellings and multiple family dwelling buildings up to four units per building, from the requirements to install automatic fire sprinkler systems. The Legislature in 2004 struck those paragraphs out of the 2003 International Building Code and replaced them with the same paragraphs out of the 2000 International Building Code which does not require the fire sprinklers. The 2009 International Building Code will mandate that fire sprinklers be required in every single family home and multiple family buildings.

New homes are usually not where there are problems with fires. They have been built and inspected using the newer building codes. The new homes are required to install smoke detectors and they can be installed for approximately \$50. A fire sprinkler system will give about the same amount of protection as the detectors but would run \$2.50 to \$7.00 per square foot. The main purpose of fire sprinklers is to allow individuals time to get out of the burning building. There is also an issue of local control over the adoption of International Building Codes. **Mr. Hart** said they would be exercising local control to deal with this issue at the State level. Keep in mind that manufactured housing is made in factories so statewide uniformity would be of the utmost importance. If every new home in America had to install fire sprinklers the cost would be approximately \$10 billion. The houses that burned down in 2005 were valued at \$5 billion which would mean they were paying \$2 for every \$1 of protection.

Chairman Andreason stated he had 18 individuals signed-up to testify in support and 10 to testify against **H218**.

Christopher Willis, General Manager for Simplex Grinnell, Fire Protection Contractor, stated he is opposed to **H218**. Mr. Willis advised that the cost of fire sprinklers supplied by the National Fire Protection Association is on average \$1.61 per square feet across the country.

Jim Young, Owner, Precision Craft Log and Timber Homes, speaking in support of **H218**. **Mr. Young** said he was not opposed to fire sprinklers in certain applications but not in all applications and not as a government mandate. He believed it was a misguided use of resources and funds. The widespread installation of residential smoke alarms in recent years has offered Americans to be safer than ever from fire according to a 2006 US Fire Association Study. The presence of smoke alarms in residential fires has shown that 88% of the fatalities in single family homes occurred where there were no functioning smoke alarms. The study suggests that the problem is not homes without sprinklers, the problem is homes without smoke alarms. Functioning fire alarm systems are dependent on the homeowners willingness to maintain the systems. Another

consideration of the use of fire sprinklers is rural new homes being built will be on domestic wells that are serviced by domestic pumps. Those wells may not have the capacity to support a fire sprinkler system. If there is a fire the electricity to the pumps will probably go down.

Senator Goedde inquired if a homeowner is able to maintain a fire sprinkler system. **Mr. Young** responded that most homeowners are not capable of testing and servicing a fire sprinkler system.

Dennis Davis, Nampa Building Official, stated that the City of Nampa is unique in terms of fire sprinkler systems. The City paid to put sprinkler systems in 30 single family homes in 1980 for cost accounting purposes and to see how well they would be received. The study did not produce a demand for the systems. The City of Nampa has been placing fire sprinkler systems in triplexes and fourplexes since the adoption of the 2003 International Building Code and have built approximately 300 units. The consensus of the local building officials and builders are that they do not see a need for fire sprinkler systems in single family dwellings. The City of Nampa recognizes multi-family as units commercial ventures and they treat them as such for the protection of the families that will live in those commercial units (Attachments C-E).

Jeremy Pisca, representing Idaho Building Contractors Association, stated that the 2009 International Building Code has been adopted at the national level. Firefighters and sprinkler advocates lobbied to adopt the codes. When the 2009 code is adopted all single family residences must have fire sprinkler systems. Over the last 50 years construction and population has increased steadily while fire deaths and damage has decreased. The home builder will reach the point of diminishing return regardless of whether it is \$2 or \$7 per square foot it gets vastly more expensive the farther away from a city you get. This code has come out with a very expensive mandate with not many benefits to show for it.

Senator Goedde inquired if he would know the cost of maintenance and testing for the sprinkler system. **Mr. Pisca** replied it is more difficult for a homeowner to test these systems. You have to apply heat in order to test them properly. As the population increases and the amount of fire death and destruction goes down, it is a direct result of building safety codes that have evolved over the years which has allowed us to make safer houses.

Senator Goedde noted low income families will not be able to afford the maintenance and testing. **Mr. Pisca** replied the core of the issue is housing affordability. For every \$1,000 increase on the cost of a home equals so many families that would be disqualified from financing for that house. Hence, driving lower income families into older housing.

Senator Sagness stated could the bill be amended to exempt single family and duplex dwellings from the mandate of sprinkler systems. **Mr. Pisca** replied **H218** is a good proposal and if you read the bill on lines 23 to 25 that exemption from one to fourplexes already exists in code today. Later sections of this same chapter say that local jurisdictions can amend

the code and that is how we have ended up with requirements in different jurisdictions. We support **H218** and the existing policy of the State but we cannot support mandated sprinkler systems in single family residences and duplexes. We support passing **H218** as written.

Vice Chairman Coiner inquired if we really need this legislation. Couldn't this be dealt with in rule? **Mr. Pisca** responded the State Building Code would be adopted in rule but you would still have local jurisdictions that are amending it and creating a lack of uniformity. If you look at the current section of code, one to fourplexes are already exempt but because of this loophole at the end of the chapter a hodge podge system has been created across the State. **H218** is a good policy. It is simply as restatement of what the Legislature intended to do in 2004.

John Eaton, Government Affairs Director for the Idaho Association of Realtors, stated the realtors do support **H218**. **Mr. Eaton** explained how codes are adopted. Local governments are able to amend by ordinance the adopted codes and provisions of referenced code to reflect local concerns provided such an amendment establish at least an equivalent level of protection to that of the adopted building code. What has occurred is the 2003 code was adopted by the State through statute. They adopted the 2006 code by rule, before they adopted the 2006 code by rule. Many of the local jurisdictions in the State held a finding under Section 4 of **H218**. 2006 codes were equivalent to the 2003 codes and they afforded a better level of protection so the local jurisdictions adopted the 2006 codes with no State action. The concern with building code adoption is that in 2009 any local jurisdiction in the State under the existing statutory framework could go in and adopt those codes without the Building Code Board and the State Legislature acting. This is the concern that the State is trying to stop with **H218**. It is important to note that any jurisdiction would still be able to use residential fire sprinklers if **H218** passes. It would be in the same framework that it is today where it is not mandatory.

The International Code Council adoption of 2009 International Building Code will mandate that fire sprinklers be required in every single family home and multiple family dwellings. The reason the fire sprinkler mandate is in the 2009 Building Code is to create an economy for the Fire Installers Union. In a recent letter published by the Fire Installer Union President, he was quoted, "The residential work is going to change from \$100 million nationwide of work per year to \$3 billion of work per year. The next step is to make sure our contractors are ready for the push. We need to have all our contractors get on board so we can protect this work." This is a big economy that is being created through a government mandate to put fire sprinkler systems in single family residences. We know that they will not provide a higher form of protection for life savings than smoke detectors. That is what this legislation is about and why the Union pushed to have this included in the 2009 code. **H218** would reverse this mandate.

Eric Makrush, Legislation Consultant for the Idaho Association of Building Officials, said his Association is opposed to **H218**. **Mr.**

Makrush highlighted three points. 1) This legislation does prevent the opportunity for local jurisdictions to establish the level of protection for their citizens which protection may be higher than established by the State. 2) The Senate is set to pass **H220** which incorporates provisions for local jurisdictions and an additional requirement on the public hearing process through negotiated rule making to ensure all effected parties have been notified to voice their opinions prior to adopting any building code provisions the State Building Code Board has amended. **H220** will allow the State Building Code Board to amend residential sprinklers from the 2009 Building Code statewide for homes and duplexes. 3) This legislation is premature. The 2009 Building Code will not be published until this summer and will not be adopted until 2010 at the State level and then January 2011 before it would be established statewide. **Mr. Makrush** indicated that the Committee and Legislative Session has plenty of time to come back at the State Building Code Board if for some reason it does not amend the requirement for residential fire sprinkling for single family dwellings.

The Idaho Association of Building Officials' position on statewide residential fire sprinklers is that they are opposed to statewide requirements and do not support single family dwellings and duplex units. The Association is opposed to a statewide mandate but are supportive of local jurisdictions having the ability to ensure the safety standards for their communities. Currently, throughout the State many local jurisdictions do require fire sprinklers for three and fourplex residential buildings. These requirements should remain intact to increase the level of protection for occupants who cannot control the action of their neighbors, which could effect their safety and personal property (Attachment F).

Senator Goedde and Senator Sagness both inquired that there seemed to be agreement on line 2 in the legislation across the two groups and it does seem in the absence of that, you would create a hodge podge system of enforcement across jurisdictions. Why would they be in favor of the hodge podge code interpretation and application by local jurisdictions? **Eric Makrush** said currently the law provides that local jurisdictions can amend the building code by ordinance without having a public hearing.

Ray Ellis, Chairman of the Local Government Affairs Committee for the Eastern Idaho Homebuilders Association, stated he represents the industry in Bingham, Bonneville, Jefferson, Clarkview, and Teton Counties. Let the homeowner choose if they want sprinkler protection or they do not want that protection. That spells real local control when the buyers is allowed the decision.

Senator Lodge said in your construction do you do dual or fire walls in your three and fourplexes. **Mr. Ellis** replied that he did. Firewall construction makes the difference between residential and commercial. **Senator Lodge** inquired if units are stacked on each other, how do you construct for fire protection. **Mr. Ellis** explained they put 5/8-inch drywall instead of 1/2-inch drywall between the floor separations. Commercial buildings can be built to require sprinklers or not to require sprinklers. This is governed by the distance of the egress.

Roy Ellis, owner of Homestead Construction and President of the Home Builders Association for the State of Idaho, stated rural areas do not have the water systems for the fire sprinklers. The Association is in support of **H218**. The Association is against fire sprinklers systems in single-family dwellings because of the added cost and water supply for the dwellings. This will force buyers out of the new home market and into the older homes because they will not be able to purchase a newer home.

Chuck Bleth, Sales Manager for Champion Homes of Idaho, stated in 2008 they built 118 homes. The Idaho Housing Alliance is in support of **H218**. We are one of the key providers of affordable housing to Idaho citizens and our homes are targeted at the lower end of the housing market to provide an excellent value for consumers with limited resources. In rural areas where home prices can be prohibited we offer a solution to those homeowners. A mandate to provide fire sprinklers in single-family dwellings they build will increase the costs. In order to meet the mandate their company would have to engage an outside contractor to prepare the homes during factory construction to accommodate the addition of a fire sprinkler system (Attachment B).

Senator Lodge said she has an amendment which would exempt single-family homes and duplexes from this mandate.

Paul Aston, Building Official for Minidoka County, stated he is opposed to **H218**. **Mr. Aston** stated that he has spoken nationally against fire sprinklers in single-family and duplexes and voted against it. The fire sprinklers being placed in code does not mean it is adopted or a Federal mandate. The state and local jurisdictions can adopt codes for their communities. H220 expanded the Building Code Board with amending authority and he is confident with this Board in place they will amend out single-family and duplex units from the fire sprinkler in the International Residential Code.

Ron Larson, Vice President of Viking Fire Protection and Boise City Fire Protection Board Committee, said the whole purpose of the International Building Code enacting fire sprinkler systems in houses and apartments is because of the loss of life. Annually there are approximately 404,900 fires per year with 3589 deaths and 13,691 injuries. These statistics developed a new code 13R and 13D just to protect the individual so they can get out of a burning building. The fire sprinkler system only provides a water curtain to protect individuals to be able to get out of a burning building.

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

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: April 7, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached sign-in sheet.

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

CONVENED: **Chairman Andreason** called the meeting to order at 1:48 P.M.

MINUTES:

H218 **Relating to Building Codes**
Lee Gagner, spoke in support of **H218**. Since the passage of 2004 Building Code passage there have been many changes. Through the passage of Building Codes in conjunction with the Fire Industry they have created standards of ingress and egress requirements out of windows in basements, upper levels which have reduced safety issues. Another major fire safety improvement was the smoke detectors systems being required to be hardwired in new housing. Any code amendments should be decided in the Legislature, rather than by the local jurisdictions. Two reasons he is supporting the bill: 1) He can not identify the need for the bill; and 2) Single-family and duplex dwellings should be exempted.

Senator Goedde stated there has been a proposal to send this bill to the amending order and opt out the single-family and duplex dwellings. **Mr. Gagner** responded that he would be in support of the amendment.

MOTION: **Senator Goedde** moved that **H218** be referred to the 14th order for amendment. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**. **Senator Smyser** stated pursuant to Rules of the Senate 39 (H), of the Idaho State Legislature, she has a conflict but still wishes to vote on **H218**.

S1166 **Relating to the State Insurance Fund**
Senator Goedde, presented **S1166**, relating to the State Insurance Fund (SIF). The purpose of this legislation is to repeal *Idaho Code*, Section 72-915, and will serve to offset an adverse decision of the Idaho Supreme

Court regarding the interpretation of *Idaho Code*, Section 72-915 which could subject the SIF to pay dividends on policies that are not financially profitable, thereby restricting the SIF's ability to reduce premiums and pay dividends to profitable policyholders. The proposed repeal of *Idaho Code*, Section 72-915 will clarify the law regarding the payment of dividends by the SIF by making it clear that in passing H774aa in 1998, it was the intent of the Legislature to have the SIF operate like an efficient insurance company subject to regulation under Title 41, *Idaho Code*, including the dividend provision set forth in Title 41, Chapter 28, *Idaho Code*. Repeal of the law effective April 3, 1998 is necessary because on that date laws were enacted which subjected the SIF to regulation under the Insurance Code, Title 41, *Idaho Code*. This legislation will allow the SIF to issue dividends in the same manner as other insurance companies operating within the State of Idaho (Attachment A).

Senator Goedde stated that historically the SIF has exercised its discretion, pursuant to *Idaho Code*, Section 72-915, to determine the annual amount of dividend, if any, a policyholder would receive. Dividends have never been distributed on a pro rata basis. It was the intent of the 1998 Legislature in passing H774aa, effective April 3, 1998, that the SIF should operate like an efficient insurance company, subject to regulation under Title 41, *Idaho Code*, including the dividend provision set forth in Chapter 28, Title 41, *Idaho Code*. The SIF does not have stockholders so dividends are returned to the policyholders.

On March 5, 2009, the Idaho Supreme Court filed its opinion in *Farber v. Idaho State Insurance Fund* in which it interpreted Section 72-915, *Idaho Code*, and ruled that the SIF cannot exercise its discretion in determining how much of a dividend to pay to each policyholder, because the statute requires a pro rata distribution of dividends to all policyholders. The result of the decision is to require that the SIF pay dividends on policies that are not financially profitable, thereby restricting the SIF's ability to reduce premiums and pay dividends to profitable policyholders. **Senator Goedde** stated that in making this decision, the Court ignored *Idaho Code*, Section 72-901, which requires the SIF to operate as an efficient insurance company, and *Idaho Code*, Section 41-2844, which allows for distribution of dividends. The Court interpreted 72-915 in a manner inconsistent with other laws governing the SIF and past practices that go back to the 1980s.

Senator Goedde advised that *Idaho Code*, Section 73-101 specifically allows for retroactive enactment of legislation. Repealing Section 72-915, *Idaho Code*, retroactive to April 3, 1998 when H774aa was enacted, will reconcile conflicts in the existing laws governing the SIF and will allow the SIF, like other insurance companies, to issue dividends pursuant to Chapter 28, Title 41, *Idaho Code*. He stated that it is not his intention in bringing this bill to circumvent the Supreme Court's decision, and in fact the Supreme Court stated in the *Farber* case that if it has become prudent to alter the statutory language related to the requirements for distribution of dividends, the Legislature is the appropriate venue for such change.

Currently the judgment against the SIF is estimated at \$5 million and

there is potential for another \$24 million in additional judgments if this legislation is not passed. Large businesses right now support the small businesses that are written by the SIF. He stated the SIF generally takes a loss on policies issued under \$1,500. If the SIF does not have the discretion to offer dividends and premium deviations to large businesses, they will go to the private sector for those benefits, and it will further erode the base of the SIF. This could also substantially impact the state agencies and public entities insured by the SIF.

In response to questions of the Committee, **Senator Goedde** disclosed that as a member of the Board of Directors of the State Insurance SIF he was named in the *Farber* lawsuit. However, he was never served nor deposed in the case. He called upon **Rich Hall**, attorney for the SIF to respond to a legal question. **Mr. Hall** stated that the Supreme Court did rule in the 2000 case of *Kelso & Irwin, P.A. v. State Insurance Fund*, that the Worker's Compensation statutes became a part of the contract of insurance between the State Insurance Fund and the policyholder.

TESTIMONY:

Phillip Gordon, attorney, representing plaintiffs, a class of 30,000 Idaho employers, in the *Farber* case spoke in opposition to **S1166**. He advised that the action was brought because his clients believe that the SIF had misinterpreted *Idaho Code*, Section 72-915 and had departed from its traditional historic interpretation of that statute. He stated that up until and including the policy year 2000, the SIF had always paid dividends pro rata as commanded by the statute. The SIF took the position after the 2000 policy year that it was the intent of the Legislature that the SIF comply with the provisions of the Idaho Insurance Code, Title 41, *Idaho Code*. However, the Supreme Court held in the 2000 case of *Kelso & Irwin, P.A. v. State Insurance Fund*, that the SIF is not a public mutual insurance company.

The *Farber* case was filed in 2006 and the Supreme Court decided unanimously on March 5, 2009, that *Idaho Code*, Section 72-915, means that if you pay dividends to one, basically you pay them to all pro rata. He stated that if this legislation is passed and *Idaho Code*, Section 72-915 is repealed there would be no guidance and no statute whatsoever that would allow the SIF to pay dividends. He stated that when you purchase a contract of worker's compensation insurance with the SIF you get three things: 1) insurance in the event one of your employee's is hurt; 2) a defense if a lawsuit is brought by an injured employee; and 3) a right to share pro rata in dividends. The State and Federal Constitutions have provisions forbidding the passage of laws which impair the obligations of contracts. **Mr. Gordon** stated that this legislation impairs the obligations of contracts inasmuch as the 2000 Supreme Court decision clearly held that *Idaho Code*, Section 72-915, is part of the contract of insurance between the SIF and all of its policyholders. To effect that retroactively impairs the obligations of contracts.

Senator Goedde inquired of **Mr. Gordon** whether he thought a policy holder that spends \$150 on a premium and incurs \$10,000 in costs in that year because of an injured employee should receive a dividend. **Mr. Gordon** responded that it was his understanding that the SIF may

consider losses and is not obligated to pay a dividend in that instance. However, he could not cite case law to substantiate his position.

TESTIMONY:

Don Lojek, attorney, also representing plaintiffs, spoke in opposition to S1166. He stated that *Idaho Code*, Section 72-915, was enacted in 1917. Under that statute the manager of the SIF has the ability to declare a dividend if he or she thinks there is a sufficient amount of money to support dividends to policyholders. Once the manager declares the dividend, then the statute requires that the manager of the SIF distribute those dividends on a pro rata basis. He stated that in recent years that was changed unilaterally by the SIF without seeking legislative approval. The SIF drew a line at \$2,500 and said that the employers whose premiums were less than \$2,500 would receive no dividend whatsoever. Dissatisfaction with that policy resulted in the class action lawsuit being filed in 2006, and the Supreme Court issued its decision in favor of the plaintiff's on March 5, 2009. This case is still in litigation as the SIF has filed a motion for a rehearing. He stated that this legislation is premature and if passed will leave the SIF without authority to pay dividends.

In response to questions of the Committee, **Mr. Lojek** advised that if this bill were to pass, the Supreme Court would then have to decide whether or not it has any jurisdiction because the statute would be repealed. This would likely lead to more litigation. He stated he is unaware of dividend policies by other domestic stock and mutual insurance companies, but is aware that there are shareholders and stockholders that are entitled to dividends under Title 41, Chapter 28, *Idaho Code*, but stated that the SIF is a different kind of entity governed by the State of Idaho and code.

Senator Cameron stated that his concern with this legislation would be to keep the SIF as a viable and responsible entity. He stated he does not see this bill as necessarily reversing the decision of the Supreme Court, but merely affects the amount of money the SIF would have to pay out. He inquired whether **Mr. Lojek** would financially gain should this bill not pass, and should the Supreme Court's decision be upheld. **Mr. Lojek** responded that according to its financial disclosure at the end of 2008, the SIF had a \$198 million surplus. If the policy holders that he and others represent prevail, the judgments could be between \$10 million and \$15 million. That amount will be governed by the Court below when it considers plaintiff's attorney's fees incurred over the last two and one half years. **Mr. Lojek** was asked if his opposition to this legislation was mainly the retroactive nature of this bill. He responded that it was.

Senator Goedde asked **Mr. Lojek** to clarify how the SIF is going to pay dividends from this day forward if the legislation is adopted without a retroactive date. He stated that it was his feeling that the SIF manager could use his discretion prospectively to decide whether or not to declare a dividend, but that it would open up a constitutional question to go back and change contracts.

Senator Coiner stated that Title 72, Chapter 9, Idaho Code states that the SIF shall be deemed a mutual insurer, subject to Idaho Insurance Code, Title 41, Idaho Code. **Mr. Lojek** advised that the 2000 case of

Kelso v. State Insurance Fund said that although it kind of looks like the SIF is a mutual insurance company, it really is not and therefore it does not fit in Title 41, Chapter 28.

TESTIMONY: **Richard E. Hall**, attorney for the SIF, spoke in support of S1166. **Mr. Hall** advised that the previous statement by **Mr. Gordon** that prior to the year 2000, dividends were distributed pro rata was incorrect, and that has never really been the case. In the past, losses were taken into account in the payment of dividends. The ability of the SIF to offset dividends with losses is unclear in the 2009 Supreme Court decision. This could result in a dividend distribution to a policyholder who pays a \$1,500 premium but has a \$3 million loss. This does not make sense, but is one of the potential problems that has been created by the Supreme Court decision.

Mr. Hall stated that managing an insurance company right now is a tremendous task, and what this decision of the Supreme Court does is that it takes away the discretion that would give the SIF the opportunity to be able to compete in a viable way with the insurance companies that are not regulated in this way. He stated that we need to pass this legislation in order to financially protect the SIF. **Senator Stegner** commented that it should not be the role of the Legislature to pass legislation to save someone who has gotten themselves into a financial mess. He asked **Mr. Hall** why this should be different. **Mr. Hall** responded that in this particular case the Supreme Court specifically said that if the parties think their decision is inappropriate they should go to the State Legislature, which was really in effect an invitation to say that this is a type of issue that the Legislature ought to deal with. He pointed out that in this situation we are dealing with a State agency which is governed by legislation. The decision is based upon a statute that was written in 1917. The insurance code has been changed numerous times since then but this one statute has been left on the books. He believes it is of such a significant financial impact that it is a reasonable way to handle this particular situation.

Senator Sagness asked **Mr. Hall** to expand on the effect not passing this legislation will have on the SIF. **Mr. Hall** responded that the Supreme Court's decision makes it very clear that they feel there should be a pro rata distribution based upon premiums paid. They do not mention anything with regard to whether or not a loss would be calculated into that dividend. He stated that because of all the factors related to how the SIF is managed, how dividends are calculated, how premiums are calculated, how rates are calculated, and how classifications are made, he is unable to give the specifics of what the financial implications will be. He advised he does believe they will be significant, and by that he means important and very difficult for the SIF to absorb. He confirmed that the cost of current judgments and future potential litigation would be between \$18 million and \$24 million.

MOTION: **Senator Cameron** made a motion, seconded by **Senator Goedde**, that **S1166** be sent to the floor with a do pass recommendation.

In discussing his motion, **Senator Cameron** stated that he participated in the 1998 group convened by Governor Batt to update the State Insurance

Fund Code. The intent at that time was to try and move the SIF away from being a state run program so that it could actively compete and work in the market place along side all the other companies that were offering worker's compensation insurance. He stated that they did a pretty good job, but obviously missed Section 72-915. The question before us today is first, what is the role that you want the SIF to play. If you want the SIF to still be a viable entity who will compete for business with every other carrier you must vote for this bill. The second issue is the retroactive nature of the bill. The minimal impact of not passing this legislation is \$24 million. The long range impact is what you do to the SIF. If you make the SIF non competitive with other worker's compensation products then you have just spelled the doom or the end of which will cause harm to all of our constituents who are currently purchasing that product because of its competitive pricing. That is the major catastrophe – not the \$24 million.

SUBSTITUTE MOTION:

Senator Stegner made a substitute motion, seconded by **Senator LeFavour**, that **S1166** be held in Committee.

In discussing his substitute motion, **Senator Stegner** stated that in his opinion the Legislature has every right to look at this issue, but we do not do it by proposing legislation in the last hours of the session. He stated a statewide debate would be more appropriate, not a half hour hearing.

Senator Goedde stated that this does affect every little policyholder in this state. The SIF is their only avenue and if we jeopardize the viability of the SIF those \$150 policy holders will be required to pay \$500 to \$750 premiums for the same coverage. He further stated that the interpretation of Section 72-915 is in direct conflict with the dividend statute in Title 41 and that causes a severe problem for the SIF. He urged passage of this bill to fix the omission of the 1998 bill.

VOTE ON SUBSTITUTE MOTION:

The voice vote on the substitute motion to hold the bill in Committee was in doubt, and **Chairman Andreason** requested the secretary take a roll call vote. **Chairman Andreason, Senators LeFavour, Sagness, Smyser and Stegner** voted **Aye**; **total of five**. **Senators Lodge, Goedde, Cameron, and Coiner** voted **Nay**; **total of four**. The substitute motion passed five to four.

H202

Relating to the State Fire Marshall

Jeanne Medley, Land Developer, testified stating she was in support of **H202**. The International Fire Code (IFC) has given rural fire chiefs absolute control and has taken away democracy and power of the people in Idaho County. The local government has no say on how the IFC is interpreted and enforced in their county.

Dean Ellis, President of the Idaho Fire Chiefs Association, stated in the interest of time he deferred to **Ron Anderson, representing the Idaho Fire Chiefs Organization**. **Mr. Anderson** stated the fix that is being proposed in **H202** does not solve the problem, in fact, it creates more problems. Under **H202** if the International Fire Code (IFC) is adopted, it will take the adoption out of the hands of the State Fire Marshall and gives each city and county fire district the ability to adopt the code. Currently, out of 35 cities only 13 of these cities have adopted the

code. If this legislation were to pass, there would be a great number of cities throughout the State where there would be no code in effect. The bill takes the authority away from the State Fire Marshall and his assistants to inspect anything other than State owned or leased buildings or governmental agencies. As a Fire Chief in the City of Meridian along with the Chiefs of Boise, Idaho Falls, Wood River and a few other chiefs in this room today, it would take away our ability to inspect other than State buildings. Section §41-256 in the State Statute states that every fire chief in the State is considered an assistant to the Fire Marshall, and will not have the authority to inspect any business. This would mean day cares, schools, bars, restaurants, etc. would not be inspected for fire safety. The proposed bill creates a number of issues for fire chiefs statewide.

The Fire Chiefs propose that an impartial appeals board be created that is not affiliated in any way with the fire department which would act with impartiality to fire code enforcement cases. The fire chiefs also propose that an interim committee would be created, chaired by the Association of Idaho Cities, to bring back legislation next year that will address some of these issues. Finally, training be put in place for smaller rural fire departments to standardize the application and enforcement of the IFC (Attachment B).

Tim Vargas, Fire Commissioner from Jerome County, State's President Fire Commissioners, stated there are a number of reasons the Idaho State Fire Commissioner Association (ISFCA) stands opposed to **H202**. The Association feels it takes away local control. Fire Commissioners are elected by the taxpayers in their districts and as duly elected officials, they are charged with overseeing a budget that will guarantee that the equipment and the manpower is in place for fire suppression. In addition, we are charged with the duty of enforcing the provisions of the International Fire Code as well as fire prevention activities within our districts. This bill eliminates the commissioners from performing their duties. It would prevent them from plan review on new construction for commercial and private properties. The commissioners would only be accountable for State owned structures or their political subdivisions. They would only have jurisdiction over their own fire stations in their district. ISFCA proposes that the Legislature consider a State Fire Code Board that would function in much the same manner as the State Building Code Board and it may even be possible to have this Board service the Fire Code. This Board would adopt the code and write the necessary amendments to tailor the code to the needs of Idaho. One of the main complaints they hear is how inflexible the code appears to be in the enforcement process. The Board would also serve as the appeals board for fire code enforcement cases. ISFCA stands prepared to work with the interim task force this summer, fire chiefs, Idaho Association of Cities, and insurance companies to develop the legislation. They hope to bring back a solid bill that will meet the needs of all Idaho citizens pertaining to the enforcement of the IFC, fire protection and prevention issues that are encountered on a daily basis.

ADJOURN: There being no further business, the meeting adjourned at 3:40 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

Lois Bencken
Assistant Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: April 9, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached sign-in sheet.

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

CONVENED: **Chairman Andreason** called the meeting to order at 1:33 P.M.

MINUTES:

Chairman Andreason welcomed **Senator Bair**, to the Committee.

H202 Relating to the State Fire Marshall

Senator Bair stated Section §41-256 "assistance to the State Fire Marshall as provided in Section §41-256, *Idaho Code* shall apply a reasonable interpretation to the International Fire Code (IFC) as adopted by the State Fire Marshall in rules of the State Fire Marshall when undertaking and enforcing action." Definition of the assistants are the chief of the fire department or his deputy. Every city or county or fire protection district organized under State law where a fire department is established and in areas where no organized fire department exists the county sheriff or his deputy shall be assistants to the State Fire Marshall in carrying out the provisions of IFC and rules of the State Fire Marshall. In applying the IFC local fire chiefs and deputies derive their power and authority directly from the State. Even though they are hired by counties, cities or fire districts the enforcement powers of the code stipulate that they derive their directive from the State Fire Marshal. The problem is the State Fire Marshall and deputy chiefs are not accountable to the local governments who hire them. Another issue in rural area fire districts is they may only have volunteer firemen. This forces the volunteer firemen to be given the authority to enforce and interpret the IFC.

Senator Bair built a home last summer and after a few inspections were finished, the fire chief appeared. The fire chief told Mr. Bair that anything over 3600 SF you must have a sprinkler system in the house and upgrade

the pump to feed the system. This meant drilling the well for fire flow. What we are finding in rural areas is the application of the code has been very inflexible.

H202 simply limits the authority of the IFC to State owned buildings and maintained buildings. Local communities must write ordinances to adopt the IFC then adapt the code for their particular communities (Attachment A).

Senator Cameron asked **Senator Bair** to clarify why removing the roll of the State Fire Marshall and limit his roll at the State level. **Senator Bair** replied the actions of the local and deputy fire chiefs as assistants to the State Fire Marshall have no oversight of their interpretation of the fire code. This bill will allow counties and cities to adopt the IFC, amend it as they see fit to match their communities and then they will have oversight directly over those fire chiefs and deputies.

Senator Stegner stated this bill seems like a severe solution to the problem. He stated he assumed that there are some good aspects of a uniformed system that allows insurance companies and contractors to have some confidence that they will be operating within the code. He would think that there could be a less severe move forward with an approved system that does not require this severe of an action. **Senator Bair** replied this approach seemed like the best alternative.

Senator Goedde inquired if the assistant fire marshals work for a set of commissioners or a city council and wouldn't they be answerable to the communities. **Senator Bair** replied that in Bingham County, where he lives, the county commissioners informed him that they have no authority over the administration of the IFC. They derive their authority from the State Fire Marshall.

The Committee received considerable testimony concerning the IFC not being interpreted uniformly across the State.

Five individuals signed up to testify in support of **H202** and 14 individuals signed up to testify in opposition.

MOTION:

Vice Chairman Coiner moved to hold **H202** in Committee. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**. **Senator Smyser** stated pursuant to Rules of the Senate 39 (H), of the Idaho State Legislature, she has a conflict but still wishes to vote on **H202**.

Senator Stegner said this bill leaves too many gaps across the State for it to be the proper solution to what is recognized as a significant problem requiring additional efforts not only by the Legislature but the fire industry. Viable alternatives need to be considered in terms of crafting a solution.

Senator Goedde stated that, developers, cities, counties the construction industry and rural areas should have an opportunity to participate in the drafting of the amendments.

Senator Cameron said he questioned what the public policy should be for the State of Idaho and the roll that State and local government should play in this issue. The issues being public safety versus public freedom. It is in the States best interest and that of its citizenry to have codes. The most uniform code seems to be the best code and the worst is when the Legislature allows the exceptions and deviates from the uniformity. His major concern with this legislation is it would limit the State Fire Marshall's responsibility to just State owned buildings. The State should have a role in the inspection of public buildings for public safety.

H258

Relating to Specialty Limited Heating Contractor/Journeyman

Representative Gibbs explained that **H258** allows for a two year license under the HVAC code. This bill provides for a speciality license and describes the scope of the work, frame and experience requirements for the license. HVAC has already approved three speciality licenses, therefore this is not a new concept. The bill benefits rural Idaho where natural gas is not available. The primary businesses that will benefit are individuals with mountain cabins, cow camps, communities around Bear Lake, Alpine, McCall, and Tamarack to name a few. The bill needs some amendments and **Representative Gibbs** requested it be sent to the 14th order for amendment. These committee amendments should resolve the issues by the computer industry and Department of Building Safety (Attachment B).

Senator LeFavour inquired as to what is involved in the licensing and safety issues. Are you speaking to great lengths of piping of propane to these structures, what is the distance and the complexity of the installations?

Representative Gibbs said this speciality licensing will not compromise safety or the inspection process of installations.

Kevin Keller, PPS Company, Soda Springs, Idaho, stated the current rules require that any new workers they hire must go through a four year apprenticeship and training before they are able to test to be a journeyman. Four years of training is a long time for the very limited practice that we experience in our industry. The bill before you would limit the practice that limited specialty contractors could perform and training for this specialty would be completed with 120 hours and two years of apprenticeship in order to qualify for the license. The appliances they would install are small, mostly area heating, and the work would be done under the permits issued by the Division of Building Safety.

Pat Minegar, Chairman of the HVAC Board, presented handouts to the Committee explaining the picture is the size of equipment that the propane contractors are asking to install. The bill calls for up to 300,000 BTU. He stated that he believes this is not adequate education for the types of equipment that this trade seeks to install.

Senator Cameron asked for clarification why the HVAC Board chose to deny their speciality license. He knows the Board has approved other speciality licenses for hearth builders, etc. that seem to pose the same

sort of public safety risks. **Mr. Minegar** stated the hearth specialty was included in the original statute. The hearth specialty has a national education process in place. The second specialty is gas piping and it is limited. If there is a HVAC specialist on the job they will do all the piping. The hearth specialists are only allowed to install gas piping in rural areas so they would not have to have two contractors on the job. **Mr. Minegar** explained that anytime there is any competition that has 25% of the education component in your industry as a owner of a business it reflects an unfair advantage and they feel it is a safety issue. HVAC journeyman trainees in two years completes 300+ hours of education and the propane industry is asking for 120 hours of education in two years to complete their training.

Gary Van Hees, representing Rocky Mountain Propane Association, stated the skill set for smaller and bigger appliances is essentially the same. Venting principles do not change from 30,000 to 300,000 BTU. The skill set with the hearth specialty is very similar to what is being requested for the propane specialty licensing. Under this licensing what they propose to not install is air conditioning and ducted furnaces.

Bob Corbell, representing Mechanical Contractors Association, stated the Association is not opposed to a specialty license as long as the legislation spells out the work that the two year graduates could perform. If you look at line 36 of the bill and go through the specialty heating contractor journeyman there is no reference to LP (which means natural gas) and it does not identify propane in this legislation. The Association opposes the 300,000 BTU installation. The installer must have education in heat loss and gain formulas and these are not taught until the third year of the HVAC apprenticeship program.

Senator Stegner rebuked the trades stating that this appears to be a classic situation where you have a board that wants to protect their industry and limit competition. The industry is not willing to develop a specialty license that would accommodate more rural areas of the State where individuals cannot qualify with the full requirements for the HVAC Journeyman's Licensure. This situation is not new to our Committee. The licensing issues come through this Committee under the guise of public safety all the time. This is a situation where you have an industry that is very protective of their position in the market place and they want to exclude the competition. This is a significant question about where the truth in this matter lies in the matter of a half hour meeting. Why can't you people cooperate and make some accommodations in the system and industry will be better served. The public will be just as well serviced and this Committee does not get put in the position of having to make these impossible decisions.

J. T. Hill, Fall River Propane of Rexburg, ID, said they are a small propane company which deals with areas of the State that are not accessible in the winter time. They have customers whose closest HVAC contractor is 100 plus miles away. If this bill were to pass it would allow them to give their customers the service they require in rural Idaho.

Vice Chairman Coiner asked if the propane contractors would be willing to make some modifications to the request and schooling so the specialty license could go forward through the HVAC Board? **Mr. Hill** replied that he could not speak for the rest of the propane contractors. A year ago he went to the HVAC Board meetings on this specialty licensing and perceived the reason the Board does not want to move forward with the licensing is they do not want the propane contractors to take the business away from their HVAC journeymen.

Suzanne Budge, representing Idaho Petroleum Marketers, walked the Committee through the amendments to the bill. In Section 54-5003, gives the definition under HVAC apprentice, specialty contractors and specialty journeyman. There is no doubt that this is a specialty license. This is not an attempt to get a four year license by doing 120 hours worth of work. Further, the definition under Section 10, very strictly defines what is included and excluded for what these specialty contractors can perform and is addressed by the amendment. They are requesting the Committee to send the bill to the 14th Order to tighten up the issues. Specifically, the issue of 300,000 BTU. **Ms. Budge** stated that none of the surrounding states have this type of requirements. Every state that borders Idaho has lesser requirements for propane contractors then what we are proposing in this bill. This also includes Washington which requires a Mechanics I license only in a specific city for less than 400,000 BTU's. Propane is included in the code under Section 3.

Senator Cameron asked for clarification on what happened when they asked for this specialty licensing of the HVAC Board and the denial process. **Ms. Budge** explained the industry undertook the same pathway in requesting this specialty licensing that the hearth specialty undertook. They met before the HVAC Board and were denied summarily in May 2008. They met subsequently with the director and were told they were not likely to get an explanation. The Board had the discretion to do as they pleased and that came from their deputy chief. They requested a written response and so they could make amendments to proceed. The propane contractors were informed they did not think there would be a path forward. Even though they never petitioned for a rule making they got a formal denial. A formal denial indicates that the number of HVAC that showed up and opposed the rule influenced the decision. **Ms. Budge** read a section of the written response from the HVAC Board. "The Associations request for rule making is not consistent with the HVAC Board responsibility and duty to protect public safety and welfare. Both representatives from the industry and Board expressed legitimate concerns questioning the same consistency of education, experience and training. Risks associated with authorizing under-trained and educated individuals to install liquid plumbing, piping and plans in residences is obvious and simply too great to accept." The standards that they are proposing in this legislation are much more stringent than what have already been approved in the hearth specialty. The hearth specialty have 60 hours of training and propane is 120 hours. The hearth specialty does essentially the same things they are just using the smaller subset of appliances.

Mr. Minegar advised that what the bill comes down to is the education component for the propane contractors. Boise State University Technical School does not endorse this bill. There is not enough education.

Vice Chairman Coiner stated that **H258** should be dealt with through the HVAC Board and the Board should figure this out. The 14th Order is open ground for everyone. He would recommend that the HVAC Board get together with the propane contractors and go back and bring a set of amendments.

MOTION:

Vice Chairman Coiner moved to hold **H258** in Committee. There was no second.

Senator Cameron said the amendments to the bill are appropriate and the sponsor of the bill attempted to go through the process and have not been allowed to work their solution out so it has fallen on this Committee to find the solution.

SUBSTITUTE MOTION:

Senator Cameron moved that **H258** be referred to the 14th Order for amendment. The motion was seconded by **Senator LeFavour**.

Vice Chairman Coiner stated he did not have the exact date of when the propane contractors summarily were dismissed by the HVAC Board. The specifics of the hours of education and the 300,000 BTU were two of the problems with the bill that he had heard the Board was not willing to negotiate. Negotiations may include the propane contractors raising the educational hours some so they were comparable to what HVAC Journeymen have to complete and lowering the 300,000 BTU unit size that they be allowed to install. The first time a bill does not make it through the Legislature to acquire a legislative solution he believes is not the right answer. **Vice Chairman Coiner** could not support moving this forward.

Senator Cameron stated that the reason he supported the 14th Order for amendment for the propane contractors is that the propane contractors came before the HVAC Board previously and were not given reasons as to why they were being dismissed. In order for these Boards to work they have to be able to listen and work together. He represents a rural area of the State with farmers that have outbuildings that need heating during the winter. He believes a fully licensed HVAC journeyman is not absolutely necessary when these propane contractors can do the work.

Chairman Andreason requested a **Roll Call Vote**. **Chairman Andreason, Senators LeFavour, Sagness, Smyser, Lodge, Cameron, Stegner, Vice Chairman Coiner** voted **aye, total of eight**. The motion carried eight to zero.

ADJOURNED

There being no further business, the meeting adjourned at 3:52 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: April 14, 2009

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached sign-in sheet.

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

CONVENED: **Chairman Andreason** called the meeting to order at 8:15 a.m.

MINUTES:

S1166 **Relating to the State Insurance Fund**
Senator Davis stated the fiscal impact of this legislation is a substantial concern to the State budget. Absent advancement of this legislation will require the State to find some economics which the State does not have built into the budget. The principle concern of the Committee was the impact of current and pending litigation. **Senator Davis** asked if the Committee would consider sending the bill to the floor for possible amendment with the commitment to the Committee that together with the sponsors of the bill a set of amendments would be written that would not adversely impact the current and pending litigation.

Senator LeFavour inquired about the settlements that had been awarded and wanted to make sure the bill would not impact the fund settlements. **Senator Davis** clarified that if there is a lawful claim currently pending they would be entitled to pursue whatever remedy. If there has already been a settlement, it is not our intent to write any amendments that would require any expunging.

MOTION: **Senator Cameron** moved that **S1166** be referred to the 14th order for amendment. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**.

Senator Stegner advised he was aware of the efforts to negotiate this bill and to find some remedy that would be agreeable to him, and he finds no objection to this action.

H231

Relating to the Public Employee Retirement System

Senator Cameron stated that **H231** is designed to fix the problem that has occurred with one of the city council members in the City of Jerome. A council member who was a former State employee ran for city council and he is fine until his number of months serving on the council exceeds the number of months he was a State employee. The result would be a significant cut in PERSI benefits to that council member. The council member would have to resign from his seat on the city council prior to that month that would lower his benefits. This legislation could potentially impact 100 to 150 active individuals who are elected officials but had some previous State service or some other entity that is a PERSI participant.

Senator Cameron walked the Committee through his presentation to clarify how the benefit would fluctuate with this public service (Attachment A). There are three methods of calculating this split benefit and **Senator Cameron** explained two. Example 1: Shows an individual who has 120 months of general service and 119 months of elected service, they stayed 1 month below the PERSI split benefit. Their monthly retirement benefit would be \$1195. Example 2: Shows an individual who has 119 months of general service and 120 months of elected service the retirement benefit drops to \$605. The proposed change in the bill allows city elected officials and others the same split benefit protection as legislators so the elected service would not count against their PERSI benefits. We do not want to prohibit those that have served either as an employee of the State of Idaho, county, city or hospital from being able to serve as an elected official.

MOTION:

Vice Chairman Coiner moved that **H231** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator LeFavour**. The motion carried by **Voice Vote**. **Senator Cameron** will be the sponsor of the bill.

H248

Relating to the Employment Security Law

Bob Fick, Legislative Affairs, Department of Labor, stated that **H248** before the Committee today takes advantage of a provision in the stimulus package that benefits both unemployed workers and businesses. Under this proposal the State will adopt three expansions of unemployment insurance benefits. Upon certifying to the federal government that the State has adopted these expansions the State will receive \$32.3 million from the Reed Act into the unemployment insurance trust fund. The expansions are relatively minor in the grand scheme of things: 1) Allows the most recent quarter of wages prior to lay-off to be used in calculating benefits if the traditional benefit calculation method, which is the first four of the last five quarters, fails to qualify the individual. This will cover approximately 8% of claimants. A large number of the claimants actually qualify later by waiting an extra quarter; 2) Benefits for claimants that work part-time and were laid-off from a part-time job and only want to continue to seek a part-time position. Under the current formula the system does not care whether you work part-time or full time per week. It is set-up to look at how much time you made in the quarter. To continue receiving benefits the claimant must be seeking part-time or

full time work; and 3) Extended benefits for workers who have exhausted all their other benefits and are in a State approved training program. As long as they continue with successful progress in the program they can receive additional benefits. A number of unemployed workers who are covered by the Trade Adjustment Systems Act already are eligible for these benefits. This picks up those in State approved training and that is the control the State has when it approves this training. It allows the workers to receive this extended benefit, and this is less than 1% of claimants. The total cost for all three expansion benefits is \$3 million. Upon certifying that we have expanded these benefits the State will receive \$32.3 million into the Reed Act Account. That infusion of cash immediately into the trust fund will reduce the amount of money the fund will have to borrow later this year when it is depleted. Eventually, once the rates adjust themselves, it will mean that rate increases to employers will be 10 to 15% less than they would be had the infusion not occurred. This legislation has been endorsed from ICAC, AFLO-CIO, small business and the Restaurant and Retailers Association.

H248 **Senator Stegner** moved that **H248** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Stegner** will be the sponsor of the bill.

S1214 **Relating to Unemployment Benefits**
Bob Fick, Legislative Affairs, Department of Labor, stated that **S1214** allows the State to adopt a formula for triggering federal state extended benefits for a longer period than the current formula allows. This is provided for in the stimulus bill. The federal state extended benefits have been around since World War II. They are up to thirteen weeks of additional benefits for unemployed workers who have exhausted all their other benefits. Up until now they have been paid 50% from the State Trust Fund and 50% from the federal government. Under the stimulus bill the federal government has agreed to pay 100% of those benefits through the end of this year and have agreed to allow states to adopt triggers on these benefits. Currently the benefits are triggered by the insured unemployment rate rising above 5%. The rate rose above 5% the beginning of February. It is expected to trigger down below 5% about the middle of June. The new formula allowed in the American Recovery and Reinvestment Act of 2009 (Stimulus Act) lets the states use the seasonally adjusted total unemployment rate. When that rate exceeds 6.5% on a three month rolling average the extended benefit period triggers on and stays on until the rolling average falls below 6.5%. Under the current situation the 6.5% three month rolling average was hit the last week of April 1, 2009. It will stay above 6.5% for the rest of this year. In cases where the federal government is paying 100% of federal state extended benefits the state can use this total unemployment rate calculation. As soon as the federal government stops paying 100% they will convert back to the more conservative 5% seasonally insured unemployment rate. The effect of this is an additional \$14 to \$20 million into the Idaho economy during the second half of 2009.

MOTION: **Senator LeFavour** moved that **S1214** be sent to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman Coiner**.

The motion carried by **Voice Vote**. **Senator LeFavour** will be the sponsor of the bill.

MOTION: **Senator Sagness** moved to approve the minutes of March 24, 2009. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

MOTION: **Senator Smyser** moved to approve the minutes of March 26, 2009. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**.

MOTION: **Senator LeFavour** moved to approve the minutes of April 2, 2009. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

ADJOURNED: There being no further business, the meeting adjourned at 8:34 a.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

- DATE:** April 17, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 117
- MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Goedde, Lodge, Smyser, Sagness (Malepeai), and LeFavour
- MEMBERS ABSENT/ EXCUSED:** Senator Cameron
- GUESTS:** See attached sign-in sheet.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Andreason** called the meeting to order at 9:17 a.m.
- MOTION:** **Senator Sagness** moved to approve the minutes of April 7, 2009. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.
- MINUTES:** **Chairman Andreason** welcomed **Director Roger Madsen and Bob Fick, Legislative Affairs, Department of Labor**, to present employment statistics.
- PRESENTATION:** **Chairman Andreason** stated he had never seen anything so earth shaking as the presentation before the Committee from the Department of Labor regarding the unemployment picture.
- Director Roger Madsen** stated that as of November 2007 they had \$320 million in the trust fund. Currently the fund is below \$100 million. The record pay-out per year is \$237 million that is including regular and extended benefits. The figures will come out today and they should be approximately \$212 million after week 16; they are very close to a record in only 16 weeks. There are well over 100,000 job seekers listed with us and last weeks figures show only about 1,700 new jobs listings. There are thousands of workers chasing fewer jobs. The decline of funds in the trust fund is serious. Fourteen states have gone broke. If Governor Otter signs **S1214** this will bring \$32.3 million into the Fund and the Department plans to pay back the loans fairly quickly. The record payout in any week was eclipsed last November at \$6 million; last week they paid out \$14.8 million. This is the **Director's 15th** year as Director and he has worked for the Department for 33 years. He has never seen anything like this downturn.

Senator Lodge asked **Director Madsen** to clarify how many thousands of job seekers are there in the State at this time? **Director Madsen** stated that he received a report last week which indicated there were 127,000 listed with the Department and there are a number of unemployed and underemployed that do not register with the Department. **Director Madsen** said that 1,700 new jobs were listed with the Department and they have been averaging 1,200 to 1,400. Last year and the year before new job listings per month were in the 3,000 to 5,000 range. The New Hiring Council was under 10,000 the lowest month they have had in the 12 to 14 years since they started the program.

Senator Sagness inquired are there some positive signs that you can see on the horizon. **Director Madsen** replied that the credit markets are improving slightly, interest rates are low, housing should start improving, there is some hiring going on, healthcare is still fairly strong, construction work is tough, and retail sales dipped a little last month. The new unemployment claims dipped last week. The Department is doing more job fairs. They just held a fair in Coeur d' Alene and there were 4,000 job seekers. The reports coming out are challenging but there is still some hiring occurring. The Wage and Hour Bureau reports companies are calling in asking how can they lower wages, cut hours, benefits and retirement programs. A year ago, they had employment to refer to the inmates and paroles but this year it is much more difficult because there are not many jobs.

Bob Fick, Legislative Affairs, Department of Labor, stated the fact is that the State has lost 33,000 jobs since the economy peaked in November of 2006. The State has had a rising unemployment rate for 19 straight months. The importance of the two bills that the Committee considered in the last two weeks should improve the unemployment benefit system. The monthly adjustment rate chart shows the exhaustion rate through February hit 38%. These numbers reflect workers who have used up all of their 26-weeks of State benefits and then they will go onto the extended federal benefit program. The third to the last page shows the number of weeks paid for extended benefits. Two weeks ago that number jumped from 8,100 to 10,200. The State is paying 50,000 people benefits and about 40,000 of them are out of the Trust Fund. The exhaustion rate is in excess of what it was during the 2001 recession and is starting to approach the waning days of 1986-87. Construction and manufacturing started to decline in late 2007 and started to ripple through the economy and onto retail and services. This is a classic example of what happens in a long recession (Attachment A).

Mr. Fick said **Senator Goedde** asked about education. They do not track the rate by education but the federal government would track it nationally. The Department knows that education counts of the workers that are claiming benefits there is a gradual increasing rate with high school diplomas and a declining rate for those who lack a high school diploma. They have already exhausted their benefits and are out of the system.

Senator LeFavour asked **Mr. Fick** to clarify the unemployment benefit

weeks. **Mr. Fick** replied when a worker goes on unemployment the first thing you get is the maximum 26 weeks of State benefits. When those benefits are exhausted they get up to 33 weeks of federal extended benefits. With the new legislation that has been passed any worker who exhausts the 33 weeks then goes onto an additional 13 weeks. Finding jobs is difficult with 110,000 to 120,000 of individuals unemployed. In March 59,000 people were unemployed and if they add 13 to 14% that adds to the 120,000.

Mr. Fick went on to explain while individuals who have college degrees are the lowest percentage of the claimants, you can see that those workers have gone up from 8% in 2007 to almost 10%. The lay-offs in high tech have had an impact on better educated workers. The next chart is the wage impact using the fourth quarter as the base for comparison. The preliminary data that the Department received earlier this week for wages paid in Idaho to covered workers the total was down \$147 million dollars from fourth quarter of 2007. To give you an idea of the impact the numbers reflected on the bar chart include the amount of increase in wages between 4th quarter of 2006 and 4th quarter of 2007. Not only was there no increase in the wages as we normally would see but lost wages and the combined effect of that was almost \$360 million in less wages than normally expected in a year with \$375 million of that in the private sector. Clearly construction is the biggest loss of jobs and then manufacturing to a lesser degree. Construction drove the expansion and construction is leading the contraction.

Vice Chairman Coiner asked about the farm employment and whether those jobs are in the downturn. **Mr. Fick** replied actually there are farm jobs included in the numbers but it is a very difficult process to get a handle on farm employment. It has been done in the past based on trends. They have no way of really tracking that number as they would for labor employment because the farm employers do not have to file quarterly reports.

Mr. Fick walked the Committee through the March unemployment numbers seasonally adjusted for every county, metropolitan area and major city in the State. From March 2008 every county has seen an unemployment rate increase. Micron and MPC layoffs might get a lot of media attention but there are layoffs occurring weekly, 10 or 20 here, and there, and they are adding up and becoming as much of a problem than the major layoffs such as Micron. The picture in your packet shows way too many people chasing way too few jobs. The job fair picture a year ago had 118 employers with less than 1,000 job seekers and there were only 50 employers participating this year with 4,000 job seekers. There was an opening at a veterinary medicine clinic for a records tech at \$10.00 per hour. Two individuals that had nuclear science degrees applied for the job. Another clerk job for the Kootenai County Commissioner Office at \$10.00 per hour requiring a high school education, 100 people applied for the job and half of them had college degrees.

The next report is the unemployment weekly. It will show that the

Department paid out \$10 million from the Trust Fund. The charts that have the analyst concerned is the seasonality of these payments seems to be changing. They are not coming down at the same time they should or as fast as they should. That combined with the fact that the State has had year after year loss in non-farm jobs for the last 12 months and for the first time in 50 years we have lost jobs between February and March. There is concern that the Department may be seeing the beginning of an actual structure shift again in the economy like they saw in the 1980s. What that shift will be no one knows. There will have to be an adjustment and that is where the idea of the training and some kind of assessment and foresight to where the economy is heading in the future. The question is what jobs will be critical to formulating the type of training programs that the State will need to have in place if it wants to put most of these 53,000 people back to work. The last time we had a decline from February to March in non-farm jobs was 1944. Fourth quarter to fourth quarter wage and employment chart shows the employment is down 2.8% from fourth quarter of 2007 and 4% in the private sector. Wages are down 2.5% overall and 4.2% in the private sector. The wage reduction and furloughs are compounding the whole problem of layoffs. The job loss would be substantially greater if it was not for the move among employers to reduce hours.

Senator LeFavour inquired if the new numbers will follow a trend line. **Director Madsen** explained they had paid out \$9.9 million which is the first week in a long time they have paid out under \$10 million. The extended benefits are staying high with \$212 million total and \$237 million record so in two weeks they should eclipse all of last year's record pay-outs, which is quite shocking, in just four months of this new year. Caldwell is at 10% unemployment, Nampa is at 9.7% and Ada County is losing tremendous amount of jobs every month and more to come. Many of the highly educated workers such as PhD's, engineers, software engineers are coming and trying to get a \$10 per hour job.

Senator Sagness stated there is stability in the Pocatello and Twin Falls area and the reason why that is occurring is that they have worked hard over the last 20 years to diversify the economy in this area of the State. In looking at the future for the State have there been any inquiries by industries looking to do business in various areas of the State. **Director Madsen** replied that there are 36 active companies in the pipeline but the inquires are down. The Department manages the Workforce Development Training Fund and they have had fewer inquires in the last few years. They have \$9 million in the Fund which funds jobs created and wages provided. The funding for created jobs from the Training Fund Grants have to be for no less than \$12.00 per hour including full benefits.

Senator Goedde asked if **Director Madsen** saw any good news in the trend lines on the charts? Last week we paid \$500,000 more in regular benefits so they went from \$10.5 million to \$9.9 million which is a decline of \$500,000 to \$600,000 but the percentage increase from last year is 138%. Last year was the record year ever for pay-outs. The benefit decrease, the seasonality is kicking in but the pace of decline is not

nearly what it should be compared to past years. They ended last year on the rocket ship effect and then they started off the new year substantially higher than where they ended and finally declined below \$10 million on a regular basis. He has been with the program 33 years and has never seen anything happen so fast. In the early 1980s and mid-1980s the State came within a week of going broke in April of 1983 which was a long double dip recession. This recession has been stronger and more powerful. The \$33 million of stimulus money will be extremely helpful for our agency and their customers. This will help the businesses because the tax rate increase which triggered January 1, 2009 should have a reduction on the massive increase of 10 to 15%. The stimulus money will not only help the claimant but the business owners.

Chairman Andreason said that the Committee was ready to present Ashley Patrick her watch and letters of recommendation for being an excellent Page for the Committee. **Chairman Andreason** said Ashley had been an outstanding Page and the Committee wanted her to know how much they have appreciated her efforts. **Ashley** stated her plans are to attend the College of Idaho and major in pre-law.

ADJOURNMENT: There being no further business, the meeting adjourned at 9:56 a.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

- DATE:** April 30, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 117
- MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Smyser, Sagness (Malepeai), and LeFavour
- MEMBERS ABSENT/ EXCUSED:** Senator Lodge
- GUESTS:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Senator Andreason** called the meeting to order at 1:05 P.M. He requested the secretary take a silent roll, and welcomed **Bob Fick** with the Department of Labor to present **H 335**.
- H 335:** **Mr. Fick** explained that this legislation encompasses what was formerly **S 1214**. While benefits are normally distributed over a maximum of 26 weeks, during periods of high unemployment an additional 13 weeks of pay has been authorized. In 2008 the Federal government approved extended benefits up to 33 weeks, which will push thousands of claimants beyond the 52 week benefit year. This legislation waives the 52 week period, so that an estimated 10,000 more claimants will be able to qualify for additional benefits.
- The rest of this legislation changes the method used to trigger the extended benefits. Since the program was implemented, when the unadjusted insured unemployment rate rose above 5% the 13 week period of unemployment benefits kicked in. When that fell back below 5% the additional unemployment benefits ceased. **Mr. Fick** noted this is an unadjusted rate that has seasonality in it; when winter hits the number increases, when summer comes up it decreases. The American Recovery and Reinvestment Act of 2009 (ARRA) has allowed the Department of Labor to use total unemployment at 6.5% so that when total seasonally-adjusted unemployment rate reaches a 6.5% average the third phase of unemployment 33 weeks is triggered on. When it falls back below 6.5% it triggers back off.
- The Department of Labor estimates that the unemployment rate reached at the end of March will remain at that above-6.5% for the rest of the year. This legislation will help maintain eligibility benefits beyond mid-June, which is when the insured unemployment rate is expected to drop below this trigger point. As such it will keep the unemployment benefits in place

for another 6.5 months, resulting in an estimated \$14 to \$20 million in unemployment kicked back into the State economy.

Senator Stegner noted that this is just a correction on the prior bill, not an amended bill as was the initial concern among some Senate members.

MOTION:

Senator Sagness moved to send **H 335** to the floor with a do pass recommendation. The motion was seconded by **Senator LeFavor**.

Senator Goedde inquired if this legislation would impact employers' contribution to unemployment. **Mr. Fick** indicated this would not be the case, stating the benefits under this legislation would be paid through stimulus money from the Federal Government.

With no further questions, **Senator Andreason** indicated a motion was on the table. The motion to send **H 335** to the floor with a do pass recommendation passed by voice vote. **Senator Sagness** will carry the bill on the floor.

Having no other business of the committee, **Senator Andreason** adjourned at 1:15 P.M.

Senator John Andreason Chairman

Carol Deis Secretary

Sara Pealy
Secretary