

House Business Committee

Minutes
2010



MINUTES

HOUSE BUSINESS COMMITTEE

DATE: January 13, 2010

TIME: 1:30 p.m.

PLACE: Room EW 41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin

**ABSENT/
EXCUSED:** None

GUESTS: Ty Palmer, We the People of Idaho; Shelley Andrus, Preforeclosure business owner; Barbara Youngstrom, IRMPA; John Eaton, Idaho Association of Realtors; Jane Wittmeyer, Wittmeyer & Associates, LLC; Dennis Stevenson, Department of Administration.

Meeting was called to order at 1:30 p.m. by **Chairman Black**, who welcomed the committee members and introduced the committee Page, Sara Carter, from Blackfoot High School.

Chairman Black advised committee members that the first order of business during the session is to review and vote on administrative rules. In order to facilitate this process, Chairman Black appointed Vice Chairman Henderson to monitor the subcommittees that will be appointed to study the rules. He encouraged members to use the rules review process as an opportunity to learn more about the various agencies and to establish good working relationships with the personnel who work there.

Vice Chairman Henderson assumed the chair and appointed the following subcommittee chairmen:

Reps. Gibbs and Thompson will serve as co-chairmen of a subcommittee to review rules from the Board of Accountancy, the Board of Engineers & Land Surveyors, the Bureau of Occupational Licenses, and the Real Estate Commission.

Rep. Jarvis will serve as chairman of a subcommittee to review rules from the Department of Insurance.

Rep. Palmer will serve as chairman of a subcommittee to review the rules from the Division of Building Safety.

Chairman Black will form a subcommittee to review rules from the Department of Finance dealing with short sales and foreclosures.

Vice Chairman Henderson asked the committee members to volunteer for whichever subcommittee they wished to join, and directed them to contact the committee secretary to indicate their choices for subcommittee assignments. He noted that at least one minority member needed to be

included on each subcommittee. Rep. Durst volunteered to serve on the Gibbs/Thompson subcommittee. Rep. Cronin will serve on the Jarvis subcommittee. Rep. Smith (30) will serve on the Palmer subcommittee. Rep. Rusche will serve on the Black subcommittee.

Chairman Black stated that members can attend any subcommittee meetings in which they are interested. During the rules review process, the full Business Committee will not meet at its regularly scheduled time, in order to allow subcommittees to meet. Vice Chairman Henderson also announced that copies of all administrative rules are available in the secretary's office.

Chairman Black welcomed the following visitors to the committee meeting: Shelley Andrus, a concerned business owner; Ty Palmer, representing People of Idaho; Dennis Stevenson, Administrative Rules Coordinator; Barbara Youngstrom; and Jane Wittmeyer, Wittmeyer & Associates, Inc.

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

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE JARVIS SUBCOMMITTEE ON RULES

DATE: January 19, 2010

TIME: 1:30 p.m.

PLACE: Room EW 32

MEMBERS: Chairman Jarvis, Representatives Henderson, Cronin, Collins, Rusche

**ABSENT/
EXCUSED:** Representative Henderson

GUESTS: Mark Larson, State Fire Marshall, Shad Priest, Deputy Director, and Bill Deal, Director, Department of Insurance, Brad Hunt, Office of Administrative Rules, and Lyn Darrington, Regence BlueShield of Idaho.

Meeting was called to order at 1:33 pm by Chairman Jarvis.

Docket No. 18-0105-0901 **Bill Deal**, Director, Department of Insurance, introduced **Shad Priest**, Deputy Director. Mr. Priest presented **Docket No. 18-0105-0901**, Health Carrier External Review. He said this temporary rule exists because of last year's new law, and this rule clarifies wording and review procedures. After a one-year trial, the rule can be amended and proposed as a final rule. There was further discussion of strict time lines, costs of review (which are defined in the code), and process of internal review.

MOTION: **Rep. Cronin** moved to **recommend approval** by the full committee of **Docket No. 18-0105-0901**; **motion carried on voice vote**.

Docket No. 18-0113-0901 **Mr. Priest** presented **Docket No. 18-0113-0901**, Life Settlements. Mr. Priest described how a life settlement broker works with a policy owner to find a policy buyer and said this is becoming an increasingly popular transaction, and he warned of fraudulent practices. Many disclosures must be made to the policy owner. The broker must be registered with the Department of Insurance and have a license as a life insurance agent. This new rule sets standards and requirements, requires annual recording, sets language, sets manner for owner to rescind the transaction, and requires documentation to be retained that statutory requirements have been met. Language and disclosures are defined in this rule. If solicitors use non-written materials, they must provide the Department with a transcript of their telephone message. When Mr. Cronin asked if there is anything comparable in other rules that sets such restrictive language in advertising, Mr. Priest responded that this rule was modeled after the language of health insurance rules. Mr. Priest also said it is a slow process for brokers to get in compliance with the Department of Insurance.

MOTION: **Rep. Collins** moved to **recommend approval** by the full committee of **Docket No. 18-0113-0901**; **motion carried on voice vote**.

Docket No. **Mr. Priest** presented **Docket No. 18-0144-0901**, Schedule of Fees, Licenses

- 18-0144-0901** & Miscellaneous Charges. Mr. Priest noted that both 0901 and 0902 are fee rules. This rule sets out the fees to be paid by life settlement providers and brokers when they register with the Department. Mr. Priest said the fees stipulated are in mid-range of other charges of this type.
- MOTION:** **Rep. Cronin** moved to **recommend approval** by the full committee of **Docket No. 18-0144-0901**; **motion carried on voice vote.**
- Docket No. 18-0144-0902** **Mr. Priest** presented **Docket No. 18-0144-0902**, Schedule of Fees, Licenses & Miscellaneous Charges. Mr. Priest explained that this fee rule establishes a fee for Independent Review Organizations, those entities which review denial of health insurance claims. Mr. Priest said that after reviewing and comparing fees charged in other states, he found this fee to be in mid- to low-range of comparable fees. He said this fee increases revenue and limits the number of applicants. Mr. Priest said that currently there are three entities signed up for application. Mr. Cronin asked what the approximate cost of review would be, and Mr. Priest estimated several hundred to 1,000 dollars.
- MOTION:** **Rep. Collins** moved to **recommend approval** by the full committee of **Docket No. 18-0144-0902**; **motion carried on voice vote.**
- Docket No. 18-0153-0901** **Mr. Priest** presented **Docket No. 18-0153-0901**, Continuing Education Requirements. Mr. Priest said this amends the department rule and requires 24 hours of continuing education every two years, rather than 48 hours. The department is working toward having all states' CE requirements uniform. Additionally, language changes are made, acceptable courses are identified, electronic processing is upgraded, testing methods are restricted, and a section is deleted regarding teachers having extra credit. Mr. Jarvis asked how long it takes to get a course approved for CE credit, and Mr. Deal said it would take two weeks at most. There was further discussion about online courses and test-taking structure.
- MOTION:** **Rep. Collins** moved to **recommend approval** by the full committee of **Docket No. 18-0153-0901**; **motion carried on voice vote.**
- Docket No. 18-0154-0901** **Mr. Priest** presented **Docket No. 18-0154-0901**, Rule to Implement NAIC Medicare Supplement. Mr. Priest said this rule is a national uniform rule developed in response to Medicare Supplement plans, and it includes all the federal requirements. He said this is a modernization of the original rule. Old policies are dismissed and new policies are implemented, hospice benefit is added, outdated benefits eliminated, and requirements for renewing the plans are defined. There was further discussion regarding pre-existing conditions' effect on transferring to a new policy and a possible premium increase. Mr. Priest said the new Medicare Supplement will be in place and available to the public on June 1, 2010. Mr. Collins suggested advising the main committee regarding benefits and process of transferring from an older plan to a newer plan, stating he is concerned about disclosure to the buyer of the policy regarding pre-existing conditions and the cost.
- MOTION:** **Rep. Collins** moved to **recommend approval** by the full committee of **Docket No. 18-0154-0901**; **motion carried on voice vote.**
- Docket No. 18-0155-0901** **Mark Larson** presented **Docket No. 18-0155-0901**, Fire Safety Standards for Day Care. Mr. Larson said his office has been working with the Department of

Health and Welfare to establish fire safety rules, and that his office is completely involved and he is confident about this issue.

MOTION: **Rep. Cronin** moved to **recommend approval** by the full committee of **Docket No. 18-0155-0901**; **motion carried on voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:45 p.m.

Representative Rich Jarvis
Chairman

Sheila Doherty
Secretary

MINUTES

**HOUSE BUSINESS COMMITTEE
THOMPSON SUBCOMMITTEE ON RULES**

DATE: January 19, 2010

TIME: 1:30 p.m.

PLACE: Room EW 41

MEMBERS: Chairman Thompson, Reps. Henderson, Gibbs, Durst

**ABSENT/
EXCUSED:** None.

GUESTS: Ken Mallea, Idaho Funeral Service Association; Dave Curtis, Board of Professional Engineers & Professional Land Surveyors; Roger Hales, Bureau of Occupational Licenses; Jack Van Eyk, Idaho Appraisers, Inc. & Idaho Real Estate Appraisers; Jeanne Jackson-Heim, Tammy Anderson, Mitchell Bird, and Graig Boyack, Real Estate Commission; John L. Byck, Dave Hatton, and Duayne Sims, State Board of Morticians; John Eaton, Idaho Association of Realtors; Drew Thomas, Risch Pisca

Meeting was called to order at 1:30 p.m. by **Chairman Thompson**, who announced that the rules from the Bureau of Occupational Licenses would be heard first in order to accommodate Mr. Hales' schedule.

Docket No. 24-0101-0901 **Roger Hales**, representing the Bureau of Occupational Licenses, presented **Docket No. 24-0101-0901**, a rule from the Board of Architectural Examiners that updates their website address and incorporates the new edition of the Handbook for Interns and Architects.

Docket No. 24-0101-0902 **Mr. Hales** then presented **Docket No. 24-0401-0902**, on behalf of the Board of Architectural Examiners. This rule will allow an applicant who meets the education requirement and who is currently enrolled in the Intern Development Program to apply for the architect registration exam.

Docket No. 24-0401-0901 **Mr. Hales** presented **Docket No. 24-0401-0901**, on behalf of the Idaho Board of Cosmetology. This rule, which implements a new law passed last session, adds the "practice" of cosmetology to the permit issued to cosmetologists. It also adds a deadline for application submissions, specifies that the Bureau is the entity that issues permits when objective requirements are met, and establishes sanitation requirements for the practice of cosmetology.

Docket No. 24-0701-0801 **Mr. Hales** presented **Docket No. 24-0701-0801**, a rule from the Board of Landscape Architects. Mr. Hales explained that last year the Rules of Professional Responsibility were amended, but one subsection was inadvertently omitted from the updates. This rule removes the ambiguity that resulted from that omission.

Docket No. 24-0701-0901 **Mr. Hales** presented **Docket No. 24-0701-0901**, a rule from the Board of Landscape Architects. Mr. Hales said this rule updates the Board's website address and clarifies the references required for applicants. Previously, the

Board required two references from Idaho-licensed landscape architects. However, sometimes new graduates from out of state do not know two Idaho licensees and thus have difficulty fulfilling this requirement. The new rule deletes the requirement that the two references be Idaho-licensed landscape architects. In addition, the prior requirement of references from four individual landscape architects has been changed to two landscape architects and two other professionals, who could be architects, engineers, or a combination.

**Docket No.
24-0801-0901**

Mr. Hales presented **Docket No. 24-0801-0901**, on behalf of the State Board of Morticians. As with other agency rules, this rule will update the Board's website address. The rule also adds, for the first time, a section on continuing education, outlining the CE requirements for morticians. Mr. Hales pointed out that this new continuing education requirement will not be in effect until July 1, 2011. He said the change is supported by the morticians' association, and he is not aware of any opposition to this new requirement.

In response to a question about variations in the amount of time that qualifies as a "credit hour," Mr. Hales said the requirement varies from profession to profession. A credit hour can be 50 minutes or 60 minutes, depending on the profession's individual rules. Mr. Hales said he does not think it would be possible to mandate a standard amount of time for all professions or agencies.

**Docket No.
24-1801-0901**

Mr. Hales presented **Docket No. 24-1801-0901**, on behalf of the Real Estate Appraiser Board. This rule incorporates the new edition of uniform standards and updates the Board's website address. It also clarifies new definitions of classroom hours, and specifies that education may include on-line virtual classrooms that allow real-time interaction with an instructor. It provides a definition for a "residential unit," which must include a kitchen and a bathroom.

This rule proposes raising the license renewal fee from \$250 to \$350. It will also allow the Board to terminate a file if there is no activity in the file for 12 months; written notice would be required before the file is terminated. Other provisions include changes in educational requirements, addition of new requirements for a supervising appraiser, and revising the educational requirements to be licensed as a certified standard appraiser. The rule also specifies that the Board will have discretion in waiving continuing education requirements for certain reasons.

Mr. Hales pointed out that this Board is significantly regulated by the federal government regarding the type of education required and also the nature of continuing education requirements. Additionally, they regulate the nature of the Board's disciplinary actions, stipulating that those actions need to be completed within one year.

At this point, the Board has a negative cash balance of approximately \$31,000. Mr. Hales stated the shortfall has resulted largely from the fact that every licensee was audited to determine whether or not he or she had met the continuing education requirements. This process resulted in a total of 210 disciplinary complaints against licensees. Since investigations are required to be completed within one year, there was a huge amount of work necessary just to meet this federal requirement. In addition, minimum standards have changed to require an increasing amount of education.

Mr. Hales read from a letter written by the Board chairman which outlines the underlying causes of the shortfall and includes a comparison of licensing fees in Washington state and Idaho. Mr. Hales requested that this letter be made a part of the record. In Washington, renewal fee is now \$407 but will be increasing to \$530. Idaho currently charges \$250 but is proposing an increase to \$350. Mr. Hales stressed that the Board continues to work as efficiently as possible, but this fee increase is necessary to cover the shortfall.

Asked why the Board decided to include the fee increases with the rest of the rule changes, rather than break it out into a separate docket, Mr. Hales said the Board was trying to be efficient. He reiterated the fact that many requirements of this Board are mandated by the federal government. Mr. Hales provided further information about what led to the \$31,000 negative balance, noting that the Board has been working through the continuing education complaints over the last three years. This has involved numerous additional board meetings and other expenses, including input from the Attorney General's office. He said the number of complaints in 2006 was 29; in 2007 it was 123; in 2008, 114; and in 2009, 48. Because of the declining real estate market and overall economy, many complaints have been received dealing with evaluations of homes.

In response to further questions, Mr. Hales said all boards try to recoup the costs of their operations, and some of those costs are recovered by imposing charges on violators. It is not always possible, however, to collect from violators, since they may have filed bankruptcy or may have moved or disappeared. Mr. Hales said there are currently 768 licensees, and the change in the fees will have a positive impact of \$76,000 in one year. Once the deficit is overcome, the Bureau will return to the Legislature to request a reduction in license fees.

Mr. Hales was asked how the Board would exercise sufficient quality control measures if they allow virtual or online education courses. He pointed out that the only online courses allowed would be in a live setting with the ability to interact with an instructor in real time. The rule states that 50 minutes out of 60 minutes must be spent in this real-time interactive method of instruction.

Chairman Thompson noted, in response to a committee question, that he would entertain a separate motion on any one of the rules from the Bureau of Occupational Licenses.

**Docket No.
24-2201-0901**

Mr. Hales presented **Docket No. 24-2201-0901**, rules of the Liquefied Petroleum Gas Safety Board. This rule revises the Board's website address and gives them the ability to terminate an application file, with 30 days' notice. It also proposes raising the license renewal fees for various categories of licenses. Mr. Hales presented a letter from the Chairman of the Board, Gary Van Hees, and asked that it be made a part of the record.

Mr. Hales testified that since 2005 license fees have not kept pace with the expenses of the Board's operation; at present they have a deficit of \$132,000. The Board has attempted to reduce costs by holding teleconference meetings rather than meeting in person. Inspection of facilities is responsible for a large part of the expenses.

Mr. Hales said this Board came into existence in 2005, and since that time

every facility in the state has had to be inspected. Although this has been an expensive project, it was necessary to protect the health and safety of the public. He said there are 558 total licensees in the state, of which about 75 are large facilities that pay the higher fee. The fee increases will generate \$33,000 per year.

Docket No. 24-2501-0901 **Mr. Hales** presented **Docket No. 24-2501-0901**, proposed rules of the Idaho Driving Businesses Licensure Board. Mr. Hales stated this is a new Board, created through legislation last year that moved private driving businesses out of the Department of Education. He said the Attorney General's office prepared these proposed rules, which are standard rules for self-governing agencies. The rules include sections that spell out definitions, fees, the nature of applications, and renewal information. They also specify the types of insurance required and the curriculum, as well as grounds for disciplinary action. Mr. Hales said there is no opposition to these proposed rules.

MOTION: **Rep. Gibbs** moved to recommend that all dockets from the Bureau of Occupational Licensing be approved by the full committee, with the exception of **Docket No. 24-1801-0901**, Rules of the Real Estate Appraiser Board. **Motion carried on voice vote.**

MOTION: **Rep. Durst** moved to recommend that **Docket No. 24-1801-0901** be sent without recommendation to the full committee for its consideration. **Motion carried on voice vote.**

Docket No. 10-0101-0901 **Dave Curtis**, Executive Director of the Board of Professional Engineers & Professional Land Surveyors, presented **Docket No. 10-0101-0901**. Mr. Curtis said that, in anticipation of the Board's conversion to computer-based examinations, the changes will allow more flexibility. The rule changes also make technical corrections, remove obsolete language, clarify that a person must be licensed in a base discipline before taking an exam as a structural engineer. They also will reflect the fact that the exams are no longer administered directly by the Board and will clarify the Board's right to publish disciplinary actions.

Docket No. 10-0102-0901 **Mr. Curtis** then presented **Docket No. 10-0102-0901**, which will define "deceit" and "incompetence" and clarify the definition of "misconduct." He said that about a year ago the industry asked the Board to reconsider some wording, but they asked late in the process last year. It was agreed that the changes would be postponed until this year. This rule will clarify the standard of care and the obligations of engineers and land surveyors in reports, statements or testimony and communication with clients. It also makes technical corrections in spelling and grammar.

MOTION: **Rep. Gibbs** moved to recommend that **Docket Nos. 10-0101-0901** and **10-0102-0901** be approved by the full committee; **motion carried on voice vote.**

Docket No. 33-0101-0901 **Jeanne Jackson-Heim**, Executive Director of the Idaho Real Estate Commission, presented **Docket No. 33-0101-0901**, a rule that codifies conditions for late license renewal applications. Ms. Jackson-Heim said the rule codifies what has been common practice, and will help clarify the conditions for licensees. She also said the Commission's intent is to incorporate this into their online automated license renewal process, which is responsible for handling about 90% of their renewals.

Docket No. 33-0101-0902 **Ms. Jackson-Heim** then presented **Docket No. 33-0101-0902**, which amends the existing rule to state that late renewal of the required errors and omissions (E&O) insurance is considered failure to maintain insurance. She said this is not a new provision, but is intended to spell out the requirement more clearly. Ms. Jackson-Heim said the Commission has received no public comment on any of its proposed rules.

Responding to committee questions, Ms. Jackson-Heim said the new rules are simply intended to make the requirements clearly published in one place. She said there is a \$100 penalty if a licensee goes 30 days or more without E&O insurance in place; this penalty doubles if the licensee has a previous violation. She also noted that during the last three years her department has reduced the number of late renewals from 1,200 to 400.

Docket No. 33-0102-0901 **Ms. Jackson-Heim** presented **Docket No. 33-0102-0901**, which will allow an out-of-state attorney to appear on behalf of a licensee on a one-time basis. The attorney must be granted limited admission by the Idaho Bar. Ms. Jackson-Heim said there are only three or four matters per year that involve an attorney, so the incidence of a request for an out-of-state attorney would be rare.

Docket No. 33-0103-0901 **Ms. Jackson-Heim** presented **Docket No. 33-0103-0901**, a rule dealing with disposition of subdivided lands, typically timeshares and out-of-state subdivisions. She noted that sellers of such properties have to file with the Real Estate Commission. The vast majority of these sales are in resort areas. An online electronic timeshare registry enables information to be sent to a central depository, and documents can then be sent electronically. Ms. Jackson-Heim said Idaho has participated in the timeshare process since July 2008. In order to encourage timeshares to use this online process, a \$25 discount in the fee is granted if the electronic registry is used. The docket also includes updates of the rules' general provisions, since they haven't been updated since the 1970s.

MOTION: **Rep. Gibbs** moved to recommend that **Docket Nos. 33-0101-0901, 33-0101-0902, 33-0102-0901, and 33-0103-0901** be approved by the full committee; **motion carried on voice vote.**

Docket No. 01-0101-0901 **Barbara Porter**, Executive Director of the State Board of Accountancy, presented **Docket No. 01-0101-0901**. Ms. Porter said this docket entails three minor changes in the Board of Accountancy rules. First, it removes the reference to the calendar year, thus enabling the board to more effectively apply its standards in regulatory matters. Second, it cleans up some references to make them match both Idaho Code and the Public Records Act numbering. Third, it updates the age at which a licensee may be granted a retired license, lowering the age from 60 to 55, as provided for in Idaho Code in 2008.

In response to a committee question, Ms. Porter said if there was an instance where the rules are in conflict with the Idaho Code provisions, the state law would take precedence and the Board of Accountancy would submit to the state authority.

MOTION: **Rep. Gibbs** moved to recommend that **Docket No. 01-0101-0901** be approved by the full committee; **motion carried on voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting

was adjourned at 2:50 p.m.

Representative Jeff Thompson
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE PALMER SUBCOMMITTEE ON RULES

DATE: January 21, 2010

TIME: 1:30 p.m.

PLACE: Room EW41

MEMBERS: Chairman Palmer, Reps. Henderson, Crane, Bayer, Smith (30)

**ABSENT/
EXCUSED:** None

GUESTS: Steve Keys, Division of Building Safety; Milford Terrell, DeBest Plumbing; Patrick Grace, Attorney General's Office; Bob Rawlings, plumbing contractor; Jerry Peterson, Idaho Building Trades

Meeting was called to order at 1:35 p.m. by Chairman Palmer, who noted that the subcommittee will be hearing testimony on 18 rule dockets from the Division of Building Safety. He announced his intention to entertain a separate motion on each of the rule dockets, rather than one motion on all of them together.

Docket No. 07-0103-0901 **Steve Keys**, Deputy Administrator of the Division of Building Safety, presented **Docket No. 07-0103-0901**, which will implement a staggered system for the renewal of electrical contractor licenses. Mr. Keys said this change will result in better distribution of the license renewal workload and will minimize the need for supplemental staff to handle the seasonal workload. He said the change has been in effect since July of last year and has worked out well.

MOTION: **Rep. Crane** moved to recommend that **Docket No. 07-0103-0901** be approved by the full committee; **motion carried on voice vote.**

Docket No. 07-0104-0901 **Mr. Keys** presented **Docket No. 07-0104-0901**. Mr. Keys said this rule change is similar to the previous docket, but applies to electrical specialty contractors. Mr. Keys said he is aware of no opposition to this change.

MOTION: **Rep. Smith** moved to recommend that **Docket No. 07-0104-0901** be approved by the full committee; **motion carried on voice vote.**

Docket No. 07-0106-0901 **Mr. Keys** presented **Docket No. 07-0106-0901**, which amends the 2008 National Electrical Code and provides additional clarification relative to the definition of a crawlspace. Mr. Keys said this issue has been brought forward by the electrical industry. He said the change recognizes the difference in hazards for wiring installed in crawlspaces as opposed to exposed wiring installed in basements. Mr. Keys said the change will lower installation costs for contractors without adversely affecting safety. Responding to a question from the committee, Mr. Keys said the new requirements will apply to both low voltage and high voltage wiring. Again, he said the Division is not aware of any opposition.

MOTION: **Rep. Crane** moved to recommend that **Docket No. 07-0106-0901** be approved

by the full committee; **motion carried on voice vote.**

**Docket No.
07-0205-0901**

Mr. Keys presented **Docket No. 07-0205-0901**, dealing with practical examinations for plumbing licenses. He noted that because of the downturn in construction it has become difficult to administer examinations in a field setting. This has illustrated the necessity of an alternative delivery system for the exam, as well as a concise definition of what the exam should encompass. This rule change defines the requirements for the practical exam and allows for its administration in a lab setting. Mr. Keys said the change is widely supported by the plumbing industry.

Mr. Keys said that since this rule was heard in the Senate, the Division has become aware of some concerns relative to the language used in the rule. He said that on page 23, in section 12.02.a, two sentences were shortened and combined, which has led to confusion.

Milford Terrell, owner of DeBest Plumbing in Boise, was recognized to address this problem. Mr. Terrell suggested the language should be changed to read "cast iron no-hub fittings" rather than "copper pipe and fittings."

Patrick Grace, Deputy Attorney General assigned to the Division of Building Safety, was recognized to testify. Mr. Grace said it is not so simple as striking a word or putting in additional words. He said the Legislature can amend and modify a rule only by concurrent legislation.

MOTION:

Rep. Crane moved to hold **Docket No. 07-0205-0901** subject to the call of the Chairman, in order to allow time to get further information and recommendation. **Motion carried on voice vote.**

**Docket No.
07-0205-0902**

Mr. Keys presented **Docket No. 07-0205-0902**, which establishes continuing education requirements for journeyman and contractor licensees. Under this rule, a journeyman plumber is required to complete eight hours of continuing education during each three-year license cycle. Four hours of the eight must be related to changes in the plumbing code. Contractors must complete sixteen hours of continuing ed during a three-year license period. Journeymen will be given the option of completing an examination in lieu of the required class time.

MOTION:

Rep. Henderson moved to recommend that **Docket No. 07-0205-0902** be approved by the full committee; **motion carried on voice vote.**

**Docket No.
07-0205-0903**

Mr. Keys presented **Docket No. 07-0205-0903**, which will align the rule provisions with the changes made to Idaho Code dealing with apprentice registration. The registration was changed from an annual requirement to a multi-year registration, five years for a plumbing apprentice and three years for a plumbing specialty apprentice. Mr. Keys said the rule also clarifies that the approved training class is four years in duration, and that the required four years of work experience is a minimum of 8,000 hours. Mr. Keys also stated that since this rule was heard in Senate committee, the Division has become aware of some opposition to it.

Responding to committee questions, Mr. Keys said the rules currently stipulate four years of experience, but there is not a specific hourly requirement. He said the 8,000 hour figure was chosen because it is the common duration of

apprenticeships on a national level, and it also is the customary term of an apprenticeship in the plumbing industry. Mr. Keys said it has become difficult to verify that a person has worked for four years, since in the current economic conditions a lot of people are not able to work full-time. The registration period has thus been lengthened to five years, and a specific number of hours has been chosen as the requirement. He said it is not atypical for an apprentice to take longer than four years to complete an apprenticeship, since the hours worked are subject to the available work.

Asked what the outcome of the Senate hearing was on this rule, Mr. Keys said the Senate committee had approved it.

Milford Terrell was recognized to testify. He said the 8,000 hour requirement has been typical for about the last 20 years, and he confirmed Mr. Keys' testimony that apprentices are often not able to work full-time. The hourly requirement is an attempt to give them some flexibility in earning the necessary practical experience. Mr. Terrell also testified that another question was raised about grandfathering in those who are already serving as apprentices under the current requirements. He said the intent of the rule change would be that anyone in the system now would stay within that system, while anyone entering the apprenticeship system after the new rule is in place would be held to the new requirements.

Patrick Grace was recognized to testify. Mr. Grace said he does not think there is a problem with grandfathering. He said the Division will no longer be checking during the five-year duration of the permit to see whether an apprentice is in school or working. At the end of the apprenticeship period, however, the apprentice will have to show proof that he has gained the proper education and performed the required work.

Responding to committee questions, **Mr. Terrell** said the new system will not require an apprentice to perform 2,000 hours of work in any given year; rather, the total of 8,000 hours will need to be worked in a five-year period. He said it is not the intent of the state board to slow down an apprentice or to ease up on the requirements.

Mr. Keys requested that the committee set aside its consideration of **Docket No. 07-0205-0903** and return to it later. By consensus, the committee agreed to do so.

**Docket No.
07-0301-0901**

Mr. Keys presented **Docket No. 07-0301-0901**, which adopts the 2009 editions of the International Building Code, the International Residential Code, the International Energy Conservation Code, and the International Existing Building Code. Mr. Keys said that following the negotiated rulemaking process, the Division of Building Safety was made aware of concerns from the log home industry that the 2009 Energy Code provisions would adversely affect their industry. To address those concerns, the Division met with industry representatives and the chairman of the Business Committee. Mr. Keys said the outcome of that meeting is reflected in the attachment to his remarks (See Attachment A). The attachment contains a temporary and pending rule docket that will be presented for Board approval following the adjournment of this legislative session and, as such, it will be reviewed by the Legislature during next year's session. Mr. Keys said the Division will be able to make sure that

log homes are not adversely impacted. He also said that all parties present at

the meeting agreed that this solution would be acceptable.

In answer to committee questions, Mr. Keys said the specific amendment was adopted in cooperation with the building industry and they had signed off on it. He said it reflects current language but also provides for an opportunity to work around the limitations. Mr. Keys also said that automatic residential fire sprinkler systems would not be required in townhouses, as specified on page 34, subsection d, of the Division's pending rules. He agreed that this provision applies only to townhouses, not to triplex or larger units.

MOTION: **Rep. Henderson** moved to recommend that **Docket No. 07-0301-0901** be approved by the full committee; **motion carried on voice vote.**

Docket No. 07-0301-0902 **Mr. Keys** presented **Docket No. 07-0301-0902**, which was promulgated as a fallback, in the event that significant barriers to the adoption of the new editions of the building code arose during the negotiated rulemaking process. Mr. Keys said the intent was to make sure that the 2009 IECC could be addressed on its own merits, particularly in light of the requirements pertaining to conditions for the receipt of federal stimulus funds. He said if the previous docket goes forward, the Division would request that this docket be rejected.

MOTION: **Rep. Crane** moved to send **Docket No. 07-0301-0902** to the full committee without recommendation; **motion carried on voice vote.**

Docket No. 07-0301-0903 **Mr. Keys** presented **Docket No. 07-0301-0903**, which addresses requirements pertaining to the Integrated Design and Fundamental Commissioning of school building facilities. He said the Division has worked closely with the legislative sponsors of the original bill to make sure that the requirements contained in this docket correlate with the intent of the original legislation. He said he is aware of no opposition.

In response to a committee question about whether this will increase the price tag of a school's construction, Mr. Keys said the fundamental commissioning design process is elective and is not imposed as a requirement. If a school chooses to use it, however, they do receive some budgetary consideration.

MOTION: **Rep. Smith (30)** moved to recommend that **Docket No. 07-0301-0903** be approved by the full committee; **motion carried on voice vote.**

Docket No. 07-0303-0901 **Mr. Keys** presented **Docket No. 07-0303-0901**, a rule that identifies certifying organizations from which inspectors involved in modular building inspections may receive certification. Mr. Keys said this rule follows the change to allow "multi-hat" inspectors for inspections of modular buildings. He said that using inspectors with multiple certifications is cost effective and results in significant savings to the Division and the customer.

MOTION: **Rep. Henderson** moved to recommend that **Docket No. 07-0303-0901** be approved by the full committee; **motion carried on voice vote.**

Docket No. 07-0311-0901 **Mr. Keys** presented **Docket No. 07-0311-0901**. This docket specifies civil penalty provisions applicable to the manufactured housing industry. Mr. Keys said he is not aware of any opposition to this rule.

MOTION: **Rep. Smith (30)** moved to recommend that **Docket No. 07-0311-0901** be

approved by the full committee; **motion carried on voice vote.**

**Docket No.
07-0311-0902**

Mr. Keys presented **Docket No. 07-0311-0902**, which eliminates the current requirement for participants in the manufactured housing industry to complete industry-related education and to satisfy continuing education requirements ahead of licensure. Mr. Keys said that due to the economic downturn, the Idaho Manufactured Housing Association would not be able to provide the traditional training sessions delivered across the state. Mr. Keys said the Division is working with the Manufactured Housing Board and the industry to establish new requirements and a new delivery system for training. He said he is not aware of any opposition to this proposed rule.

In answer to a question from the committee, Mr. Keys said it is the Board's intention to have a new proposed rule in place for consideration next year. He noted that the industry association is trying to put together some type of correspondence or online course to satisfy the education requirement.

MOTION:

Rep. Smith (30) moved to recommend that **Docket No. 07-0311-0902** be approved by the full committee; **motion carried on voice vote.**

**Docket No.
07-0312-0901**

Mr. Keys presented **Docket No. 07-0312-0901**, which reflects changes to the Idaho Manufactured Home Installations Standards required to bring those standards into conformance with federal installation requirements. He said the change is supported by the manufactured housing industry in Idaho, and he is not aware of any opposition.

MOTION:

Rep. Bayer moved to recommend that **Docket No. 07-0312-0901** be approved by the full committee; **motion carried on voice vote.**

**Docket No.
07-0402-0901**

Mr. Keys then presented **Docket No. 17-0402-0901**, which updates the editions of the elevator codes currently in force in Idaho. He said that adoption of updated codes allows for the use of new technologies and updates some testing requirements. Again, he is not aware of any opposition to this change.

MOTION:

Rep. Bayer moved to recommend that **Docket No. 07-0402-0901** be approved by the full committee; **motion carried on voice vote.**

**Docket No.
07-0501-0901**

Mr. Keys presented **Docket No. 07-0501-0901**, which details the definition of "estimated cost" as it applies to license requirements for Public Works Contractors. Mr. Keys said the definition has not been contained in rule, but has been the policy and the interpretation of the agency and the Public Works Contractors Licensing Board for an extended period of time. He said the net effect of the definition is that any project estimated to exceed \$10,000 will require all contractors engaged in the project to be properly licensed as Public Works Contractors. Mr. Keys said there is no known opposition to this rule.

Responding to questions from committee members, Mr. Keys said anyone can work on a public works project that is estimated to cost less than \$10,000. He said if federal funds are involved, the state cannot mandate licensing for a contractor who wants to submit a bid, but can require the contractor to sign a contract before commencing work.

MOTION:

Rep. Crane moved to recommend that **Docket No. 07-0501-0901** be approved by the full committee; **motion carried on voice vote.**

Docket No. 07-0601-0901 **Mr. Keys** presented **Docket No. 07-0601-0901**, which modifies the provisions of the Uniform School Building Safety Code. Mr. Keys noted that codes are typically updated on a regular basis, usually every three years, and making sure that the rules reflect those changes is a never-ending endeavor. He said this change references the particular codes which are applicable to school buildings, but deletes any reference to the edition of the particular code that is in effect.

MOTION: **Rep. Henderson** moved to recommend that **Docket No. 07-0601-0901** be approved by the full committee; **motion carried on voice vote.**

Docket No. 07-0701-0901 **Mr. Keys** presented **Docket No. 07-0701-0901**. He said the HVAC Board promulgated this rule, which will impose a requirement on permit holders to request an inspection of the work covered by a permit. Currently there is no specific requirement that a contractor or property owner request such an inspection, and many times the Division is unable to access a work site to assure that the installation meets minimum code requirements. The industry has consistently voiced support for this change, and no opposition has come forward.

MOTION: **Rep. Smith (30)** moved to recommend that **Docket No. 07-0701-0901** be approved by the full committee; **motion carried on voice vote.**

Docket No. 07-0701-0902 **Mr. Keys** presented **Docket No. 07-0701-0902**, which deletes any reference to the International Residential Code as applied to the installation of HVAC equipment in one- and two-family homes. This change means that all HVAC installations in the state must conform to the International Mechanical Code and the International Fuel Gas Codes. This rule also incorporates requirements for protection of regulators and piping subject to damage from snow and ice. This will facilitate the inspections of some solid fuel and hearth-related installations not covered under the mechanical provisions of the IRC previously incorporated into Idaho Code governing HVAC installations. This change will also eliminate the need for HVAC inspectors to have the IRC book. Mr. Keys said that currently the 2006 edition of the International Residential Code covers all components of residential structures. He said in Idaho plumbing is done under the Uniform Plumbing Code instead. He noted that Idaho also currently uses the National Electrical Code in lieu of these regulations. Now, with this change, the International Mechanical Code and the Fuel Gas Code books will be used.

MOTION: **Rep. Henderson** moved to recommend that **Docket No. 07-0701-0902** be approved by the full committee; **motion carried on voice vote.**

Docket No. 07-0205-0903 Chairman Palmer directed the committee's attention back to **Docket No. 07-0205-0903**, the change to an 8,000 hourly requirement for apprentices.

Patrick Grace was recognized to provide further testimony on this rule docket. He stated there was previously no specific hourly requirement for apprentices. He said the new rule will require an apprentice to show proof that the necessary education and hours have been satisfied before he can sit for the exam. In response to a question from the committee, Mr. Grace said hours are typically documented by submissions from employers.

Jerry Peterson, representing the Idaho Building Trades, testified that this rule

change is an attempt to find a way to let apprentices continue schooling and catch up on hours if necessary. He noted that sometimes National Guard duty or other commitments will take an apprentice out of the work force for some time. The new regulation of 8,000 hours will allow apprentices to accumulate hours rather than try to complete the requirements in a four-year time span. He said the new rule will remove a lot of gray area for the Division of Building Safety

Milford Terrell was recognized to testify further on this rule docket. He said this bill will clarify the requirements for apprentices and will provide some level of protection for them.

Bob Rawlings, a plumbing contractor and HVAC journeyman, testified on **Docket No. 07-0205-0903**, saying it is his position that the Division is not taking into account the existing apprentices who have already served most of their time. Mr. Rawlings said he favors grandfathering for those apprentices. He also noted that the statute does not say one has to have a certain number of hours to sit for the examination.

MOTION: **Rep. Bayer** moved that **Docket No. 07-0205-0903** be sent without recommendation to the full committee for its consideration. **Motion carried on voice vote.**

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

Representative Joe Palmer
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

- DATE:** January 25, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room EW 41
- MEMBERS:** Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin
- ABSENT/
EXCUSED:** None
- GUESTS:** David L. Curtis, Board of Engineers & Surveyors; Brenda Tominaga, Idaho Rural Water Association; Sen. Dean Cameron; Don Drum, PERSI; Joie McGarvin, America's Health Insurance Plans; Skip Smyser, Connolly Smyser; Ben Botkin, Times-News; Martin Bilbao, Connolly Smyser; Woody Richards, Steve Thomas, Idaho Association of Health Plans; Kathie Garrett, Idaho Academy of Family Physicians; Julie Taylor, Blue Cross of Idaho; Colby Cameron, Sullivan & Reberger; Tana Cory, Bureau of Occupational Licenses
- MOTION:** Meeting was called to order at 1:30 p.m. by **Chairman Black**. **Rep. Smith** moved to approve the minutes of January 13, 2010; **motion carried on voice vote.**
- RS 19154C1:** **Dave Curtis**, Executive Director of the Board of Professional Engineers and Professional Land Surveyors, presented **RS 19154C1**. This legislation will remove obsolete references, modernize Title 55 Chapter 17 of Idaho Code, which deals with coordinate systems, and create an optional single-zone system of geographic coordinates.
- MOTION:** **Rep. Mathews** moved to introduce **RS 19154C1**; **motion carried on voice vote.**
- RS 19174C1:** **Mr. Curtis** then presented **RS 19174C1**, which has five objectives. First, it will stagger the expiration date of business entity certificates of authorization, which will have the effect of flattening out the work load for Board staff. Second, it amends language relating to examinations in order to allow the use of computer-based testing. Third, it provides for the transfer of "responsible charge" from one professional to another in the event that the first professional is no longer available to complete a project. Fourth, it changes obsolete nomenclature. Finally, it eliminates the requirement for references for applicants for their initial certification examination.
- MOTION:** **Rep. Collins** moved to introduce **RS 19174C1**; **motion carried on voice vote.**
- RS 19165:** **Tana Cory**, Bureau Chief of the Bureau of Occupational Licenses, presented

- RS 19181:**
RS 19183:
- RS 19165.** Ms. Cory testified that this legislation will remove members of the state Board of Morticians from the Public Employee Retirement System (PERSI) by changing the payment they receive from compensation to an honorarium. It also makes some grammatical changes to the existing Code. **Chairman Black** noted that this same type of change from compensation to honorarium has been put in place with other agencies over the past several years.
- MOTION:** **Rep. Patrick** moved to introduce **RS 19165**.
- SUBSTITUTE MOTION:** **Rep. Rusche** moved to introduce **RS 19165**, **RS 19181**, and **RS 19183**, all from the Bureau of Occupational Licenses, since they are similar in effect; that is, they remove Board members from the PERSI retirement system. **Motion carried on voice vote.**
- RS 19114:** **Shad Priest**, Deputy Director of the Department of Insurance, presented **RS 19114**. Mr. Priest explained that this legislation repeals an old code section that made life insurance payable for the benefit of a married woman the separate property of the woman. Recently the Idaho Supreme Court considered this provision and determined it is unconstitutional because it violates the equal protection clause. Mr. Priest said in light of the Supreme Court decision, this section of Code needs to be repealed because it has been rendered without effect.
- MOTION:** **Rep. Jarvis** moved to introduce **RS 19114**; **motion carried on voice vote.**
- RS 19206C1:** **Bill Deal**, Director of Department of Insurance, presented **RS 19206C1**. Mr. Deal stated this legislation clarifies the status of records available to title insurance companies and self-funded health insurance plans. It also clarifies the process for adopting title agent examination reports and clarifies their status as records available to the public. In addition, it clarifies that examinations of title agents may include other aspects of their business, in order to determine compliance with applicable laws. Mr. Deal said the Department is not aware of any opposition to this proposed legislation.
- In response to committee questions, **Mr. Deal** clarified that the legislation specifically deals with examinations and specifies that an examination report will be made to the title agent being examined. The agent will be given an opportunity to review the exam results and submit additional information. The examinations are then made public record. Mr. Deal said that at the present time examinations are made public for insurance companies, with a similar process in place for a licensee to review the exam results and make comment. He said this legislation simply applies the same requirements to the title insurance exam records.
- MOTION:** **Rep. Patrick** moved to introduce **RS 19206C1**; **motion carried on voice vote.**
- RS 19196C2:** **Mr. Deal** presented **RS 19196C2**, which repeals a 25-year-old law governing third party administrators (TPAs). This legislation contains an entire new chapter that will make the new law consistent with model law of the National Association of Insurance Commissioners. Mr. Deal said most states have some type of TPA law in place, and noted that Arizona, California, Montana, Nevada, New Mexico, Wyoming and Utah already have laws consistent with

the NAIC model law. He said third party administrators handle large amounts of money and have authority to determine payment of claims. Therefore, they need to be regulated.

In further testimony, Mr. Deal said the law will require nonresident TPAs to acquire a license prior to application for an Idaho license. This is an attempt to achieve some uniformity in licensing. The legislation will allow the Department of Insurance to accept electronic applications. It will assure more transparency by requiring an annual report to the Department including a current audited financial statement and a list of insurers with which the TPAs have agreements. It will also allow an exemption from licensure when no more than 100 lives are covered.

Mr. Deal testified that this new law will require registration of TPAs who directly or indirectly underwrite business in Idaho on behalf of self-funded plans. This will provide some help for the Department in dealing with complaints and directing aggrieved persons to the proper party who can deal with the complaint. The legislation contains an emergency clause, with an effective date of February 1, 2010, which will make it coordinate with the next RS that will be presented by the Department.

Mr. Deal said there are currently 254 TPAs operating in Idaho, but only eight of them are physically located in the state. This legislation will streamline their licensing process and help monitor their operations.

Responding to a committee question, **Mr. Deal** stated this proposal will not affect ERISA plans. He said TPAs administering ERISA plans will have to register some information, but he said the Department does not have authority to regulate ERISA plans. Mr. Deal agreed to further explain the definition of "affiliate" or "affiliated" on page 2 of the legislation, when the bill comes before the committee for a hearing. Mr. Deal also said he will provide further information about compensation and standards of performance.

MOTION: **Rep. Collins** moved to introduce **RS 19196C2**; **motion carried on voice vote.**

RS 19412: **Sen Dean Cameron** presented **RS 19412**. Sen. Cameron said Governor Otter discovered last year that General Fund dollars were being used to pay for immunizations of children who are insured. He said federal dollars are used to pay for immunizations for the uninsured. Governor Otter recommended a plan that would provide funding for immunizations for insured children, and the Legislature adopted it, effective July 1, 2009. Sen. Cameron noted, however, that as a consequence of that plan, the children on insured plans would have had to pay significantly more for their immunizations. Additionally, physicians would be required to keep two separate stocks of vaccines and monitor the usage of each separately. He said that in some parts of rural Idaho, physicians decided not to carry all vaccines because of the difficulties presented by the new plan.

Sen. Cameron said he and **Rep. Gary Collins**, along with other members of the Health Care Task Force, wrote to Governor Otter and requested additional time and funding to come up with a more workable solution. Governor Otter agreed to direct some of the federal stimulus dollars to extend the previous program through January 31, 2010. A subcommittee

was appointed to work on a permanent solution to the funding need; the subcommittee received input from insurance carriers, members of the public, and the Idaho Association of Health Plans. **RS 19412** is the result of their work.

Sen. Cameron testified that **RS 19412** sets up a board that can levy an assessment, proceeds of which will be held in the state Treasurer's Office, will be considered General Fund dollars, and will be used only to pay for immunizations of children covered by insurance plans. Sen. Cameron noted the legislation contains an emergency clause which will make the effective date February 1, 2010. The assessments will be made on insurance carriers and third party administrators, for those under self-funded insurance plans. The assessments will create a purchasing pool that will allow the industry to purchase vaccines at the discounted CDC rates.

The legislation also contains a three-year sunset clause, requested by the insurance carriers, after which the program will be evaluated for its effectiveness and any unintended consequences.

Responding to committee questions, **Sen. Cameron** said that, although this legislation and **RS 19196C2** can both stand on their own merits, they need to be coordinated and thus they each have an effective date of February 1, 2010. Sen. Cameron also clarified that specific federal programs, namely Vaccines for Children and 317 funds, currently pay for the uninsured. These programs, however, are prohibited from being used to pay for vaccines for insured children. Instead, on a temporary basis, federal stimulus money is being used to fund vaccines for insured children in Idaho.

MOTION:

Rep. Thompson moved to introduce **RS 19412**; motion carried on voice vote.

Chairman Black announced that Wednesday's Business Committee meeting will be a hearing on the Department of Finance administrative rule, which deals with the federal S.A.F.E. Act. On Friday, the committee is invited to tour the Boise Airport; parking will be validated and lunch will be served prior to the tour. Chairman Black said the Boise airport should be of interest to all legislators, not just those in the Boise area, since it serves the major travel needs of all Idaho citizens. **Rep. Bilbao** encouraged members to take the airport tour; having done so himself, he testified to its merit. **Rep. Patrick** stated he had also toured the airport and encouraged fellow committee members to avail themselves of this opportunity.

Chairman Black noted that the Air Force may possibly locate all training for its F-35 aircraft at Gowen Field. He said Mountain Home Air Force Base is also on a short list of possible locations for operational training for the aircraft. If Gowen Field and Mountain Home were to be chosen, it would provide a tremendous economic boost for the entire state.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:15 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

DATE: February 1, 2010

TIME: 1:30 p.m.

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin

**ABSENT/
EXCUSED:** Rep. Rusche

GUESTS: Woody Richards, Surplus Line Association; Don Roberson and Tricia Carney, Department of Insurance; Roger Hales, Board of Occupational Licenses; Wendy Tippetts, Surplus Line of Idaho; Diane Golder, Independent Insurance Agents; Jeri DeLange, Hayden, Rathdrum, and Coeur d'Alene Chambers of Commerce; Paul Jackson, Farmers Insurance; Larry Halvorson and Anne Lorenz, National Association of Insurance and Financial Advisors

Meeting was called to order at 1:30 p.m. by Chairman Black.

MOTION: **Rep. Bilbao** moved to approve the minutes of January 25, 2010; **motion carried on voice vote.**

Bill Deal, Director of the Department of Insurance, was recognized to present information on fraud prevention. Mr. Deal explained that the Department of Insurance organized the Fraud Awareness Coalition three years ago and hired **Tricia Carney** to be the Department's public information officer. Mr. Deal said the Coalition has enjoyed a high level of cooperation from government and community organizations. The Coalition has held seminars throughout the state, has produced a DVD on fraud prevention, and has sponsored a scholarship for high school students to help raise awareness of fraud even among young people.

Don Roberson, Chief of the Investigation Unit at the Department of Insurance, was recognized to address fraud prevention from an investigational perspective. He said that since September 11, 2001, most federal enforcement efforts have targeted terrorism, which leaves a void for white collar crime and prosecution. These crimes therefore are dealt with at the state level. However, in some jurisdictions the prosecutor's position is only part-time; additionally, there is often a high turnover rate in these positions. With limited resources, prosecutors tend to concentrate on violent crimes, drug crimes and sex crimes.

In 2005, with the help of state legislators, the Department funded a special prosecutor in the Attorney General's office specifically for insurance crimes. This position was established without any general fund money or any increase in fees. In 2007, the insurance fraud statutes were strengthened and a second special prosecutor was added. These prosecutors offer assistance to county prosecutors, sometimes even conducting the entire

prosecution, at no cost to the counties. Mr. Roberson recounted one success of this program, noting that the Department assisted the Power County Prosecutor in a vehicle arson case. Mr. Roberson said there are currently 28 active fraud cases in the Attorney General's office, 13 at the county prosecutor level, and three in federal prosecution.

Mr. Roberson said the Coalition Against Insurance Fraud, the National Insurance Crime Bureau and the National Association of Insurance Commissioners estimate that 10% to 25% of every premium dollar goes to fraud. He noted that even at the 10% level, the loss involves hundreds of millions of dollars.

At the present time, according to Mr. Roberson, the fastest rising insurance crime is health care identity theft, which involves obtaining patient identification numbers and then billing insurance companies for treatments that were never provided. Sometimes these identification numbers are sold to the uninsured so they can get medical treatment. Mr. Roberson said this can be dangerous because a fraudulent person could be treated with medication that the actual insured patient might be allergic to. Because that treatment becomes a part of the patient's file, the patient could later be treated with the wrong medication, which could have serious or deadly consequences.

In conclusion, Mr. Roberson said the Fraud Coalition meets quarterly to discuss fraud trends and exchange ideas. He also said other states are now using Idaho's model to organize similar efforts in their jurisdictions.

Beve Bryant, Better Business Bureau and a member of the Fraud Coalition, testified that last year the Better Business Bureau assisted a half million people who contacted them about possible fraud. She said fraud has no boundaries, respecting neither age, race, intelligence or location. She encouraged members of the committee to do whatever they can legislatively to help reduce fraud.

Michael Mulcanery, who serves with the Special Investigations Division of State Farm Insurance and is also a member of the Idaho Fraud Awareness Coalition, was recognized to testify. He said most successful fraud prosecutions happen when people come forward and talk about fraudulent activity they have observed or learn about. He offered several examples of fraudulent insurance claims which had been successfully prosecuted because of the cooperation of others. He said this, however, is not the norm. Mr. Mulcanery said the norm is actually apathy. He said Idaho suffers from the same level of fraud as California, the fraud capital of the U.S. It is estimated that Idahoans pay hundreds of extra premium dollars apiece each year to pay for fraud. Some of the most common types of fraud are staged auto accidents, staged thefts, and falsified death claims. Mr. Mulcanery said raising public awareness can help stem the incidence of fraud, since honest people don't like to pay for the dishonesty of others.

Steve Reynolds, United Heritage Insurance Company, testified that the biggest problem in Idaho, Oregon and Utah is finding people willing to prosecute fraud, even in cases where it is well documented. He talked about a case of insurance fraud in Boise County, a staged arson fire. His company had to pay \$70,000 on the claim, even though it was proven to be a staged

fire with an accelerant being used, and was also the homeowner's second total loss fire in seven years. The case was never prosecuted, however, because it occurred in the middle of a change from one prosecutor to another.

Mr. Reynolds also testified that in the current poor economic climate there are a lot of robberies, which give the homeowner an opportunity to "pad" the list of belongings that may have been stolen. He said the cost of fighting these claims in court is generally higher than the cost of simply paying the claims. In addition, sometimes counties or states do not have sufficient resources to prosecute such cases.

Les Lake, a forensic accounting manager for one of the top 25 CPA firms in the U.S., testified that in one single year, 2008, \$994 billion was lost to fraud. He said 7% of gross business revenue is lost to fraud, and three out of four businesses are hurt by fraud. Mr. Lake said nine out of ten new businesses fail in their first year, and of these, one out of three fails because of fraud or embezzlement. Of the top ten most victimized types of businesses, insurance ranks number seven. The four most common types of fraud are billing, corruption, check tampering and skimming.

Mr. Lake stated that individuals can fight fraud in the following ways: First, if they notice something unusual or odd, pay attention and ask relevant questions to determine if fraud may be involved. Second, take responsibility for the issue; this could mean that a small problem will be caught before it becomes a big problem. Third, treat others as they deserve to be treated; in other words, sometimes people need to be held accountable for the decisions they make. He urged the committee members to do all in their power to help put a stop to fraudulent activity, and not to put off doing something about a situation until it may be too late.

Bill Deal concluded the fraud awareness presentation by stating that fraud costs billions of dollars each year. He said the members of the Fraud Awareness Coalition are committed professionals who are involved with the issue of fraud on all levels. He invited members of the committee to contact the Department of Insurance if they had any further questions.

RS 19308:

Woody Richards, representing the Surplus Line Association, presented **RS 19308**. Mr. Richards explained that the surplus line companies are not admitted to do business by the Department of Insurance; rather, they are insurers of last resort. He said they insure such things as a quarterback's arm or a dancer's legs, or high-risk entities like ski resorts. Because of the high risks, neither of the guaranty associations cover them for insolvency. He said surplus line insurance companies rarely become insolvent, but when they do, they have to rely on the company's assets to pay claims.

Mr. Richards said Idaho Code already includes a requirement that a notice be given to purchasers of surplus line insurance that there is no coverage provided by either the Idaho Insurance Guaranty Association or the Idaho Life and Health Insurance Guaranty Association. He said the purpose of the proposed legislation is to allow an option to print this notice in 12-point bold type, rather than in red ink, which is the current requirement. Due to advances in electronic signature and the manner in which policies are distributed, red ink is an impediment. Mr. Richards said permitting black ink

with larger type will reduce expense and time. He said he has met with the Department of Insurance and has circulated the proposal to other insurance companies, and he is not aware of any opposition.

MOTION: **Rep. Collins** moved to **introduce RS 19308; motion carried on voice vote.**

RS 19158C2: **Roger Hales**, an attorney appearing on behalf of the State Board of Barber Examiners, presented **RS 19158C2**. Mr. Hales said the legislation has a four-fold intent. First, it will clarify the qualifications for a barber instructor's license, stating that there is one year of experience required. Second, it will create qualifications for a barber stylist instructor license. Third, at the request of a barber school owner in the state, the Board is increasing the student-instructor ratio from 1/15 to 1/20. This change is being made because of the limited number of instructors in the state. The Board does not believe this change will jeopardize instructional quality. Finally, the Board is removing its members from the PERSI retirement system by changing the pay they receive from compensation to an honorarium.

Responding to a committee question, Mr. Hales said the term "good moral character" is included in the rule because it mirrors the qualifications for a barber instructor license. He said the term is typically defined by court decisions in Idaho, and it gives the Board some discretion to investigate the applicant's character.

Mr. Hales also introduced **Kevin Moriarty**, chairman of the Barber Examiners Board.

MOTION: **Rep. Gibbs** moved to **introduce RS 19158C2; motion carried on voice vote.**

RS 19169: After introducing Peter Rockwell, a member of the Architectural Examiners Board, **Mr. Hales** presented **RS 19169**, on behalf of Idaho State Board of Architectural Examiners. He said the Board is expanding an exemption by defining those who do not need an architect's license to design a residence. He said the limitation is for residences of not more than three units and not more than two stories. He pointed out, however, that the current International Building Code and the Residential Code sets the limit at three stories rather than two. The Board thinks this is an appropriate change to the exemption, and they do not think it will jeopardize the public health or safety.

MOTION: **Rep. Mathews** moved to **introduce RS 19169; motion carried on voice vote.**

RS 19182: **Mr. Hales** presented **RS 19182** on behalf of the Bureau of Occupational Licenses. He explained that the Bureau is directed to cooperate with certain agencies, and their "cooperation" includes being able to share information not only with state agencies but also with federal agencies. Mr. Hales said this clarification will allow the Bureau to cooperate with appropriate regulators and law enforcement agencies; for instance, they will be able to share evidence of a crime obtained in conjunction with a regulatory investigation. Mr. Hales also introduced **Tana Cory**, Bureau Chief of the Bureau of Occupational Licenses.

Responding to a question about the confidentiality of information, Mr. Hales said information in an application or an investigation is exempt from public inspection under the Open Records Act. He said there has been some concern raised as to whether or not the Bureau can, in fact, share that information even for investigational reasons, and that is the concern that will be alleviated with this new rule. He said the rule will not change the confidentiality of such information but will allow the Bureau to share information with other agencies when necessary.

MOTION: **Rep. Thompson** moved to **introduce RS 19182; motion carried on voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:20 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

- DATE:** February 3, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room EW41
- MEMBERS:** Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin
- ABSENT/
EXCUSED:** Reps. Bayer and Palmer
- GUESTS:** Dave Curtis, Board of Professional Engineers & Professional Land Surveyors; Julie Robinson, Family Medicine Residency; Ted Epperly, Family Medicine Residency; Kathie Garrett, Idaho Academy of Family Physicians; Kurt Stembridge, GSU; Steve Keys, Division of Building Safety; Patrick Grace, Division of Building Safety; Perry Brown, Family Medicine Residency of Idaho; Denise Chuckovich, Idaho Primary Care Association; Gina McBride, Idaho Department of Insurance; Shad Priest, Idaho Department of Insurance; Woody Richards, Blue Cross of Idaho; Joie McGarvin, America's Health Insurance Plans; Julie Taylor, Blue Cross of Idaho; Jeremy Pisca, Saint Alphonsus Regional Medical Center; Stephen R. Thomas, Idaho Association of Health Plans; Mike Brassey, St. Luke's Health System; Janice Fulkerson, Bright Path; Bill Deal, Department of Insurance; Dawn Justice, Idaho Bankers Association; Christine Hahn, Idaho Division of Health & Welfare; Jane Smith, Idaho Division of Health & Welfare, Susie Poulcot, Idaho Medical Association; Mike Kane, Property & Casualty Insurers Association of America; Kenton Brine, Property & Casualty Insurers Association of America; Corey Surber, Saint Alphonsus; Leslie McMillan, Merck; Martin Bilbao, private citizen; Skip Smyser, private citizen; Sarah Michael, Sanofi Pasteur; Gavin Gee, Department of Insurance
- Meeting was called to order at 1:34 p.m. by Chairman Black.
- MOTION:** Rep. Bilbao moved to approve the minutes of February 1; **motion carried on voice vote.**
- H 432:** **Sen. Dean Cameron** presented **H 432**, saying it could be one of the most important issues to be decided this session. He said Governor Otter discovered last year that General Fund dollars were being used to pay for immunizations of children who are insured. He said federal dollars are used to pay for immunizations for the uninsured. Governor Otter recommended a plan that would provide funding for immunizations for insured children, and the Legislature adopted it, effective July 1, 2009. Sen. Cameron noted, however, that as a consequence of that plan, the children on insured plans would have had to pay significantly more for their immunizations. Additionally, physicians would be required to keep two separate stocks of vaccines and monitor the usage of each separately. He said that in some parts of rural Idaho, physicians decided not to carry all vaccines because of

the difficulties presented by the new plan.

Sen. Cameron said members of the Health Care Task Force contacted Governor Otter and requested that he direct some of the federal stimulus dollars to extend the previous program through January 31, 2010. A subcommittee was appointed to work on a permanent solution to the funding need; the subcommittee received input from insurance carriers, members of the public, and the Idaho Association of Health Plans. **H 432** is the result of their work. Sen. Cameron gave particular credit to the Idaho Association of Health Plans and to Dr. Ted Epperly for their efforts. Dr. Epperly suggested that Idaho adopt some aspects of a similar plan from New Hampshire and customize it by including provisions from Idaho's high risk insurance pool.

Sen. Cameron testified that **H 432** sets up a board that can levy an assessment, proceeds of which will be held in the state Treasurer's Office to be used only to pay for immunizations of children covered by insurance plans. Sen. Cameron noted the legislation contains an emergency clause which will make the effective date February 1, 2010. The assessments will be made on insurance carriers and third party administrators, for those under self-funded insurance plans. The assessments will create a purchasing pool that will allow the industry to purchase vaccines at the discounted CDC rates.

Sen. Cameron covered several aspects of the bill, noting that it includes definitions, stipulates what is not covered, and designated the membership of a nine-member board. It also lists the duties, powers and liabilities of the board and specifies that board members serve without compensation or reimbursement for their expenses. **H 432** includes the assessments that will create the special fund and notes that the first assessment will be due on or before April 1, 2010. Finally, the bill has an emergency clause with an effective date of February 1, 2010, as well as a three-year sunset clause, allowing it to be evaluated at that time.

In closing, Sen. Cameron recognized the efforts of all involved, singling out Rep. Rusche and Rep. Collins for their considerable commitment of time and effort. He said the insurance industry is on board with the legislation, which will create a pool to enable the purchase of vaccines at discounted prices.

Dr. Ted Epperly, a family physician, testified **in support of H 432**, noting that it will be beneficial for all the children who need vaccinations as well as for physicians who can now offer adequate vaccines to all. He said it will also be beneficial to the state of Idaho, which currently ranks 50th out of 50 states in immunization rates. The bill allows pooling of resources to assure that Idaho's children will be able to access the vaccines they need. This, in turn, will hopefully raise the level of vaccinations in the state of Idaho.

Dr. Perry Brown, who serves as a director of pediatric education and is the legislative and public policy chair of the American Academy of Pediatrics, testified **in support of H 432**. Dr. Brown shared anecdotal information about the importance of just one vaccine, for whooping cough, and how just one child sick with this illness can require hospitalization and can infect many others. He explained the "herd effect" with regard to immunizations, noting that in order for a population to enjoy a fairly low level of infection from certain diseases, the immunization rate in that population needs to be about

80%. Idaho's immunization rate is currently between 58% and 60%. Dr. Brown noted that until the unintended consequences of last year's legislation, doctors could operate with a single vaccine stock. After the 2009 legislation, however, they had to hire extra personnel to manage the new requirements for separate stock. He said one large pediatric group in Boise estimated front-end costs of around \$400,000 plus the cost of one extra nurse. Because of these costs, many doctors simply decided to stop offering some vaccines altogether. Thus, access to vaccines became a huge issue, particularly in smaller communities.

Dr. Brown explained that this is not an attempt to try and get parents to vaccinate if they don't want to. Rather, it simply makes vaccines available. He complimented the insurance industry for cooperating in finding a solution to this problem.

Dr. Christine Hahn, State Epidemiologist in the Division of Public Health for the Idaho Department of Health and Welfare and a participant in the Health Care Task Force discussions, testified **in support of H 432**. She stated the bill will allow streamlining in the process of ordering vaccines. She said her department is committed to ensuring that the plan is a success and that vaccines will be available to all who need them.

Steve Thomas, appearing on behalf of the Idaho Association of Health Plans, testified **in support of H 432**. He gave a short procedural history of the situation leading up to development of this legislation, noting that the program is a melding of aspects from the High Risk Insurance Pool and a similar New Hampshire program, which has been in place since 2002. Mr. Thomas said he had worked through over a dozen drafts of this bill before arriving at the legislation being considered today. The goal was to develop a mechanism that would guarantee a single source of vaccines, to minimize the cost to Idaho employers, and to make sure that insured kids would have access to the vaccines. He said he received input from multiple interested parties, including the Department of Health & Welfare, the Idaho Medical Association, the Department of Insurance, the Idaho Association of Commerce and Industry, and the health insurance and pharmaceutical industries. **H 432** is consensus legislation acceptable to all parties.

Denise Chuckovich, representing 13 community health centers, testified in support of H 432. Ms. Chuckovich detailed the services of community health centers, noting that they provide a medical "home" to many of Idaho's children. She testified that the requirement of keeping a separate stock of vaccines represented a significant burden, noting that one center spent over \$80,000 purchasing vaccines and had to purchase a second refrigerator as well. She expressed appreciation for the efforts of all involved in **H 432**.

Susie Poulcot, Idaho Medical Association, testified **in support of H 432**, stating that one of their highest priorities has been a universal vaccine program. She said this bill will help maintain and expand accessibility of vaccines for all Idaho's children. She also expressed her gratitude to Sen. Cameron, Reps. Collins and Rusche and others involved in this legislation.

Corey Surber, Director of Advocacy and Community Health at Saint Alphonsus Regional Medical Center, testified in support of H 432. She said

Saint Alphonsus' participation in the development of this legislation was viewed from two perspectives. First, they considered their mission to serve the community and ensure that all Idaho children will have access to vaccines. Second, they considered it as a member of a self-funded insurance plan that would be assessed to pay for the cost of the program. She stated that without this bill, the vaccine situation could revert to what it was last July, with two separate stocks being required. She said St. Al's continued to offer vaccines even at that time, but they spent hundreds of thousands of dollars to do so. She also testified this will be one important step toward improving Idaho's vaccination rates.

Responding to committee questions, **Sen. Cameron** said the necessary funding could range from \$4.2 million to \$7.2 million, depending on the number of children needing vaccines. He said the estimated fiscal impact is between 80 cents and \$1.20 per month, per child in any particular health plan. He also noted that Idaho currently has an "opt-in" registry for vaccinations, which creates incomplete data on vaccination rates. He said the registry question will be addressed in separate legislation, in an effort to provide more pertinent and accurate information. **Sen. Cameron** said that although there is a cost to insurance companies under this plan, there is also a financial benefit to them when children are immunized.

MOTION: **Rep. Crane** moved to send **H 432** to the floor with a **DO PASS** recommendation; **motion carried on voice vote.** **Rep. Cronin** noted that it would be helpful if the committee could receive a progress report on immunization rates during next year's legislative session.

H 430: **Bill Deal**, Director of the Department of Insurance, presented **H 430**. **Mr. Deal** introduced **Shad Priest**, Deputy Director at the Department, and **Gina McBride**, Supervisor of the Consumer Affairs Section, who was heavily involved in drafting **H 430**. **Mr. Deal** explained that this legislation deals with Third Party Administrators (TPAs), those who contract with insurers and self-funded health plans to administer the underwriting, collect premiums, and pay claims. This bill is an update to 25-year-old TPA legislation and it will bring Idaho's regulations into alignment with the National Association of Insurance Administrators model. **Mr. Deal** said one of the major concerns is that TPAs handle a considerable amount of money and have decision-making responsibility in the administration of plans and the payment of claims.

The goal of the NAIC is to arrive at uniform licensing requirements from state to state, thus streamlining the process of nonresident TPAs acquiring Idaho licensing. **Mr. Deal** said there are about 249 nonresident TPAs operating in Idaho and only eight resident TPAs. He said Idaho is one of the first states that is uniform to the highest degree possible with other states.

Mr. Deal explained that the Department is asking TPAs who are not residents of Idaho to become licensed in their home state, and if they meet the uniformity of licensing standards, then they can simply make application for licensing in Idaho and meet other simple requirements, and they will receive an Idaho license. He said much of the licensing process is now carried out on the internet, and this bill will allow the Department to accept electronic applications. TPAs will need to be registered with the Department and will need to submit annual financial reports with audited statements and

a list of insurers with which they have agreements. They receive an exemption from the requirements if they have less than 100 lives covered in Idaho. Mr. Deal said the registration requirement serves two purposes. First, it allows the Department an assessment tool; and second, it provides contact information to help field complaints against these companies. Mr. Deal said the bill has an emergency clause that will allow it to “hook onto” the previous bill. He said the legislation will not affect employer plans or ERISA plans, but only TPAs.

Responding to questions from the committee, Mr. Deal said resident TPAs will still be required to have bonding, but nonresident TPAs meet their home states’ requirements, and Idaho depends upon those requirements being met. He reminded the committee that those TPAs will still need to submit an audited financial statement. Asked whether there is any enforcement mechanism to deal with TPAs who do not register, Mr. Deal said generally the Department finds out about non-licensed administrators and is then able to impose a penalty. Possible penalties include fines and/or legal action.

MOTION: **Rep. Thompson** moved to send **H 430** to the floor with a **DO PASS** recommendation; **motion carried on voice vote.**

RS 19486: **Dave Curtis**, Executive Director of the Board of Professional Engineers and Professional Land Surveyors, presented **RS 19486**. Mr. Curtis explained that his previous legislation, **H 427**, was found to have two minor errors. The new RS is the corrected version of **H 427**. Mr. Curtis reminded the committee that the objective of the legislation was to convert certificates of renewals from the month of July to the end of the month in which they were issued, thus spreading out the work load for his staff.

MOTION: **Rep. Rusche** moved to **introduce RS 19486**; **motion carried on voice vote.**

RS 19411: **Rep. Jim Patrick** presented **RS 19411**, which changes the requirements for mortgage insurance guaranty companies. Rep. Patrick explained that these companies write guaranty insurance for first-time home buyers or others who may not qualify for a loan without a guaranty. Current Idaho law prohibits a mortgage insurance company from writing new business if the company’s risk-to-capital ratio exceeds 25 to 1. Rep. Patrick said having a fixed capital number without other considerations is not helpful. This legislation will allow the Department of Insurance to have some discretion in this area.

MOTION: **Rep. Rusche** moved to introduce **RS 19411**, observing that this legislation sounds as if it may be transferring the risk away from mortgage bankers, a situation that may be partially responsible for the problems of the last two years. **Motion carried on voice vote.**

RS 19113C1: **Gavin Gee**, Director of the Department of Finance, presented **RS 19113C1**. Mr. Gee introduced **Marilyn Chastain**, Securities Bureau Chief, who served as chief drafter of the bill and who supervises most major enforcement actions in the state. Mr. Gee said his department, a small dedicated fund agency with 55 employees, administers over 22 different financial service laws. This bill sets up a contingency fund for to pay the costs of specialized services associated with enforcement actions. Mr. Gee said costs for such things as expert witnesses or special expertise currently must be paid out of

the Department's budget. This bill provides for a continuous appropriation, from fines, civil penalties and attorney fees on enforcement actions. The bill has an emergency clause so the Department can begin funding this in the near future.

Mr. Gee illustrated the need for this legislation by giving details of recent cases in which the Department has been involved. One recent case involved a Canadian stock promoter involved in securities fraud. Mr. Gee reported that the Department was able to recover over \$567,000 to return to investors, but the legal expenses involved were \$150,000, which is paid out of the Department's general operating fund. Mr. Gee gave details of the DBSI case, in which the Department sued DBSI in state court in Idaho for securities law violations. Because all decisions in the case were made in Delaware, the Department hired a Delaware attorney with expertise in bankruptcy, and they also hired a forensic accountant. Again, the legal fees incurred were \$150,000.

These cases, and others, have proven to be costly because they require hiring of experts such as lawyers, accountants, and others. Mr. Gee said the legislation envisions a set-aside fund, modeled after the same kinds of funds used by other state agencies and in other states

Responding to questions from the committee, **Mr. Gee** said when the Department collects fines, that money goes into their dedicated account. He pointed out, however, that the Department returns any excess at the end of each year, to the extent that it exceeds 125% of their current year budget. Last year this amounted to \$5.6 million being returned to the General Fund. The Department is seeking to take up to \$300,000 of the funds derived from enforcement actions and place that in a revolving fund that they could use to pay for extraordinary expenses.

During further questioning, Mr. Gee stated last year over \$3.3 million was returned to investors, either ordered by the courts or because of Department action. He said the amounts payable to individual investors is determined as part of the investigation, which attempts to locate all investors that were defrauded in a particular case. Mr. Gee said often the Department invites defrauded parties to come forward with information.

MOTION: **Rep. Smith (30)** moved to introduce **RS 19113C1**; **motion carried on voice vote.**

Vice Chairman Henderson assumed the chair.

RS 19175C1: **Steve Keys**, Deputy Administrator of the Division of Building Safety, **presented RS 19175C1**, which will clarify that plumbers may install venting for water heaters. Mr. Keys said the HVAC statute did not recognize that plumbers had traditionally installed the venting for water heaters. He said both the plumbing and HVAC boards support this legislation.

MOTION: **Rep. Rusche** moved to **introduce RS 19175C1**; **motion carried on voice vote.**

RS 19186: **Mr. Keys** presented **RS 19186**, which expands the definition of "plumbing systems" to include medical gas and medical vacuum systems. Mr. Keys

said that while medical gas and medical vacuum system installations in large health care facilities are routinely certified by accredited certification agencies, many smaller installations are not. Adoption of this legislation would assure that all of these critical and potentially very dangerous systems are installed by competent installers and certified by a recognized inspection organization. Mr. Keys said these these systems are typically installed by plumbing contractors.

MOTION: **Rep. Gibbs** moved to **introduce RS 19186; motion carried on voice vote.**

RS 19231: **Mr. Keys** presented **RS 19231**, which amends provisions of the plumbing statute to reflect current practice for the deposit of funds. Mr. Keys said this legislation responds to some concerns brought forward by the Division of Financial Management. He said it won't affect their current practice but it does amend the plumbing statute.

MOTION: **Rep. Durst** moved to **introduce RS 19231; motion carried on voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:00 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

DATE: February 5, 2010

TIME: Upon Adjournment of the House

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin

**ABSENT/
EXCUSED:** Reps. Henderson and Bayer

GUESTS: Benjamin Davenport, Risch Pisca; John Eaton, Idaho Association of Realtors; Mark Warbis, Office of the Governor; Jayson Ronk, Idaho Association of Commerce & Industry

Meeting was called to order at 11:45by Chairman Black.

RS 19329 **Rep. Grant Burgoyne** presented **RS 19329** which will amend the Code providing for state public employee health, life and disability insurance. Rep. Burgoyne said the Code currently permits local units of government to sign on to the state's insurance plan if they so choose. This amendment will allow private sector employers in the state of Idaho to sign on to the state employee benefit package, including coverage for life, health, disability, vision and dental. Rep. Burgoyne said the Department of Administration would not have to contract with a private employer if the interests of the state are not protected. The private employers would pay all the costs of the insurance. Rep. Burgoyne said this provision would simply provide another option for employers, which should help to lower the cost of health insurance for private sector employers.

MOTION: **Rep. Mathews** moved to introduce **RS 19329**; **motion carried on voice vote.**

PRESENTATION **Don Dietrich**, Director of the Governor's Project 60 program, was recognized to present the Governor's Business Summit Report. Mr. Dietrich gave a brief history of the Governor's jobs and economic development plan, known as Project 60, which was launched about 18 months ago. He stated this plan focuses on three critical areas: first, systemic growth (things that can be done to support business and communities within Idaho); second, recruitment of businesses from outside Idaho; and third, international interaction, which includes marketing Idaho goods and looking for potential capital and businesses from overseas. As a result of this effort, there are now 106 companies in the recruitment pipeline, more than ever before.

Mr. Dietrich explained the two primary reasons for this success. First, discussions have included interaction among a number of agencies, including the Departments of Commerce, Labor, Transportation, Tax, and others. He said each time a business comes into Idaho on a recruitment visit, these agencies work together and are a part of the visit. Mr. Dietrich

said it is important that federal, state and local authorities work together. A second factor in the success is the utilization of a "top-to-top" initiative. Under this type of initiative, chief executives in resident companies try to recruit companies from outside Idaho; the approach is often made through the Governor's Office and the Department of Commerce. This has proven to be a very effective recruiting tool to attract businesses to the state of Idaho, thus creating additional jobs.

Mr. Dietrich noted that, as the economy softened, Governor Otter wanted to assure that we were doing everything as a state to assist companies. To that end, the Governor brought together 41 panelists from eight different business sectors, including agriculture, natural resources, tourism, construction, manufacturing, commercial, retail, and health care. Out of the many pages of testimony, 250 recommendations were developed, and those were distilled down to eight major ideas, which are contained in the report. Mr. Dietrich said the focus was on objectives that are do-able and that will make a difference. He stressed that these recommendations are not the Governor's, nor does he endorse them in any official way. Rather, these are ideas from the private sector. Mr. Dietrich asked members of the committee to evaluate and consider them, and he offered his help with any further analysis or implementation. He also noted that the report is available at www.commerce.idaho.gov and also at www.Project60.idaho.gov.

Mark Warbis, Office of the Governor, was recognized to further address the committee about the Governor's Business Summit Report. Mr. Warbis said the Governor gave him two tasks while working with the Department of Commerce on this summit as well as future summits on innovation, finance, and small business. First, the summits should be driven by the participants, which will result in a clear view of what people think the government can do for them in order to grow and attract business. Second, the reports that are generated from the Summits should not be reports that will sit on a shelf, unused and ineffective. The Governor wanted this to be an action-oriented process. Mr. Warbis said future summit reports will be brought to the Business Committee, and he and Mr. Dietrich will make themselves available to answer questions. He again stressed that the findings are not the Governor's recommendations, but rather are a summation of the solutions that people have brought forward.

Responding to questions from the committee, **Mr. Dietrich** said the current number being reported for the GDP basis is \$52.7 billion, which is actually an increase from the \$51 billion initially reported.

Mr. Warbis was asked about whether Idaho might become a favorable climate for insurance companies. He responded that Director Deal is very wary of any federal legislation that would mandate the way the insurance industry should do their work. He said Section 7 of the Governor's report is narrow in scope and aimed only at things the state can control and how state government can help create jobs.

Mr. Dietrich said there was a separate summit held on innovation, and the recommendations coming from that summit should be ready within the next three weeks. They will be presented to the germane committees in the future.

In response to further questions, **Mr. Dietrich** said there are a number of factors that contribute to a healthy employment environment in the state, including keeping barriers down and providing a predictable tax structure. He said Idaho is receiving multiple calls from Oregon after last week's decision by the Oregon Legislature to implement further tax increases. He said similar things are happening in Washington. Mr. Dietrich said the entire west coast has become a major target for recruiting because of the unfavorable tax environment in those states. He encouraged the Legislature to make sure it creates the best operating environment for companies to survive and thrive.

Mr. Warbis added that Governor Otter is very aware of what is going on in other states and he is taking note of their fiscal problems. He is also aware of how important good tax policy is in recruiting new businesses to Idaho. He said they visited Seattle last summer and spoke to top executives at Boeing, letting them know that if they want to move, Idaho is willing to work with them. Boeing said they look at places with a critical mass of support businesses. Mr. Warbis also mentioned that the location of the F-35 Lightning 2 Strike Fighters in Idaho could create the need for an ancillary support structure business for the aircraft industry. He said the same is true for Quest Aircraft in northern Idaho.

Mr. Dietrich said he does not believe the selection process for the F-35 has narrowed the locations from five to two. He said Idaho is in a great position to accommodate the mission without any additional military construction. In response to a further question, Mr. Dietrich commented on the area of insurance, noting that they had not yet looked at such factors as the need for medical managers, actuaries, or greater higher education opportunities. He said they regularly consult with the universities to determine what it might take in terms of curriculum changes to attract particular sectors, and he noted that the insurance industry seems to be an interesting sector to support.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 12:20 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

DATE: February 9, 2010

TIME: 1:30 p.m.

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin

**ABSENT/
EXCUSED:** None

GUESTS: Jerry Peterson, Building Trades; Steve Keys, Division of Building Safety (DBS); Kelly Pearce, DBS; Janice Foster, DBS; Kirk Weiskircher, DBS; Patrick Grace, DBS; Bill Hatch, DBS; Ray Coon, Say-Ray Plumbing & Treasure Valley Master Plumbers Association; Joe Schneehagen, Greg Oyama, and Mark Zaleski, International Brotherhood of Electrical Workers; Marc Bernsen, Idaho NECA; Tom Brown, State Electrical Board; Roger Hales, Idaho Bureau of Occupational Licenses; Erik Makrush, Idaho; Dave Whaley and Kelly McDonald, AFL-CIO; Larry Yardlay, Plumbers & Pipefitters; Russ Knapp, Mark Rowley and Mike Kelly, Building Trades; Rod Clay, Plumbers & Pipefitters; Dee Dee Yardley, Idaho PFP; Mike Mantey and Dennis Ritchie, Idaho Pt Pipe Trades; Julie Pipal, IEC; Jane Wittmeyer, Associated Builders & Contractors

Meeting was called to order at 1:30 p.m. by Chairman Black.

MOTION: **Rep. Collins** moved to approve the minutes of February 3 as written; **motion carried on voice vote.**

RS 19449C1: **Kerry Ellen Elliott**, representing the Idaho Association of Counties presented **RS 19449C1**. Ms. Elliott explained that the legislation would give counties the option of doing electrical and plumbing inspections. It extends to counties the same option that cities currently have. All county plumbing and electrical inspections are done by the Division of Building Safety currently. With this option, counties may be able to provide a more efficient inspection process and better utilize the inspectors they have. This legislation would simply allow counties the option of doing inspections themselves but would not be mandatory.

Responding to committee questions, **Ms. Elliott** said that she had not received any information regarding the Idaho Electrical Board's decision not to support the legislation. She stated that she was aware of the opposition of the Building Contractors Association and noted that it was based on the lack of a fee threshold guarantee in the legislation. The impetus for the legislation was to provide cost savings for the taxpayer. County staff could be better utilized if they could have dually qualified inspectors.

MOTION: **Rep. Matthews** moved to introduce **RS 19449C1**; **motion carried on voice**

vote.

**SUBSTITUTE
MOTION:**

Rep. Smith moved to return **RS19449C1** to the sponsor. She said that the major parties are not on board with the legislation. It is a duplication of services that are already being provided. All stakeholders need to be in agreement before this legislation goes forward.

Rep. Gibbs spoke in support of the original motion. He stated that the bill deserves a hearing.

Rep. Thompson spoke in support of the original motion. He said there should be an opportunity for both sides to speak on the issue.

Rep. Crane noted that based upon House Rule 38 he should make the committee aware that this bill would have a significant financial impact on his business. This legislation would promote increased regulation and cost. It would also interrupt what is currently a streamlined inspection process. He stated that he would be **supporting the substitute motion**.

The substitute motion failed on voice vote.

**VOTE ON
ORIGINAL
MOTION:**

The original motion, to introduce RS 19449C1, carried on voice vote.

RS 19185:

Steve Keys, Deputy Administrator of the Division of Building Safety, presented **RS 19185** which changes compensation for members of the Modular Building Advisory Board from a \$25 daily fee to a \$50 honorarium. This would be the same rate that other board members at the Division currently receive. It would allow members to participate in private retirement programs by removing them from PERSI.

MOTION:

Rep. Collins moved to introduce **RS 19185; motion carried on voice vote.**

RS 19190:

Mr. Keys presented **RS 19190**. It would allow the Division to establish a fee for examinations delivered by the agency rather than through a third-party testing organization. Currently the administrator does have authority to deliver exams, but lacks explicit authority to charge for the exams.

In response to committee questions, **Mr. Keys** said that anyone who comes forward with the necessary qualifications is welcome to provide an exam upon approval of the Board.

MOTION:

Rep. Rusche moved to introduce **RS 19190; motion carried on voice vote.**

RS 19192:

Mr. Keys an attorney appearing on behalf of the Bureau of Occupational Licenses, presented **RS 19192**. It would remove the Department of Administration from dealing with serious school safety issues. The legislation would allow the Division of Building Safety Administrator to hire an engineering consultant directly. The change would simplify and expedite the process for dealing with school safety problems.

MOTION:

Rep. Thompson moved to introduce **RS 19192; motion carried on voice vote.**

RS 19484: **Rep. Wendy Jaquet** presented **RS 19484** which would transfer the accrued interest on a tenant's security deposit from the landlord to the tenant on a yearly basis. She said the issue was brought to her attention by a concerned constituent that believed it was an issue of fairness.

MOTION: **Rep. Rusche** moved to introduce **RS 19484**; **motion carried on voice vote.**

RS 19226C1: **Roger Hales**, an attorney appearing on behalf of the State Athletic Commission, presented **RS 19226C1**. He stated that the Commission regulates boxing, wrestling and mixed martial arts and requires combatants, promoters, and ring officials to carry licenses. The legislation is aimed at continuing to strengthen the regulation of mixed martial arts for not only professionals but amateurs as well. It clarifies definitions, establishes fees for amateur athletic sanctioning groups, establishes a fees schedule for approving events as well as revises Idaho code to ensure consistency with other changes.

Responding to committee questions, **Mr. Hales** stated that secondary schools and colleges or universities, whether public or private, are exempt from the rules.

MOTION: **Rep. Durst** moved to introduce **RS 19226C1**; **motion carried on voice vote.**

RS 19229: **Mr. Hales** presented **RS 19229**. It clarifies who must be listed on applications submitted by an entity to the Idaho Contractors Board and who must disclose disciplinary action. Further clarifications are being made to the discipline section to allow the Board to refuse to issue or renew licenses.

MOTION: **Rep. Thompson** moved to introduce **RS 19229**; **motion carried on voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:07 p.m.

Representative Max C. Black
Chairman

Sarah Hendrick
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

- DATE:** February 11, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room EW41
- MEMBERS:** Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin
- ABSENT/
EXCUSED:** None.
- GUESTS:** Jim Szatkowski, Idaho Board of Plumbers/Pipefitters; Mratin Bilbao, Connolly Smyser; Roger Hales, Idaho Bureau of Occupational Licensing; Steve Keys and Patrick Grace, Division of Building Safety; Julie Taylor, Blue Cross of Idaho; Joie McGarvin, America's Health Insurance Plans; Steven Thomas, Idaho Association of Health Plans; Barbara Porter, Idaho State Board of Accountancy; Jeanne Jackson-Heim, Real Estate Commission; Tana Cory, Bureau of Occupational Licenses; Leon Duce, Association of Idaho Counties; Jeremy Pisca, Saint Alphonsus Regional Medical Center; Kim Coster, Idaho Real Estate Commission; Mark Larson, Department of Insurance; Skip Smyser, Idaho State Dental Association; Woody Richards, Blue Cross of Idaho; Toni Lawson, Idaho Hospital Association; Sarah Fuhriman, Roden Law Office; Janice Fulkerson, Bright Path; Zach Hauge, Capitol West; Steve Millard, Idaho Hospital Association; Corey Surber, Saint Alphonsus; Colby Cameron, Sullivan & Reberger
- Meeting was called to order at 1:40 p.m. by Chairman Black.
- MOTION:** **Rep. Bilbao** moved to approve the minutes of February 9; motion carried on voice vote.
- MOTION:** **Rep Bilbao** moved to approve the minutes of February 5; motion carried on voice vote.
- Vice Chairman Henderson** assumed the chair. **Rep. Thompson** was recognized to report on the administrative rules studied by his subcommittee. He reported their recommendation that the Business Committee approve all pending, temporary and fee rules reviewed by his subcommittee, with the exception of **Docket No. 24-1801-0901**, Rules of the Real Estate Appraiser Board. Rep. Thompson noted that this docket is referred to the Business Committee without recommendation.
- MOTION:** **Rep. Gibbs** moved to approve all pending, temporary and fee rules from the Board of Accountancy, Board of Professional Engineers & Professional Land Surveyors, Real Estate Commission, and Bureau of Occupational Licenses, with the exception of **Docket No. 24-1801-0901**, which will be considered by the full committee. **Motion carried on voice vote.**
- Rep. Jarvis** was recognized to report on the administrative rules studied by

his subcommittee. He reported their recommendation that the Business Committee approve all pending, temporary, and fee rules from the Department of Insurance, with the exception of **Docket No. 18-0153-0901, Section 024, Subsection 01**. Rep. Jarvis reported that the Department of Insurance is requesting rejection of this section. **Vice Chairman Henderson** announced that the full committee will hear testimony from the Department about the reason behind their request.

MOTION: **Rep. Jarvis** moved to approve all Department of Insurance rules, with the exception of **Docket No. 18-0153-0901, Section 024, Subsection 1**, which will be considered separately by the full committee. **Motion carried on voice vote.**

Rep. Palmer was recognized to report on the administrative rules studied by his subcommittee. He reported their recommendation that the Business Committee approve all pending, temporary, and fee rules from the Division of Building Safety, with the exception of the following: With regard to **Docket No. 07-0205-0901**, the subcommittee recommends that the Business Committee reject this docket, as requested by the Division. With regard to **Docket No. 07-0205-0903** and **Docket No. 07-0301-0902**, the subcommittee refers these two dockets to the full committee without recommendation.

MOTION: **Rep. Palmer** moved to approve all Division of Building Safety rules, with the exception of **Docket Nos. 07-0205-0901, 07-0205-0903 and 07-0301-0902**. **Motion carried on voice vote.**

Chairman Henderson asked **Roger Hales** to provide further information regarding **Docket No. 24-1801-0901**.

Docket No. 24-1801-0901 **Roger Hales**, an attorney representing the Real Estate Appraiser Board, explained that **Docket No. 24-1801-0901** is essentially a fee increase. He stated the Board is a self-supporting entity that relies on license fees to fund its operation. Currently the Board has a negative balance. Mr. Hales said none of the Board's licensees has registered any objection to the requested fee increase, which will raise the annual license renewal fee from \$250 to \$350. Mr. Hales further explained that this Board operates under significant federal oversight and regulation, and some of their expenses are outside of their control. He said they have incurred a considerable amount of expense over the past few years from disciplinary actions and investigation of complaints. Mr. Hales said the Board is made up largely of licensed full-time appraisers who have donated considerable time to deal with the disciplinary actions and investigations.

Responding to committee questions, Mr. Hales said the Board's current fund balance at the end of fiscal year 2009 was a deficit of \$31,000; by December of 2009 the deficit had increased to \$64,000. He said the number of complaints and investigations had also greatly increased over the past three years, from 35 complaints in 2005 to 114 in 2008. There are a number of factors that have resulted in the increase in complaints and investigations. Mr. Hales said the federal government recently required that Idaho audit every licensee to determine compliance with continuing education requirements; this audit resulted in disciplinary actions being taken against those licensees who were not in compliance. Another factor is the decline in real estate prices, which has affected the assessed value of properties; this,

in turn, has generated complaints against the assessors. He also noted that the Board had been conscientious in trying to collect fees and costs when violations are found, and they have been successful in collecting a high percentage of the fines and costs that have been assessed.

In answer to further questions, Mr. Hales said there are currently 756 licensees in the state of Idaho, and 98 trainees. He said the number of trainees has been declining over the past three years, which probably means that the number of licensees will decline as well. He said the proposed fee increase is projected to raise approximately \$76,000.

MOTION: **Rep. Thompson** moved to approve **Docket No. 24-1801-0901**; **motion carried on voice vote.**

Docket No. 18-0153-0901 **Bill Deal**, Director of the Department of Insurance, was recognized to explain the reason behind the Department's request that the committee reject a portion of **Docket No. 18-0153-0901**. Mr. Deal explained that this rule concerns continuing education, specifically, updates to the requirements for online courses. Mr. Deal said some members of the subcommittee had found the language in this portion of the rule to be unclear and not easily understood. After some further consideration, Mr. Deal said the Department agreed that the language should be clarified, and therefore he asked the committee to reject only the troublesome portion of the docket, specifically **Section 024, Subsection 01**. He said the Department would return with new language next year that will more precisely comply with the National Association of Insurance Commissioners wording on continuing education.

MOTION: **Rep. Jarvis** moved to reject **Section 024, Subsection 01**, of **Docket No. 18-0153-0901**; **motion carried on voice vote.**

Docket No. 07-0205-0901 **Steve Keys**, Deputy Administrator of the Division of Building Safety, was asked to explain his Division's request to the committee that they reject **Docket No. 07-0205-0901**. Mr. Keys said there is some incorrect language inadvertently included in this rule, specifically in **Section 012, Subsection 02a**. The rule directs apprentice plumbers to pipe DWV systems "using copper pipe and fitting." This sentence should read, "... using cast iron pipe and fittings." Mr. Keys said his Division is requesting rejection of the entire docket because the deletion of just this specific language would change the meaning of the entire rule.

MOTION: **Rep. Palmer** moved to reject **Docket No. 07-0205-0901**; **motion carried on voice vote.**

Docket No. 07-0205-0903 **Mr. Keys** then presented **Docket No. 07-0205-0903**, which changes apprentice registration from an annual to a multi-year registration system. He noted that the previous 2,000 hour annual work requirement was being changed to a cumulative 8,000 hour requirement, to be completed during a five-year period.

MOTION: **Rep. Collins** moved to approve **Docket No. 07-0205-0903**.

SUBSTITUTE MOTION: In a substitute motion, **Rep. Mathews** moved to reject **Docket No. 07-0205-0903**. **Rep. Patrick** argued in favor of the substitute motion, noting that the new 8,000 requirement seems to be a further restriction on people entering

the plumbing business.

**ROLL CALL
VOTE ON
SUBSTITUTE
MOTION:**

A roll call vote was requested on the substitute motion. By a vote of **8 aye and 9 nay**, the substitute motion **failed**. Voting in the affirmative: **Reps. Henderson, Crane, Mathews, Patrick, Bayer, Jarvis, Palmer and Thompson**. Voting in the negative: **Reps. Collins, Bilbao, Chadderdon, Gibbs, Smith (30), Rusche, Durst, Cronin, and Black**.

**VOTE ON
ORIGINAL
MOTION:**

Chairman Henderson called for a vote on the original motion, to approve **Docket No. 07-0205-0903**. **Motion carried on voice vote**.

**Docket No.
07-0301-0902**

Mr. Keys then asked the committee to reject **Docket No. 07-0301-0902**, explaining that this rule was promulgated as a fall-back rule in the event that the rule adopting new versions of all building codes was not approved. In that case, this docket would adopt the only new International Energy Code.

MOTION:

Rep. Black moved to reject **Docket No. 07-0301-0902**, at the request of the Division of Building Safety; **motion carried on voice vote**. **Rep. Smith (30)** requested that she be recorded as voting no.

Chairman Black reassumed the chair.

RS 19464:

Rep. Nonini presented **RS 19464**. He said the purpose of this legislation is to further clarify legislative intent with regard to the accessibility of health care. **Rep. Nonini** recalled that he had brought similar legislation last year, and at that time he was asked whether this was perhaps just a local north Idaho problem. Since that time, however, the problem has been experienced in other parts of the state, including the Treasure Valley. He thinks the legislation is necessary to close a loophole in the law before further problems develop and become more widespread. **Rep. Nonini** said when the bill is before the committee for its consideration, they will be able to hear testimony from doctors who co-own surgery centers in various parts of the state, from other doctors, and from patients who have been treated at the facilities.

MOTION:

Rep. Thompson moved to introduce **RS 19464**; **motion carried on voice vote**.

RS 19596:

Rep. Gibbs presented **RS 19596**, stating this legislation will repeal the two sections of Idaho Code that **Rep. Nonini's** legislation is trying to amend. **Rep. Gibbs** noted that the "any willing provider" law has been in effect for 17 years, and it may be time to have a full discussion about whether it has outlived its usefulness. **Rep. Gibbs** said the Idaho Hospital Association and the Association of Health Care Plans both support printing this RS.

MOTION:

Rep. Thompson moved to introduce **RS 19596**; **motion carried on voice vote**.

RS 19591:

Skip Smyser, representing the Idaho State Dental Association, presented **RS 19591**, saying it will eliminate the possibility of a potentially unfair business practice. He explained that currently insurance companies negotiate contracts with participating dentists, but the insurance companies regulate even those treatments that are not covered by their policies. **Mr. Smyser** said this is a practice that is occurring on the East Coast and is gradually moving

westward. He said he has worked closely with Delta Dental and the Department of Insurance in developing this legislation, which will preclude this practice in the state of Idaho.

MOTION: Rep. Bayer moved to introduce **RS 19591**; **motion carried on voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:25 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

DATE: February 15, 2010

TIME: 1:30 p.m.

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin

**ABSENT/
EXCUSED:** None.

GUESTS: Steve Keys, Division of Building Safety; Jeanne Jackson-Heim, private citizen; Kris Ellis, Idaho Land Title Association; Sarah Fuhriman, Roden Law Office; Mandy Wood, private citizen; John Eaton, Idaho Association of Realtors; Lyn Darrington, Mortgage Insurance Companies of America

Meeting was called to order at 1:34 p.m. by Chairman Black.

MOTION: **Rep. Cronin** moved to approve the minutes of February 11; **motion carried on voice vote.**

Vice Chairman Henderson assumed the chair for the purpose of requesting approval of minutes from the Administrative Rules subcommittees.

MOTION: **Rep. Thompson** moved to approve the minutes from the Thompson Subcommittee meeting of January 19; **motion carried on voice vote.**

MOTION: **Rep. Jarvis** moved to approve the minutes from the Jarvis Subcommittee meeting of January 19; **motion carried on voice vote.**

MOTION: **Rep. Palmer** moved to approve the minutes from the Palmer Subcommittee meeting of January 21; **motion carried on voice vote.**

Chairman Black reassumed the chair.

RS 19360: **Rep. Rusche** presented **RS 19360**. He explained that the Idaho Department of Commerce has been directed to use their existing resources to assist small businesses in Idaho. These existing resources include office space, conference room facilities, and shared staff. Rep. Rusche said the Department will make these resources available to qualifying small businesses in Idaho, under low-cost, flexible lease terms. He noted that the bill does not require the Department to build additional space to house an incubator, but if additional space currently exists, it can be made available to a small startup company.

Responding to questions from the committee, Rep. Rusche said the excess space in the Department of Commerce is generally office space and would probably not include any manufacturing facilities. Asked about the

legislation's Statement of Purpose, which projects creation of up to 500 new Idaho jobs in the first year, Rep. Rusche said that was an optimistic projection based on how many small businesses could be lured out of garages and basements. He said, however, that he would be happy to change the Statement of Purpose to revise or remove that projection.

MOTION: **Rep. Patrick** moved to introduce **RS 19360**; **motion carried on voice vote.**

RS 19506: **Kris Ellis**, representing the Idaho Land Title Association, presented **RS 19506**. Ms. Ellis stated that the number of foreclosures in the past few years has brought to light some discrepancies in the Code that need to be clarified. First, when a property is purchased at foreclosure, it is simply not feasible to record the sale on the same day. This legislation will provide a 15-day window to record the sale, and the date will be retroactive to the date of sale. Second, there have been instances in which a home is purchased as a foreclosed property, but the foreclosure was actually a mistake and should not have happened. This legislation will allow a mechanism to reverse the sales and allow the homeowners to keep their home.

Responding to committee questions, Ms. Ellis said the legislation would not allow a higher bidder to come into the process and buy the home during the 15-day window. She also said she will bring additional testifiers who can provide more detailed information when the bill is before the committee

MOTION: **Rep. Thompson** moved to introduce **RS 19506**; **motion carried on voice vote.**

RS 19509: **Ms. Ellis** then presented **RS 19509**, on behalf of the Idaho Land Title Association. She said this legislation will fix an ambiguity in Idaho Code with regard to the recording of the Affidavit of Compliance package being recorded prior to the "sale date" until the affidavits have timely recorded. There is some doubt as to whether such a practice is prohibited. Ms. Ellis said clarifying language has been added to the Code section to clarify that a postponement is allowed. She said this change will clear up the inconsistencies and other problems that have been experienced as a result of the ambiguity in the Code.

MOTION: **Rep. Collins** moved to introduce **RS 19509**; **motion carried on voice vote.**

RS 19160: **Steve Keys**, Deputy Administrator of the Division of Building Safety, presented **RS 19160**. Mr. Keys said this bill will eliminate the International Residential Code as a code governing HVAC installations. He said these installations are governed by Parts V and VI of the International Residential Code. However, certain solid-fuel burning appliances are not referenced in Parts V and VI, and both the HVAC industry and the Board think those installations need to be permitted and inspected. Mr. Keys explained that the HVAC information in the Residential Code is largely the same as that contained in the International Mechanical Code (IMC). Mr. Keys pointed out that the recent **Docket No. 07-0710-0902** has already added an amendment to the IMC deleting language which exempts one- and two-family homes and townhouses. He said the Board thinks the only negative outcome of this change would be a reduction in revenues to the International Code Council, since HVAC inspectors would no longer need to purchase that code book.

Responding to committee questions, Mr. Keys said the term “solid fuel” is generally understood to mean wood, pellet or coal. He said a gas fireplace installation would require an inspection.

MOTION: **Rep. Chadderdon** moved to introduce **RS 19160**; **motion carried on voice vote.**

RS 19232: **Mr. Keys** presented **RS 19232**, which modifies language contained in the electrical statute that governs the depositing of moneys by state agencies. Mr. Keys said this legislation would not cause a change in the function of his Division, since they already comply with the requirements. Rather, it simply removes the old language out of the statute.

MOTION: **Rep. Collins** moved to introduce **RS 19232**; **motion carried on voice vote.**

RS 19529: **Jeanne Jackson-Heim**, appearing as a private citizen, presented **RS 19529**. Ms. Jackson-Heim explained that in Idaho Code there is a process for legally changing one’s name. Part of the requirement to do so is to publish a legal notice in the newspaper, which notice must include specific information such as date and place of birth, street address, and names of close relatives. RS 19529 would not change the information that is needed for the filing but would delete the requirement that it be published. She said this legislation arose from a situation with an acquaintance of hers who legally changed her name and later received a letter from an inmate at the County Jail. Ms. Jackson-Heim said the identifying information can also be used for attempted identity theft.

Responding to committee questions, Ms. Jackson-Heim said she has not personally spoken to the Clerks’ Association but Rep. Black did consult with them about possible problems with this legislation. She also reiterated that this will not change the information that is required to be filed, but will only delete the requirement that it be published in the newspaper. It will still remain public information on file.

Chairman Black confirmed that he did consult with the Clerks’ Association and they did not raise any concern about this RS. He said the legislation will help prevent easy access to the identifying information. **Ms. Jackson-Heim** also agreed to address, at the bill’s hearing, the question of what effect this might have on creditors who might be trying to locate debtors.

MOTION: **Rep. Jarvis** moved to introduce **RS 19529**; **motion carried on voice vote.**

H 477: **Rep. Patrick** presented **H 477**, dealing with mortgage guaranty insurance. Rep. Patrick said current Idaho law prohibits a mortgage insurance company from writing new business if the company’s risk-to-capital ratio exceeds 25 to 1. He said in the current economic climate capital is scarce and difficult to acquire. He also pointed out that there are other ways to measure the health of a company besides the risk-to-capital ratio. Rep. Patrick stressed that this bill will not expand the availability of loans, but rather will allow the real estate market to maintain its current activity level. The bill will allow the Department of Insurance to give a variance from the 25-to-1 requirement if requested by a company. The Department can still deny the variance if it determines that the company is not healthy enough. Rep. Patrick said this will help maintain some sort of market for low- and middle-income families.

Lyn Darrington, representing Mortgage Insurance Companies of America (MICA), was recognized to respond to committee questions. She testified that in today's environment there are no longer any real estate loans that are being made with zero down payment. She said the insurers who offer mortgage insurance are solvent and fully capitalized. She also agreed with Rep. Patrick that other measures of a company's health can be used when evaluating whether it should be allowed to continue writing business. She stressed that the Department of Insurance will not be evaluating lenders but will only be looking at insurers who sell mortgage insurance.

In response to further questions, Ms. Darrington said the Department of Insurance will have discretion as to the type and frequency of monitoring with regard to these companies. She said the bill requires the insurance companies to be in compliance with the rules of the states where they are domiciled. She said outside experts can also be called in to help evaluate a company's stability. Ms. Darrington said she does not think the state of Idaho would be financially liable if a company were to be granted a waiver and then become insolvent. Ms. Darrington said six other states have successfully made provision for a similar waiver, including North Carolina, California, Arizona, Kentucky, Texas and Wisconsin. In nine others, the industry is pursuing such legislation; these states are Kansas, Missouri, New York, Oregon, Iowa, Florida, Illinois, New Jersey and Ohio.

Rep. Patrick was recognized to conclude his presentation on **H 477**. He noted that the reason behind the current real estate crisis is not mortgage insurers but rather greed on the part of buyers and sellers, land developers and mortgage companies. Loans were too easy to acquire, with no money down, using stated incomes and often based on poor appraisals. He stressed again that this legislation will not loosen up lending standards but will instead allow the real estate market to continue in this state.

Lyn Darrington was recognized to testify **in support of H 477**. She said all six companies who provide mortgage insurance in the state of Idaho are members of MICA. Ms. Darrington provided some history of mortgage insurance, which originated during the period following World War II, when the federal government encouraged home ownership by allowing lower down payments. Mortgage insurance covered the gap between the lower down payment and what a traditional down payment might have been.

Ms. Darrington said in the early 1960s state regulators began deciding the proper required capitalization rate for a mortgage insurance company. The National Association of Insurance Commissioners (NAIC) set the optimum capitalization rate at between 12-1 and 40-1; Idaho adopted a required 25-1 capitalization rate. She said in the current real estate environment, there is pressure on mortgage insurers to continue writing new business. There are currently only six companies in the nation who are writing this business. Ms. Darrington said she had met with both the Department of Insurance and the Department of Finance on H 477; Finance deferred to the Department of Insurance in this matter. Ms. Darrington said the banking community is remaining neutral, and the realtors are favorable.

John Eaton, Government Affairs Director for the Idaho Association of Realtors, testified **in support of H 477**. Mr. Eaton said this change will have a positive impact on the real estate market in the state of Idaho. He said

Fannie Mae and Freddie Mac are the only entities currently buying mortgage loans, and they require this insurance. If the six providers of the insurance cannot be active in Idaho, that will have a negative impact on the market.

MOTION: **Rep. Bayer** moved to send **H 477** to the floor with a **DO PASS** recommendation; **motion carried on voice vote.**

Chairman Black recognized and introduced **Don Pischner**, a former legislator from Coeur d'Alene, who was visiting the meeting.

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

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

- DATE:** February 17, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room EW41
- MEMBERS:** Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin
- ABSENT/
EXCUSED:** None.
- GUESTS:** Tracy Zearth, Idaho Trial Lawyers Association; Erik Makrush, Idaho Association of Building Officials; Paul Jackson, Farmers Insurance Company; Randy Colson, Rocky Mountain Towing; Corey Surber, Saint Alphonsus Regional Medical Center; Zach Hauge, Capitol West Advisors; Julie Taylor, Blue Cross of Idaho; Joie McGarvin, America's Health Insurance Plans; Roger Seiber, Capitol West Advisors; Ray Stark, Boise Chamber of Commerce; Woody Richards, Blue Cross and Willamette Dental; John Eaton, Idaho Association of Realtors; Kris Ellis, Cosmetology Board; Ryan Fitzgerald, Principle Strategic Advisors; Miguel Legaretta, Idaho Association of Realtors; Dawn Justice, Idaho Bankers Association; Mike Kane, Property Casualty Insurers Association of America; Drew Thomas, Risch Pisca; Benjamin Davenport, Risch Pisca; Mike Brassey, Idaho Financial Services Association
- Meeting was called to order by Chairman Black at 1:33 p.m.
- MOTION:** **Rep. Patrick** moved to approve the minutes of February 15; motion carried on voice vote.
- RS 19352:** **Rep. Phylis King** presented **RS 19352**. She testified that she was a member of the Governor's Task Force on Mobile Home Park Closures, and in that capacity she learned about the plight of mobile and manufactured home residents. She pointed out that these people own their homes but rent the land on which the homes are located. This leaves them vulnerable when the land is sold to a new owner, since the new owner may change the rules, raise the rents, or impose other conditions that are unacceptable. Rep. King said residents may have to pay between \$5,000 and \$15,000 to move their homes to new sites. She said 71% of manufactured homes are located on leased land.
- Rep. King talked about the handouts distributed to committee members which detail the number of manufactured housing units in Idaho, listed by county. She also pointed out two additional sheets, one containing a comparison between manufactured housing and site-built houses and the other showing pictures and features of a manufactured home. Rep. King testified that often manufactured homes are built to higher standards than site-built homes, including such factors as 2x6 construction, steel frames, and reinforced corners. She also noted that there are four manufacturers in

southwest Idaho, including Fleetwood, Kit, Nashua, and Champion.

Rep. King then explained **RS 19352**, saying that the purpose of the legislation is to request that tenants be given a copy of the rules of a manufactured home community prior to signing a lease. For instance, if a particular park has strict rules regarding pets or parties, the tenants will be able to decide whether or not that park is a good fit before they move in.

Responding to questions from committee members, Rep. King said if a park owner wishes to terminate the existence of his park and change it to a different use, he is required to give the tenants 180 days' notice. With regard to the proposed legislation asking owners to supply park rules to prospective tenants, Rep. King said she decided not to include any penalty provision since she did not think a penalty would be appropriate.

MOTION: **Rep. Durst** moved to introduce **RS 19352**; **motion carried on voice vote.**

RS 19370: **Rep. King** presented **RS 19370**. She testified this legislation specifies that any rule change restricting the type or size of a tenant's mobile home shall not apply if the home was in compliance with the park's rules prior to the adoption or amendment of the new rule. She stated this legislation arose because of the eviction of an elderly woman in Emmett who lived in a single-wide home and whose new park owner began requiring double-wide homes.

MOTION: **Rep. Bilbao** moved to introduce **RS 19370**; **motion carried on voice vote.**

RS 19445: **Rep. King** presented **RS 19445**, saying this legislation provides a 30-day notice of intent by the owner of a mobile home park if he is considering the sale of his park. This will allow the tenants' association time to hold a meeting to determine whether or not they want to, and are able to, purchase the park. Rep. King said the legislation includes a requirement that the owner record this notice with the county recorder, which will serve to record the physical dimensions of the land, including the legal description of the property.

In response to committee questions, Rep. King explained the difference between a "mobile home" and a "manufactured home," saying that technically a mobile home is one produced prior to 1976, when the Department of Housing and Urban Development requested higher standards for manufactured homes. She said the two terms seem to be used interchangeably in statute, but she would prefer to use the term manufactured home.

During further questions and discussion, Rep. King said any time an owner was considering selling his park, the required 30-day notice would still be required. Asked how this legislation would affect a transaction as part of a 1031 Exchange, in which funds may have to be reinvested within a short time span, Rep. King said the full 30-day notice would need to be honored.

MOTION: **Rep. Smith** moved to introduce **RS 19445**.

SUBSTITUTE MOTION: **Rep. Palmer** offered a substitute motion, to return **RS 19445** to the sponsor.

Testifying in support of his substitute motion, **Rep. Palmer** said this requirement would place too much pressure on landowners who may want to sell their land. **Rep. Mathews** said he thinks this could have unintended consequences and could hinder commerce.

Responding to further questions, **Rep. King** said the intent of the legislation is to allow mobile home residents to purchase their own parks. She said the tenant association would have to make an offer just like any other buyer, and if a better or higher offer is forthcoming from another party, the seller can accept the higher bid. She said the 30-day requirement is meant to be a courtesy to the tenants.

Rep. Henderson, arguing in favor of the substitute motion, stated the proposed legislation could be difficult to enforce because the owner of the land could be an off-site corporation. He also stated it seems to be an interference in a business owner's right to make business decisions,

Rep. Durst pointed out that this is simply a hearing to get the RS introduced and get a discussion going on this problem. He also noted that, when talking about a property owner's rights, there are actually two property owners: the owner of the land and the owner of the home which is on the land.

Rep. Crane argued in support of the substitute motion, saying it is a private property rights issue. He said the land owners should have the right to sell their property whenever they want to do so.

**VOTE ON
SUBSTITUTE
MOTION:**

A roll call vote was requested on the substitute motion to return **RS 19445** to the sponsor. By a vote of 13 aye and 4 nay, the substitute motion passed. Voting in the affirmative: **Chairman Black, Reps. Henderson, Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, and Thompson.** Voting in the negative: **Reps. Smith (30), Rusche, Durst, and Cronin.**

RS 19530:

Steve Thomas, representing the Idaho Association of Health Plans, presented **RS 19530**. Mr. Thomas testified this bill does not address emergency ground transport, or ambulances, but rather emergency helicopters with EMT's aboard. He said health insurance plans generally contract with air ambulance services that are associated with hospitals. This proposed legislation provides for compensation of air emergency transport services who are not contracted with health insurance plans at the same rate as if they were contracted. In other words, the patients will not be balance billed from the air transport services.

Mr. Thomas offered an illustration of the problem that this legislation seeks to solve, saying that a patient in an emergency medical situation does not have a choice of air carriers if he or she needs air transport. The patient is not in a position to negotiate price or to question whether or not the air ambulance service contracts with a particular insurance company. He testified that the air transport bills are comprised of two components, a mileage fee and a take-off fee. Typical charges for a non-contracting air ambulance service in Idaho are \$9,975 for the take-off fee and \$139 per mile for the mileage fee. Mr. Thomas said the U.S. Government reimburses these fees at the rate of \$3,114 for the take-off fee and \$21.53 per mile. A typical bill for a non-contracting air transport service might be as high as

\$10,000 to \$15,000. Mr. Thomas asked the committee to introduce this RS in order to allow a full discussion of a possible resolution to this problem.

Asked whether he thought this legislation might result in a reduction in the number of air transport companies, Mr. Thomas said he is not aware that it would have that effect. He said he is aware of three air ambulance services that are affiliated with major hospitals, and at least one company that is not affiliated, although there may be others throughout the state.

MOTION: **Rep. Bilbao** moved to introduce **RS 19530**; **motion carried on voice vote.**

RS 19554: **Rep. Black** presented **RS 19554**, saying it is designed to help protect countywide highway districts from the large bills they sometimes incur as a result of urban renewal projects. Repair of roadways is one example of such expense. Rep. Black said the idea is to take parking meter and other fees and use that revenue to perform maintenance, landscaping, or other projects. He pointed out that he is aware of a recently formed Revenue & Taxation Subcommittee on urban renewal and suggested this proposal may be considered by that subcommittee. Responding to a question, Rep. Black said details of the legislation would have to be worked out, but it would be his impression that "revenues" refers to gross revenues.

MOTION: **Rep. Mathews** moved to introduce **RS 19554**; **motion carried on voice vote.**

RS 19571C1: **Rep. Wendy Jaquet** presented **RS 19571C1**, dealing with foreclosures. She testified that this is intended to provide an opportunity for mediation between a homeowner and the party holding his mortgage, in order to avoid foreclosure. Rep. Jaquet reported that she had met with a large number of interested parties, including representatives of credit unions, Idaho Legal Aid, the Supreme Court, the Department of Finance, Idaho Housing and Finance Association, and the Idaho Bankers Association. She said the RS has been through numerous drafts and she has tried to incorporate some suggestions from these parties. She also noted that not all parties are currently supportive of the legislation.

Rep. Jaquet testified that Idaho ranks 19th on a list of 200 metropolitan areas in terms of percentage of homes in foreclosure. In 2009 the percentage of loans that were seriously delinquent was 6.69%, a huge increase from 2008. She stated a number of other states are trying to use mediation to avoid foreclosures; those states include Connecticut, Maine and Nevada.

Speaking to some of the specific measures in the legislation, Rep. Jaquet said it will expand the notice requirement and will require that the homeowner be provided the name, address and a toll-free number of a person who has the authority to modify the terms of the loan. She said homeowners are frustrated by the process of calling and getting an answering machine, and often they are not told about the availability of qualified counselors who can help them work through the process. This RS includes a provision that would supply HUD's current list of approved housing counselors in the state of Idaho. Rep. Jaquet said the legislation will create the impetus to start a conversation that will help people stay in their homes.

MOTION: **Rep. Bilbao** moved to introduce **RS 19571C1**.

Responding to committee questions, **Rep. Jaquet** said the financial burden is placed on the lender in this RS because it was determined that a homeowner who is in default on a mortgage would most likely not be able to pay mediation costs. It was pointed out that the "cost" involved is not limited to the mediator but would also include attorney fees and other possible expenses. Rep. Jaquet noted that both borrowers and lenders are partially to blame in the mortgage default arena. Asked whether every foreclosure would be required to submit to mediation, Rep. Jaquet said a grantor can "elect" to participate or not participate. She said that if mediation does not result in agreement between the parties, it is not binding on either side.

SUBSTITUTE MOTION: **Rep. Patrick** offered a substitute motion, to return **RS 19571C1** to the sponsor.

Arguing for his substitute motion, **Rep. Patrick** pointed out that, while there may be good intent in this legislation, it is not a good idea to require a lender to go to more expense in order to renegotiate a loan. He said this could reduce the availability of loans. **Rep. Bayer** said the circumstances leading up to foreclosures vary widely; some of them are simply situations in which the borrower is over-leveraged. He said the potential cost implications to the trustee or the mortgage servicer could be considerable.

Rep. Rusche argued in support of the original motion, reminding members of the stories about foreclosure rescue organizations preying on people. He said this would provide a way to come to agreement without forcing them to take the path of mortgage rescue companies.

Rep. Bilbao stated his support for the original motion, saying that loan holders have been reluctant to negotiate with homeowners. He said the trustees should tell people they can renegotiate their loans to make smaller payments temporarily until their financial situation recovers. He said this benefits both the trustee and the homeowner.

Rep. Patrick said it is his opinion that all banks would like to renegotiate loans, but there are more costs involved than initially thought. He argued against the original motion and in support of the substitute motion.

VOTE ON SUBSTITUTE MOTION: **Chairman Black** called for a vote on the substitute motion; **motion failed on voice vote**.

VOTE ON ORIGINAL MOTION: A roll call vote was requested on the original motion, to introduce **RS 19571C1**. On a tie vote of **8 aye** and **8 nay**, with one absent, the original motion **failed**. Voting in favor: **Reps. Henderson, Collins, Bilbao, Jarvis, Smith (30), Rusche, Durst, and Cronin**. Voting in opposition: **Reps. Crane, Mathews, Patrick, Bayer, Gibbs, Palmer, Thompson and Chairman Black**. **Rep. Chadderdon** was absent.

RS 19626: **Rep. Durst** presented **RS 19626**, which will create a Micro Enterprise Development Authority (MEDA). He said the legislation specifies the authority of the MEDA to make loans of \$35,000 or less to small businesses for creation or expansion. It also grants bonding authority. Rep. Durst said

that in the current economic environment it is difficult to find capital for small business investment. These businesses often do not have adequate credit history or enough collateral to earn an appropriate credit score. In these cases, lenders have little choice but to reject applications, based on their credit guidelines. This results in less expansion of small businesses, which has a negative effect on economic development.

Rep. Durst said this RS has gone through nine revisions, after being shared with many interested parties including Chambers of Commerce, the National Federation of Independent Businesses, a number of banks and credit unions, the Idaho Housing Finance Association, and others. He said he has included all their suggestions in the legislation. He said the legislation's language was borrowed from the building authority statute. It will create an independent public body and will provide powers and authorities. The bonding authority will be underwritten by the state sales tax account. Rep. Durst said the state's exposure is limited, since the authority will be required to retain reserves equal to the amount of loans outstanding. They will need to follow specified procedures before making loans, and will be required to file an annual report.

Speaking to specifics of the bill, Rep. Durst said if a small business creates a job that lasts at least one year and pays at least Idaho's average annual wage, the employer can deduct \$2,500 off the loan's principal balance. He also pointed out that the legislation will be revenue neutral since the job created will generate approximately \$2,500 in income tax revenue.

In response to committee questions, Rep. Durst said funds for micro enterprise development is less accessible through the Small Business Administration. Additionally, there is sometimes a reluctance to take money from the federal government, and eligibility provisions are also different.

Chairman Black was asked whether this RS will come back to the Business Committee as a bill, or whether it would be referred to the Revenue & Taxation Committee. He responded that the Speaker would make that decision.

Rep. Henderson stated he thinks much of this proposal is valuable, but he is concerned that it is virtually a function of the Department of Commerce and it duplicates programs already available. He noted that in Idaho there are six economic development "Councils of Government" that also house new business incubators. He said there is currently seed money available for innovators through these programs, and since the money appropriated has not been spent. He praised the idea of encouraging private sector solutions, but he is not sure whether this legislation is necessary. He also asked whether this bill would be considered by a different committee, since there are tax implications involved.

Rep. Durst responded to Rep. Henderson's points, noting that the Legislative Library's research did not show this to be duplicative. He also said the National Federation of Independent Businesses has not taken a formal stance on the legislation, although they were generally positive and excited about the prospect of doing this.

Rep. Bayer offered his opinion that this legislation should be referred to the

Revenue & Taxation Committee, if it is printed as a bill, since there will be tax consequences.

Rep. Cronin argued in support of the motion to introduce **RS 19626**, saying the primary concern of most people during the recent economic downturn is economic development and jobs. **Rep. Patrick** argued in support of the motion, saying that without a full hearing on the legislation, it will be difficult to understand it fully and decide whether or not it will be helpful.

Rep. Henderson agreed that a full discussion may be helpful to educate people about what is available in terms of small business development. He said the programs currently available may not be well implemented or even well advertised. He stated that the Department of Commerce has a jobs development fund of \$450,000 available at the sole discretion of the Director to attract new businesses. He argued in support of introducing the RS.

MOTION: **Rep. Cronin** moved to introduce **RS 19626**; **motion carried on voice vote.**

RS 19645: **Rep. Smith (30)** presented **RS 19645**, legislation that will increase the number of representatives on the Board of Cosmetology. It will add another school representative and a nail technician to the Board and will eliminate geographical and association constraints from the appointment process. Finally, it will clear up conflicting language within the current law on qualifications for board members. Rep. Smith said the proposed legislation was submitted to the Board of Occupational Licenses for review; they suggested it also be reviewed by the Governor's Office, which has been done. Asked about the fiscal note, which states there is no fiscal impact, Rep. Smith reminded the committee that the Cosmetology Board, like other self-sustaining boards, pays its expenses out of fees collected by licensees. This RS will not result in any fee increases.

Kris Ellis, appearing on behalf of the Idaho Association of Cosmetology Schools, was recognized to answer questions. Ms. Ellis said the Cosmetology Board is one of the better financed boards in the Bureau. She testified that in 2008 the Board was \$140,000 in the black; by 2009 this had increased to \$190,000 in the black.

MOTION: **Rep. Rusche** moved to introduce **RS 19645**; **motion carried on voice vote.**

RS 19675: **Rep. Smith (30)** presented **RS 19675**, saying this legislation is the result of meetings between tow operators, insurance companies, the Idaho Transportation Department, and law enforcement lobbyists. Input was also received from the Idaho State Police and car dealers. She said attempts have been made to develop similar legislation over the last ten years. She said getting this RS printed and out for public hearing will be helpful. The purpose of the legislation is to inform people of the location of their vehicles when they have been towed. It will disclose any charges that may be incurred as a result of the vehicle's storage, will clarify definitions and will provide for timely and uniform notification procedures. It will provide uniform procedures for all vehicles towed and stored by tow companies. In compliance with Rule 38, Rep. Smith stated her husband is a car salesman.

Responding to questions, Rep. Smith said the legislation has been reviewed by tow operators, who made some suggestions on wording. She also

pointed out that the definition of “extraordinary circumstances” as well as other definitions are spelled out on page 2 of the RS.

MOTION: **Rep. Patrick** moved to introduce **RS 19675**; **motion carried on voice vote.**

RS 19654: **Ryan Fitzgerald**, representing the Idaho Association of Chiropractic Physicians, presented **RS 19654**. Mr. Fitzgerald said this will establish a lien mechanism for health providers, including chiropractors, physical and occupational therapists, dentists and podiatrists, to recoup medical expenses for services or treatment that in some cases go unpaid. These cases generally involve a patient who has been injured in an accident, and the agreement is that the medical service provider will be paid after a settlement is made. Mr. Fitzgerald pointed out that the lien authority being requested is limited to treatment for an injury in which there is a legal action, lawsuit or injury claim. He said that in some instances, service providers are contacted by a lawyer telling them that their payment will be reduced or simply not paid because the settlement amount will not cover all the bills plus attorney fees. Mr. Fitzgerald said he has heard that some health care providers have been asked to accept as little as 10 cents for every dollar of services provide.

Mr. Fitzgerald stated that currently the only means available to these health care providers to recover these charges is to take a patient to court. Idaho law allows medical doctors, nursing homes and hospitals to file a medical lien to recoup their charges. He said the proposed legislation includes a subordination clause to ensure that medical doctors and hospitals maintain their lien right in first position.

Responding to questions from the committee, Mr. Fitzgerald said it is his understanding that health care providers currently can place a lien only against a person. He also said any attorney fees would be paid as part of the settlement, as provided in the legislation.

MOTION: **Rep. Collins** moved to introduce **RS 19654**; **motion carried on voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:12 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

DATE: February 23, 2010

TIME: 1:30 p.m.

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon (Sims), Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin

**ABSENT/
EXCUSED:** Rep. Palmer

GUESTS: David Curtis, Board of Engineers & Surveyors; Michael Pope, Robert J. Hopp & Associates; Jack Clark, Idaho Society of Professional Surveyors; Drew Thomas, Risch Pisca; Kris Ellis and Jesse Hamilton, Idaho Land Title Association; Miguel Legarreta and John Eaton, Idaho Association of Realtors

Meeting was called to order at 1:30 p.m. by Chairman Black.

MOTION: **Rep. Bilbao** moved to approve the minutes of February 17; motion carried on voice vote.

H 425: **Dave Curtis**, Executive Director of the Board of Licensure of Professional Engineers and Professional Land Surveyors, presented **H 425**. Mr. Curtis said the purpose of the legislation is to eliminate obsolete references, provide continuity, and create a single system of coordinates for use in geographic locations. Mr. Curtis referred to specific portions of the legislation, saying it inserts a definition of "basis of bearing" and sets forth requirements that must be listed on a plat if coordinates in the Idaho coordinate system are used. It also creates a single zone of coordinates within the state of Idaho and defines mathematically a U.S. survey foot, which is different than some other definitions of a "foot." Finally, the bill defines the new single zone of coordinates and specifies the information that must be shown when coordinates are used.

In response to committee questions, Mr. Curtis said the new single zone encompasses the entire state of Idaho, and the beginning coordinates are not at the center of the state but rather at a corner. He said the location of a central part of the zone is irrelevant. Asked how this might affect land descriptions in home sales, Mr. Curtis said this new provision would not affect legal descriptions, which will continue to use "metes and bounds" or "lots and blocks." Mr. Curtis said there are currently three zones in Idaho; this bill will set up a single zone. He said the majority of the bill deals with striking obsolete references and clarifying some ambiguities in terminology. He also reported that the legislation had been widely vetted among the surveying community and there were no concerns expressed.

Jack Clark, Editor of the Idaho Society of Professional Land Surveyors journal and an employee of the Ada County Assessor's Office, testified in

support of H 425. Mr. Clark distributed a letter detailing the history of the legislation's development. He said the single zone is a new concept in surveying legislation, and is a compromise that allows the entire state to be depicted on one picture. Mr. Clark testified that this bill has had wide distribution and he is not aware of any negative feedback. In fact, most state agencies are already using a single zone projection; this bill will formalize what is already common practice. He said the National Geodetic Survey will also utilize the single zone in its software applications.

Responding to questions, Mr. Clark said the computation of a "foot" was worked out in an international treaty dating from the late 19th century; the treaty defined the length of a meter relative to the foot. He also said that, even though Canada shares a border with Idaho, Canada will be unaffected by this legislation since they are totally metric.

MOTION: **Rep. Jarvis** moved to send **H 425** to the floor with a **DO PASS** recommendation; **motion carried** on voice vote. **Rep. Jarvis** will sponsor the bill on the floor.

H 478: **Mr. Curtis** presented **H 478**, saying this legislation will accomplish five objectives. First, it will stagger the expiration date of business entity certificates of authorization, which will have the effect of flattening out the work load for Board staff. Second, it amends language relating to examinations in order to allow the use of computer-based testing. Third, it provides for the transfer of "responsible charge" from one professional to another in the event that the first professional is no longer available to complete a project. Fourth, it changes obsolete nomenclature. Finally, it eliminates the requirement for references for applicants for their initial certification examination. Mr. Curtis pointed out that passage of the examination does not confer practice privileges on a candidate, and he said the Deans of the various Colleges of Engineering have requested this final change that will eliminate the reference requirement.

Responding to a question, Mr. Curtis said that prior to this change, there was no provision in the law for a subsequent professional to sign, seal and date the project, in the event that the person in responsible charge died, moved, or otherwise was unavailable to complete the project. Mr. Curtis related two specific instances in which this created a problem, one in which the "responsible person" died the day before he was to stamp the work, and the other a project that spanned over 30 years before it was completed.

MOTION: **Rep. Mathews** moved to send **H 478** to the floor with a **DO PASS** recommendation; **motion carried on voice vote.** **Rep. Jarvis** will sponsor the bill on the floor.

Chairman Black noted the presence of **Kevin Barker**, New Plymouth High School, and a group of officers of their FFA chapter who are visiting the capitol.

H 550: **Kris Ellis**, representing the Idaho Land Title Association, presented **H 550**, saying this legislation is being brought because the higher number of

foreclosures in the past few years have brought to light some discrepancies in the Code that need to be clarified. Ms. Ellis said that when a property is purchased at foreclosure, it is simply not feasible to record the sale on the same day. This legislation will provide a 15-day window or grace period to record the sale, and the date will be retroactive to the date of sale. She noted that it has been difficult to get all the paperwork completed and the funds transferred in the current business environment, when office hours have been reduced in some instances. Second, there have been instances in which a home is purchased as a foreclosed property, but the foreclosure was actually a mistake and should not have happened. This legislation will allow a mechanism to rescind the sales and allow the homeowners to keep their home. Recording such a rescission would return the home to the previous owner. Ms. Ellis said both the Bankers' Association and the Credit Union Association have reviewed this legislation and have agreed that it meets their concerns.

Jesse Hamilton, General Counsel for Pioneer Title and a board member of the Idaho Land Title Association, was recognized to respond to questions. Mr. Hamilton said the language of the bill favors a purchaser. He said if a person is a bona fide purchaser at a trustee sale, the ability to rescind will not exist. Mr. Hamilton said in the event a bankruptcy was filed by the debtor prior to the sale being held, or if a temporary restraining order disallows the sale, the sale would not really take place. Asked what protection there is for a potential buyer of a foreclosed property, Mr. Hamilton said that is addressed by the title insurance industry in the normal course of their business. He affirmed that the "grace period" simply allows the banks to get paperwork, which could be prepared outside the state, finished and returned. This will give them time to record the trustee's deed. He also said Idaho does not have a statutory rescission process. If a property is taken to auction that should not have been, this will give the banks a chance to rescind the sale, thereby cancelling it.

MOTION: **Rep. Bilbao** moved to send **H 550** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Rep. Bilbao** will sponsor the bill on the floor.

H 551: **Ms. Ellis** presented **H 551**, on behalf of the Idaho Land Title Association. She said this legislation will fix an ambiguity in Idaho Code with regard to manner of foreclosures and the giving of notices. She said the time frame for notice is 20 days for a notice in the newspaper and on the doors of the property. If this time frame is missed, the entire process starts over. She said this legislation will allow for a postponement of the "sale date" if certain conditions are met. Currently some are allowing a postponement and some are not; this will clarify ambiguities in the code and will provide consistency.

Responding to a committee question, Ms. Ellis said in Idaho a homeowner being foreclosed upon can be required to pay the fees involved in the foreclosure plus the interest on their mortgage. If the process has to start over because the notice requirements are not met, this will cost them more money.

MOTION: **Rep. Thompson** moved to send **H 551** to the floor with a **DO PASS**

recommendation; **motion carried on voice vote.** Rep. Thompson will carry the bill on the floor.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 2:15 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

DATE: February 25, 2010

TIME: 1:30 p.m.

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon (Sims), Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin

**ABSENT/
EXCUSED:** None.

GUESTS: Woody Richards, Willamette Dental; Joie McGarvin, America's Health Insurance Plans; Mike Hodge, Employers Health Coalition; Dr. Mike Dixon, North Idaho Health Network; Tim Olsen, Regence Blue Shield; Ken Harman, Cassia Hospital; Dick Knapp, Yanke Machine Shop; Steve Thomas, Idaho Association of Health Plans; Tom Shores, ; Nate Marshall, Moreton; Julie Taylor, Blue Cross of Idaho; Toni Lawson, Idaho Hospital Association; David Lehman, Kootenai Medical Center; McKinsey Miller, Regence Blue Shield; James Pegrum and Laura Bishop, J.R. Simplot Company; Lydia Aguirre, Idaho Housing; Mike Brassey, St. Luke's Health System; Karen North, J.R. Simplot Company; Steve Millard, Idaho Hospital Association; Roger Seiber, Capitol West; Norm Semanko, Idaho Water Users Association; Jeff McDonald, M.D.; Ron Rock, private citizen; Nick Genna, Treasure Valley Hospital; Larry Benton, Benton Ellis; Corey Surber, Saint Alphonsus Hospital; Flinda Terteling, Terteling/Western States; Jim Farrel, private citizen; Zach Hauge, Capitol West; Joe Webber, DHR; Sarah Fuhriman, Roden Law Firm; Colby Cameron, Sullivan & Reberger; Bryce Farris, Ringert Law; Ben Wright, AmeriBen; Tom Shores, Health Underwriters; Drew Thomas, Risch Pisca; Julie Foote, MD, Idaho Medical Association; Shad Priest, Idaho Department of Insurance; Andrea Thomas, North Idaho Health Network; Russell Westerberg, Hagadone Hospitality; David Lehman, Kootenai Medical Center; Elizabeth Criner, J.R. Simplot Company; Jeff Church, Veritas Advisors; Alex LaBeau, Idaho Association of Commerce & Industry; Lyn Darrington, Regence Blue Shield of Idaho; Neil Colwell, Avista Corporation

Meeting was called to order at 1:30 p.m. by Chairman Black.

MOTION: **Rep. Bilbao** moved to approve the minutes of February 23; **motion carried** on voice vote.

H 560 **Norm Semanko**, Executive Director of the Idaho Water Users Association, presented **H 560**. Mr. Semanko explained that last year his organization sought and received an exemption for irrigation districts to buy used personal property without using a competitive bid process. This provision is applicable only to used property, and it is felt that no purpose would be served from a bidding process for these purchases. This year Mr. Semanko said the Water Users Association is seeking the same provision for drainage districts, which work together with irrigation districts and have many of the

same functions. This bill will provide consistency between the two entities.

Answering committee questions, Mr. Semanko said generally a drainage district is a larger area that can include several irrigation districts. He pointed out that purchases below \$25,000 do not require competitive bidding; this bill will allow purchases without a bid process for used equipment that is worth more than \$25,000.

MOTION: **Rep. Gibbs** moved to send **H 560** to the floor with a **DO PASS** recommendation; **motion carried on voice vote.** **Rep. Gibbs** will sponsor the bill on the floor.

H 528 **Chairman Black** advised the committee and members of the audience that he intended to limit testimony on H 528 to four minutes per person, with the exception of the bill's sponsor and one person from the opposition.

Rep. Bob Nonini presented **H 528**, stating that in accordance with House Rule 38 he is disclosing that he has a business relationship with Northwest Specialty Hospital in Post Falls. Rep. Nonini said H 528 is about equal access by patients to the doctors and hospitals of their choice. Rep. Nonini then yielded his time to Ken McClure and asked him to present opening testimony on the bill.

Ken McClure, representing the Idaho Medical Association, testified **in support of H 528**. Since Mr. McClure was the drafter of the original "any willing provider" (AWP) statute, he was asked to give a brief history of its development. He said when the AWP statute was adopted in 1994, health maintenance organizations were gaining in popularity and it was hoped they would offer a better, cheaper way to deliver health care. However, they proved to be disruptive of a physician's relationship with his patients and the patients' ability to choose their doctors. Mr. McClure explained that in a closed-panel delivery system, a person's doctor has to be a member of the panel or the patient's insurance will not cover a visit to that doctor. Although this is not as important in large metropolitan areas, where patients are accustomed to seeing different physicians in the same office, Mr. McClure said Idahoans generally develop a personal relationship with their own physicians and prefer to choose which doctors they will see.

Mr. McClure testified that since most people receive health coverage through their employers, they do not have a choice of companies; the choice of insurance carriers is generally made by their employers. He said the purpose of the "any willing provider" law was to make sure that patients could continue to access their own doctors, regardless of whether they changed jobs or their employers changed health insurance plans. In those cases, without an AWP law, if a patient chooses to continue seeing his or her own doctor even if he was not on the list of preferred providers, the patient would have to pay higher charges. Alternatively, the patient would have to change doctors and see one that was included on the list of preferred providers. Mr. McClure pointed out that it is not unusual for companies to "shop" for lower prices and change providers every few years.

Mr. McClure pointed out that H 528 includes the same amending language in two separate sections of the code in order to cover both managed care organizations and insurance companies. He said after the law passed in

1994, some parties have found a way to circumvent the law. Since the law's adoption, networks owned by doctors have come into existence and the "any willing provider" law does not apply to such networks, who can exclude some doctors.

According to Mr. McClure, the "any willing provider" issue has become a political football. He said there has been an uneasiness about it for the last 15 years and there have been efforts to repeal the AWP law. He pointed out that last year when legislation similar to H 528 was introduced by Rep. Nonini, the Idaho Medical Association remained neutral. Mr. McClure said the medical association still believes in the "any willing provider" legislation, and this year the Board of the IMA has voted to support H 528. Mr. McClure said the basic provision of H 528 is that if a managed care organization or an insurance company works through networks it must also work through non-networks. This will allow patients have continued access to their own doctors.

Responding to committee questions, Mr. McClure said an "otherwise eligible provider" is one who is licensed and legally authorized to provide health care of the type that is being provided by other providers. He said no doctor would be required to offer all services; for instance, a pediatrician would not be required to offer neurosurgery or ophthalmology. Asked whether a doctor could be required to be available on a 24-hour basis in order to contract with a managed care organization that offers 24-hour coverage, Mr. McClure said the provider could satisfy that requirement by being a part of a call network that would offer round-the-clock coverage. Mr. McClure was asked whether an insurance company or managed care organization would be required to contract with a facility even though that particular facility did not have x-ray facilities, a lab, or an emergency room. He said in his opinion if the facility is willing to meet the terms and conditions of the contract, in terms of quality control, reporting, and pricing, it should be allowed to participate in the network and provide whatever services it normally provides. He said his priority is to facilitate the physician/patient relationship.

Mr. McClure was asked whether the "loophole" in the AWP law resulted from an oversight or a compromise reached at the time of its passage. He said neither was the case. Rather, at that time the formation of closed networks was not anticipated and few, if any, networks even existed. If networks had been in existence, they would have been specifically included in the law. He was also asked whether passage of the bill will reduce costs and increase access to health care. Mr. McClure responded that access will be increased, but he pointed out that doctors do not set the price of their services. He said it is difficult to understand how driving volume by excluding some supply from the market is going to reduce price.

Asked how this legislation will affect current closed panel providers, Mr. McClure said it could make it more difficult for them to deselect or exclude someone from providing care for their patients. He said the state of Idaho is experiencing a shortage of doctors in most practice specialties. He also stated there are probably members of the Idaho Medical Association who do not agree with the Board's support of this legislation, but he thinks the overwhelming majority of members would agree with the Board's position, since they have concluded that open access for patients is in the patient's best interest.

In response to further questions from committee members, Mr. McClure said the term “reasonable expectation” does not appear in the section. Rather, the language says a provider must “meet the terms and conditions of the contract.” Asked whether a pediatrician who does not believe in giving immunizations would be forced to provide them in order to be included in a network, Mr. McClure said it is his opinion that a pediatrician would have to offer the full spectrum of pediatric care. Mr. McClure said the concern among physicians about being excluded from networks is not limited to any particular specialties; rather, the concern is across the spectrum and among all specialties.

Asked whether private hospitals have emergency rooms, Mr. McClure said he knows of two which do not. He said that in areas where there is no 24-hour emergency staff, such as in Bonners Ferry or other smaller towns, doctors remain on call around the clock. Larger areas such as Boise have 24-hour emergency room services, staffed by physicians who contract with the hospitals to provide those services.

Woody Richards, an attorney representing Willamette Dental, testified **in opposition to H 528**. Mr. Richards gave some historical background information about the “any willing provider” law, saying that in the mid-1990s a group was formed, with the cooperation of the Department of Insurance, to study insurance laws and address some of the inadequacies in the law. He said the study group included the Idaho Medical Association, hospitals, and health insurance companies, including Primary Health, Blue Cross, and Regence Blue Shield. Mr. Richards said the result of the study was the Managed Care Act of 1997, whose principal architect was Sen. Dean Cameron. Mr. Richards also said networks were already in existence and were contracting with physicians by this time. Mr. Richards said if any change is to be made to the statute, it should include a review of the entire managed care act and a rewrite of the entire chapter. He said, in his opinion, it would be unfair to “undo” a part of the deal that was struck, since it involved a number of compromises. He said all parties should be given a chance to negotiate a new managed care law.

Mr. Richards was asked if there was any effort to get all interested parties together during the interim, since last year’s “any willing provider” legislation was unsuccessful. He said the Health Care Task Force did not include this subject in its interim meetings, and he does not think the Task Force necessarily needs to be the entity to revisit this question. He said it requires only a charge by the Director of the Department of Insurance to rewrite the laws.

Dr. Michael Dixon, a family physician and Medical Director of the North Idaho Health Network (NIHN), testified **in opposition to H 528**. Dr. Dixon said he has been a member of the North Idaho Health Network since its inception in the early 1990s. He stated physicians knew very little at that time about managed care, which was just emerging. Dr. Dixon said a group of physicians was formed to study the issue and make recommendations on how doctors could position themselves with regard to managed care. He said it is not true that NIHN was created by Joe Morris, nor is it true that its aim is to prevent competition from outside hospitals. In fact, he testified, the governing board includes fewer hospital seats than physician seats. Dr. Dixon said the majority of physicians are disappointed that the Idaho Medical

Association is supporting this bill. He said the “any willing provider” law is good as currently written because it protects providers and protects networks, and it requires providers to meet the standards of the plans. The proposed amendment to the AWP law, on the other hand, will allow equal access to the benefits of being an in-network provider without having to meet any quality standards and without participating in the risk sharing.

During committee questions and discussion, Dr. Dixon was asked to state which specific standards are not being met by Northwest Specialty Hospital. He responded that the North Idaho Health Network is not in existence to prevent competition. He said the North Idaho Health Network represents 97 percent of physicians in Idaho’s five northern counties, and he testified that the physician-owners of Northwest Specialty Hospital are members of the North Idaho Health Network. Dr. Dixon said his issue is not about physician access, but rather about access to facilities. He has no concern about the quality of the physicians; rather, he said his concern is about specialty hospitals in general. He testified that specialty hospitals are set up to take advantage of laws that allow physicians to be owners of an entity, and then refer patients to their own entity. This allows them to perform the most lucrative, highly reimbursed procedures in a hospital which the doctors own. Thus, they can reap the financial benefits of being the provider and receiving the facility reimbursement. Dr. Dixon pointed out that the acute care portions of any hospital, such as intensive care units, emergency rooms, or coronary care units, almost never pay for themselves. These portions of the hospital are subsidized by other hospital procedures that are more profitable. Since a specialty hospital has no emergency room or intensive care unit, the extra reimbursement it receives goes to the owners, who are sometimes doctors or other investors. Dr. Dixon said those funds that would otherwise support a community hospitals are lost.

Responding to further questions, Dr. Dixon said the mission and goals of the smaller specialty hospitals are not the same as the North Idaho Health Network. He said NIHN tries to reduce waste, improve care and improve cost efficiencies, whereas a specialty hospital’s motive is profit, and their profit comes from increased utilization. He stated that when both facilities maintain magnetic resonance imaging (MRI) equipment, that creates a problem for a community that needs only one, since both have to be paid for through either higher prices or increased utilization.

Asked whether the North Idaho Health Network had done any cost analysis regarding the inclusion of Northwest Specialty Hospital, Dr. Dixon said they had not done such an analysis because they are opposed in principle to including the specialty hospital, because of the difference in mission. He restated his belief that the primary incentive for a physician-owned, for-profit entity is to increase utilization, whereas the goal of a community facility is to reduce cost by controlling utilization. Dr. Dixon said the NIHN is trying to bring all physicians together to increase efficiencies. He said in the future, doctors will be rewarded through “bundled payments,” through which they are rewarded for coming together. He said in north Idaho the issue is not physician access but rather facility access.

Asked about the original motivation behind the formation of Northwest Specialty Hospital, Dr. Dixon agreed that at that time surgical suites at the community hospital were so overloaded that surgeons were required to operate on patients at 1:00 a.m. He said, however, that the problem was in

the process of being corrected when the 12 surgeons came together to initiate Northwest Specialty Hospital. Dr. Dixon stated that, in his opinion, those doctors were more upset about their personal schedules being interrupted than about their patients' welfare.

Dr. Julie Foote, an independent practitioner in Boise, testified **in support of H 528**. Dr. Foote said she employs ten people in her office and provides them with health insurance. She stated she does not practice at a specialty hospital, does not own a facility, and does not even own her own office. Dr. Foote said she supports the legislation because she believes this bill protects a patient's right to choose his or her own physician. In her specialty, which is endocrinology, diabetes patients have a long-standing relationship with their doctors. Dr. Foote said this legislation will protect her patients' rights to see their own physicians even when their employers change health plans, which can occur every one or two years. It will also protect patients' rights to access care in their own areas, rather than having to travel. Dr. Foote said the foundation of quality medical care is independent practitioners. She said passage of H 528 will ensure continued access to high quality and affordable care in the state of Idaho.

Joie McGarvin, representing America's Health Insurance Plans (AHIP), testified **in opposition to H 528**. AHIP represents nearly 1,300 members who provide health care for 200 million Americans. Ms. McGarvin said the "any willing provider" legislation will significantly increase costs for consumers, employers, and programs. She testified that states with restrictive AWP laws spend about two percent more on health care than states with no AWP laws. These laws have anti-competition effects, and they negatively impact the quality of care to consumers. Ms. McGarvin said the AWP mandates create a presumed right to employment or contract, a right that does not exist anywhere else. For instance, schools are not required to hire any willing teacher, airlines are not required to hire any willing pilot, and hospitals are not required to accept any willing nurse or doctor. She said her organization would prefer that this matter be vetted through the Health Care Task Force, and they oppose passage of H 528.

Dr. Jeff McDonald, a practicing neurosurgeon who has been in north Idaho for 11 years, testified **in support of H 528**. He gave examples of real-life situations where a patient needed continuing treatment, but she had changed health insurance products and Dr. McDonald was no longer included on the new company's list of preferred providers. In another instance, a patient had problems with pre-authorization and restriction of access to her physician, following a switch to a new insurance plan in January. Dr. McDonald showed the committee a typical enrollment packet, consisting of many pages of forms and applications, and he stated it would be difficult for a patient to find information about possible restrictions in his or her new health plan. He testified that passage of H 528 would allow the maintenance of doctor-patient relationships, and he said fair and open competition should be important in the health care field.

Dr. McDonald disputed claims that the quality of care is lower at specialty hospitals, saying this perception is the result of ignorance, misinformation, or myth. He said Northwest Specialty Hospital has a demonstrated track record of providing top quality care, evaluated by an outside independent

analysis. He said the hospital has earned a five-star rating, the highest possible, for spine surgery in 2007, 2008 and 2009. In the Consumer Reports ratings of hospitals in 2009, Northwest Specialty Hospital was the number one rated hospital in the four-state region of Oregon, Washington, Idaho and Montana. It rates very high in patient outcome, satisfaction, doctor/patient communication, and low infection rates. Dr. McDonald said this issue is not just about north Idaho; three of the four top-rated hospitals in Idaho turn out to be specialty hospitals.

Responding to questions, Dr. McDonald said he is a co-owner of Northwest Specialty Hospital. He said the patients used in his examples changes health coverage because they thought they would be moving to a better plan. He said one of the patients could have received care in a network facility, but the other one could not have received care in a timely manner at a network facility.

Steve Thomas, an attorney appearing on behalf of the Idaho Association of Health Plans, testified **in opposition to H 528**. Mr. Thomas said one of the most fundamental tools of business is freedom of contract and sanctity of contract. He said businesses allocate risks in their business transactions, and without the ability to do this, the capital market cannot function and succeed. He testified that cost control is an essential right and duty of any business's management. If the business does not control costs, it will not be profitable. Health care costs are rising rapidly, and health insurance is one of the highest cost factors in any business. Mr. Thomas explained the three types of plans that Blue Cross offers in north Idaho: traditional plans, preferred provider plans (PPO), and point of service plans. In traditional coverage, a patient can see any doctor he wants, but prices are higher. The PPO plan is a large network of doctors; the patients receive a discount if they see those doctors. They still are free to see other doctors but will not receive the discount. Mr. Thomas described point of service plans as a small network of efficient health care providers. He reported relative costs of each of the plans, saying that for every dollar that goes to traditional plans, PPO plans cost 90 cents and point of service plans cost 84 cents. He said one of the tools available to control costs is the ability to use networks and to ask for quantity discounts in order to get a good price for network members.

Mr. Thomas said the Association's members are not-for-profit companies. He said H 528 will undercut their ability to negotiate quantity discounts because they can't guarantee quantity. He said that in the AHIP white paper on costs, an economist affiliated with the Federal Trade Commission found that states with AWP laws spend about 2% more on health care, all other things being equal. Mr. Thomas said that each 1% increase in premiums leads to loss of coverage for 300,000 people. For each 1% increase, small business coverage falls by 2.8%.

Mr. Thomas concluded his testimony by saying that the Legislature should not be increasing the cost of doing business in Idaho and should not be sending the message that business contracts in Idaho may be broken at any time, contrary to the will of the existing parties to those contracts. He said H 528 would be contrary to the interests of the state of Idaho, and also contrary to federal and state constitutional provisions, that no state shall pass any law impairing the obligation of contracts.

Responding to questions, Mr. Thomas said the statistics he provided are

national statistics that compared states with AWP laws to states without those provisions, but he would not be able to respond to a specific question with regard to the North Idaho Health Network. Mr. Thomas said Idaho's existing "any willing provider" laws have already made it more difficult to guarantee significant traffic to health care providers, and H 528 would expand it even further. Mr. Thomas said his organization sees this as anti-competitive.

Asked whether H 528 is better for the insurer or the insured, Mr. Thomas said it is worse for both because it takes away from carriers a tool to negotiate on behalf of the insured. He said he is not sure whether H 528 will increase access. He testified that Idahoans do enjoy some of the lowest costs for health care in the nation. He said he does not necessarily see a correlation between Idaho's "any willing provider" statutes and the lower cost of health coverage in the state, noting that the absence of mandates could be responsible instead.

Mr. Thomas said, in response to a question, that the ability to use networks is one of the best tools available to enhance quality and contain costs. He said the North Idaho Health Network has been able to deliver a 16% discount to those who choose that network. Thus, they have delivered a good product at a good price.

Mike Hodge, Director of Employee Benefits at SuperValu, the parent company of Albertson's, testified **in opposition to H 528**, on behalf of the Employers' Health Coalition of Idaho. He said many employers in Idaho are struggling to provide health coverage for their employees. He stated the development of PPO networks throughout the United States has helped better control costs. Mr. Hodge stated that the sponsor of H 528 did not intend it to affect ERISA employers, but some of them would be affected. He said a large number of their employers self-insure, purchasing insurance products when they believe it will be more effective to do so. He stated that separate network structures, one for self-insured and one for fully insured, would be too complex to set up. He said the health care market is very complex and every change has numerous effects. One of the effects of this legislation will be to drive up the price of health care. Mr. Hodge said his organization encourages a more robust conversation around this issue.

In response to a question about the bill's statement of purpose, which states that ERISA plans will not be affected, Mr. Hodge said he had not fully read the bill. He believes, however, that the Blue Cross PPO network will be impacted by the legislation, and therefore it will have an impact on his company. Mr. Hodge also said he should have used the more correct term "self-funded" rather than "self-insured" when describing his company's plan.

Shad Priest, Deputy Director of Department of Insurance was recognized to respond to a question from the committee. Mr. Priest said the Department does not have a position on this bill. He said that, based on his reading of the ERISA law, H 528 would not have an effect on ERISA plans. Mr. Priest said a 2003 U.S. Supreme Court case found that "any willing provider" laws do not violate ERISA plans, and this law will not directly regulate self-funded plans. He said the AWP laws apply only to insurance companies or managed care organizations, not to employers. Mr. Priest was asked whether there are any constitutional grounds on which to question the

legislation. He stated that the Department has not requested a legal opinion on H 528, but the AWP laws have been in effect for about 15 years and he is not aware of any constitutional challenge during that time, nor is he aware of any application to a self-funded employer plan.

Jeff Sayer, CEO of Mountain View Hospital in Idaho Falls, testified **in support of H 528**. Mr. Sayer gave a brief historical perspective on the development of the specialty hospital in his community. He said the only hospital in Idaho Falls was able to make high profits because of their solo position. In 2002, major employers found they could more economically send their employees to Salt Lake City for treatments. During this period, premium increases ranged from 30% to 35%, and some people could not access health care in their own towns. Mr. Sayer said Mountain View Hospital was opened and has provided a competitive balance, restoring the ability of the market to function properly. He said they have instituted multiple innovations for patients, physicians and employers, and they could not have done those things without full access to contracts. He testified that Mountain View Hospital is paid up to 30% less than other hospitals for the same procedures.

Mr. Sayer testified that the issue addressed by H 528 is not one of cost containment or quality, but is an issue of control. He said he believes some parties are going around the AWP law, and this could begin happening in other parts of the state. He encouraged the committee to preserve the "any willing provider" statutes and to pass H 528, which is the right policy for the needs of Idaho's people.

Asked to elaborate on whether H 528 will impact health care costs, Mr. Sayer said he does not believe it will drive up costs, noting that specialty hospitals are already lower cost providers of care. He believes that in some states that show a 2% increase in costs, as stated by earlier witnesses, that increase is due to the underlying health of the states' populations. He stated he thinks large employers are basing their concerns on misinformation, since the bill will not apply to ERISA self-insured plans. Mr. Sayer said this is an issue of open access for patients and providers. He asked the committee to protect competition and open markets by passing this bill. The larger question of whether "any willing provider" is good policy should be addressed later, as a separate matter.

Mr. Sayer was asked about why specialty hospitals are paid less for the same procedures. He said that since these facilities do not have an ICU unit or an emergency room, for instance, the insurance companies are able to negotiate lower reimbursement rates with them. He said this is a market function, and it serves to balance the market for everyone.

Tim Olsen, Regence Blue Shield, testified **in opposition to H 528**. Mr. Olsen said he supported the group that created the North Idaho Health Network in 1991, in an attempt to contain ever-rising health care costs and maintain access to high quality care. Mr. Olsen said that by 1994, when the "any willing provider" law was passed, there were established networks who had negotiated contracts for best price and quality. With the advent of AWP, any provider could tap into the contracts they had negotiated. He said expansion of "any willing provider" will further reduce the ability to make the best deal for consumers. Mr. Olsen said it is time for a full debate on this

issue.

In response to committee questions, Mr. Olsen said there are a number of factors which drive up the cost of health care, including greater numbers of uninsured and inadequate Medicare and Medicaid reimbursements. He said those costs are shifted to the insured market, because premiums have to cover them. Mr. Olsen said the insurance company becomes the advocate for its insurance customers because it is important to maintain them as customers.

Asked what he envisions as a possible “middle ground” on this issue, Mr. Olsen said there are strong feelings on both sides. He said whether H 528 is passed or not, someone will be upset. He said he is undecided on the question of whether this issue could be handled by the Health Care Task Force or by an interim subcommittee. Mr. Olsen was asked whether there was adequate Idaho-specific data to help arrive at a solution; he said he could not make a judgment on whether the available data is really the right kind of information needed.

Chairman Black announced a ten-minute recess.

Meeting was called back to order at 4:20 p.m.

Andrea Thomas, representing the North Idaho Health Network, testified **in opposition to H 528**. Ms. Thomas offered two clarifications: First, she said sufficient data does exist to show that providers using the North Idaho Health Network save an average of 6% to 12%, which represents a minimum of \$10 million per year. Second, she stated that North Idaho Health Network was not created to circumvent the “any willing provider” statute, since it was created prior to the AWP law.

Russell Westerberg, appearing on behalf of the Hagedone Corporation, testified **in opposition to H 528**. Mr. Westerberg said the Hagedone Corporation employs about 1,500 people in the five northern counties of Idaho and provides its employees with health insurance. The Hagedone Corporation has been a member of the North Idaho Healthcare Network for nearly a decade, which has resulted in health care costs approximately 5% lower than other parts of state, an annual savings to them of \$300,000 per year. Hagedone also has employees in Wisconsin, Montana, Washington, Oregon, California, and Hawaii. The annual cost of healthcare within the network is by far the lowest of all locations where they have employees, and is about 50% lower than other states. Mr. Westerberg requested that H 528 be held, stating that the Hagedone Corporation believes its passage will cost them \$300,000 per year.

David Lehman, representing Kootenai Medical Center, testified **in opposition to H 528**, saying it will have adverse impacts on Idaho businesses. Mr. Lehman said businesses have averaged a 135% increase in health insurance costs over the past ten years, while the number of small businesses offering health coverage has decreased from 56% to 46%. He said this legislation will result in premium increases of 6% to 12%, which will mean even fewer businesses will offer health coverage to their employees. Mr. Lehman also commented on Idaho’s growing indigent population and said passage of H 528 will increase the rolls of the uninsured. He also said

it will decrease competition. Mr. Lehman said although this bill will not impact ERISA plans directly, it will ultimately drive costs up by forcing networks to include all providers, thereby impacting their ability to offer discounts. He encouraged the committee to hold the bill, saying there is a way to find common ground on this issue.

Elizabeth Criner, representing the J.R. Simplot Company, testified **in opposition to H 528**, offering a clarification on the ERISA issue. She said it is true that large companies will not have to be in compliance with the “any willing provider” provisions, but the health care products they can contract to purchase will change dramatically. She noted this will impact small businesses and individuals who purchase insurance. Ms. Criner asked the committee to hold the bill and create an opportunity for a conversation on the bigger issue, which is controlling the rising costs for health care.

Ken Harmon, Administrator and CEO at Cassia Regional Medical Center and CEO of Intermountain Health Care, testified **in opposition to H 528**. Mr. Harmon said Intermountain has been working for the last two years to put together a bundled payment arrangement so they can negotiate with Blue Cross. To make this product work and accomplish their goals, they have to be able to create a network. Mr. Harmon said physicians currently are paid differently for different types of care; for instance, they are paid more for a C-section than for a natural delivery. Sometimes financial incentives encourage more expensive care. His facility is trying to form a network of physicians who will follow best practices, which will significantly lower costs. Mr. Harmon said passage of H 528 will kill this project and derail others. He asked the committee to facilitate a discussion among physicians, hospitals, insurance companies and specialty hospitals, with the goal of finding a solution to this issue.

Dick Knapp, representing Yanke Machine Shop, a privately held company in Boise, testified **in opposition to H 528**. Yanke self-insures its 300 Idaho employees and would be exempt under the ERISA provisions. Mr. Knapp said their consultant, Mercer, agrees that H 528 is not in the best interest of Yanke in terms of cost or quality. He said he thinks networks will control quality, which will provide significantly better costs to patients. He said Yanke will be negatively impacted by this bill.

Tom Shores, representing the Idaho Association of Health Underwriters, testified **in opposition to H 528**, noting that he does not work for insurance companies, hospitals or doctors. Mr. Shores pointed out that in a PPO network there is no restriction of physicians, but if a patient sees someone outside the network he will pay a higher price for the treatment. Mr. Shores said there is a 15% to 20% reduction in point-of-service policies over other plans. He said the way insurance companies control their costs is to use networks, and it would not be advisable to take away that tool.

Alex LaBeau, President of the Idaho Association of Commerce and Industry (IACI), testified **in opposition to H 528**. Mr. LaBeau said that although IACI has discussed this issue over the past few weeks, he does not have a unanimous decision from his board, although a majority oppose the bill. He said that historically IACI has opposed AWP laws because of the right to contract. He said that, although the ERISA exemption is technically true, as

a practical matter large employers will be negatively impacted by this change to the law. Mr. LaBeau said that market principles are being applied to something that is not a true market, namely, health care. He said IACI intends to move forward with an internal task force that will undertake a broad debate about the “any willing provider” statutes. He said he does believe there is some middle ground on the issue which may be able to be reached.

Neil Colwell, testifying on behalf of Avista Corporation, a gas and electric utility in Spokane, testified **in opposition to H 528**. Mr. Colwell said his company has 1,500 employees who all participate in a plan in which Avista guarantees that they will go to certain providers. Avista, in turn, receives beneficial rates. He said the insurance company is the negotiator of the price, and that price will go up under this legislation, which will cause their employees to pay more in premiums. Mr. Colwell said Avista’s north Idaho employees participate in the North Idaho Health Network, and he noted that his company saved approximately \$6 million in 2009 by having that network.

Julie Taylor, Director of Governmental Affairs for Blue Cross of Idaho, testified **in opposition to H 528**. She urged members of the committee to consider the next generation of health care, when care will be delivered by accountable, high performance networks. She said employers are demanding cost effective health care but also accountability by providers. Ms. Taylor agreed that a wide-ranging discussion needs to be held about the whole issue of health care, where it should go from here, and what health care financing should look like in the future.

Toni Lawson, Vice President for Governmental Relations at the Idaho Hospital Association, testified **in opposition to H 528**. She stated this bill will significantly change the current “any willing provider” laws, and she does not believe the change is needed. She said the current AWP law is reasonable and is working, although the IHA does not like all its components. Idaho has some of the lowest health care costs in the country, and some rural health facilities in Idaho are ranked as least costly in the nation. Ms. Lawson said as health care changes, hospitals need flexibility to improve care, but this bill will create barriers to high quality, cost-effective health care. Ms. Lawson said she does not think there is a major problem that needs to be addressed at the present time. She questioned whether this legislation will actually increase patient choice, and noted it may actually decrease access if the rate of uninsured increases. She agreed that more data and further study are necessary before any change in the law is made.

Nate Marshall, representing Moreton and Company, an insurance brokerage and consulting firm, testified **in opposition to H 528**. He stated he has received care as a patient at specialty hospitals, and his experience has not been great, although he recognizes that it may not have been any better at another hospital. Mr. Marshall said this legislation will affect physicians as well as specialty hospitals. He also stated that one of the criteria for physicians in the North Idaho Health Network is that they be board-certified, and this legislation would not allow that criteria to exist. Mr. Marshall thinks H 528 will negatively affect the quality of care. He pointed out that the majority of participants in a health plan are non-patients. These people want health insurance but do not necessarily want or need continuity of care. They do, however, want care at a good rate when they need to

access it. Mr. Marshall said he would encourage further study of H 528, along with another proposed bill, H 530.

Mr. McClure was recognized to respond to a question about the time line on the establishment of networks, Mr. McClure said if there were networks in existence in 1994 he was not aware of them. He said perhaps any existing network did not have sufficient market presence. He said Group Health Northwest was attempting to enter the Coeur d'Alene market at the time, and that was the first entry of a closed panel HMO.

Mr. Richards was recognized to respond to a question about any possible middle ground on this issue. He responded that it would be difficult and inadvisable to disclose what various parties may be willing to settle for, at least in the current forum of a committee meeting. He said the discussion may have to involve looking at three issues, namely, access, cost and quality, and deciding what tradeoffs can be made. Mr. Richards said difficult issues have been solved before, and perhaps this one could be moved forward by having the Legislature set a specific time frame in which to expect a group of proposals from all parties.

Rep. Rusche stated his belief that he was involved in developing a community hospital in Lewiston in the mid-1990s, and he was aware of at least four other networks in the state at that time. He said one of the proposals included in the Clinton health care plan was the formation of an accountable health care network, and he pointed out that networks can collect and provide data on individual doctors. Rep. Rusche stated that the national trend is that health care costs increase at three times the rate of inflation, a figure that has remained consistent.

Rep. Nonini was recognized to respond to a question from the committee concerning his efforts following last year's failure of **H 174**, legislation similar to **H 528**. Rep. Nonini said he approached Steve Millard and Toni Lawson following last year's failed legislation and asked if there was any part of the bill he could change in order to gain their support or at least enable them to remain neutral. He said their response was absolutely not, because there is nothing about "any willing provider" that they like. Rep. Nonini said he again approached Steve Millard at the beginning of the 2010 session and asked him to discuss possible common ground, but Mr. Millard said there is no common ground. Rep. Nonini said that Julie Taylor and Tim Olsen also agreed there is no common ground on this issue.

Julie Taylor was recognized to summarize testimony in opposition to H 528. She stated the matter should have been taken up in the Health Care Task Force, but neither of the two co-chairmen were asked to put it on the agenda so the parties could come to the table for a discussion.

Rep. Nonini was recognized to close his presentation on **H 528**. He first stated that a previous testifier's statement, that this legislation would disallow a network from requiring its physicians to be board-certified, was completely incorrect. He said the existing language in the "any willing provider" law states that this is not the case. Referencing his attempts to reach a "middle ground," Rep. Nonini said he has twice attempted to visit with the Idaho Hospital Association, and he restated the fact that Blue Cross and Blue Shield will admit no middle ground. He reiterated that reimbursement rates

at specialty hospitals are lower than community hospitals for the same procedures, and said the specialty hospitals are willing to accept lower reimbursements because their fixed overhead expenses are lower. Rep. Nonini said if one accepts the concept of “any willing provider,” one should vote yes on H 528. He said the current AWP law is discriminatory because it does not apply equally and fairly to all.

MOTION: **Rep. Henderson** moved to send **H 528** to the floor with a **DO PASS** recommendation, saying this may be one of the most critical issues on which legislators will vote this session.

SUBSTITUTE MOTION: **Rep. Bilbao** stated he serves on the board of a public hospital, but he intends to vote on this bill. Rep. Bilbao offered a substitute motion to **HOLD H 528** in committee and refer it to the Health Care Task Force.

Rep. Rusche, arguing in support of the substitute motion, said the bill takes the “any willing provider” statute that applies to insurance companies and managed care organizations and applies it to networks, which will restrict their ability to develop their own negotiating and contracting entity. He also said entities would no longer have to meet the terms and conditions of the contract because they would no longer have to provide services required under the contract. Rep. Rusche said if the bill passes, the St. Alphonsus physician health organization could not compete with St. Luke’s physician health organization because they could not keep each other’s doctors out of the respective networks. He said the bill would have significant unintended and bad consequences.

Rep. Cronin stated he believes the current practice does violate the spirit or intent of the “any willing provider” law. He said there had been conflicting information presented about how prominent networks were in 1994, and he noted that some of the data presented was not compelling and was possibly out of context. He said he believes that support for this bill may unleash a torrent of support for H 530, and there will still be insufficient data provided to make a sound decision. He said the relatively new phenomenon of specialty hospitals does change the landscape, and he would support the formation of a task force to further study this issue. He will vote in support of the substitute motion.

Rep. Durst said he does not believe that the current practice falls within the spirit of AWP, and said in his opinion the parties are intentionally trying to find a loophole. He said he does not believe there is an interest in finding common ground, so the status quo will remain. He also expressed concern about the Health Care Task Force being given such a prominent position on this issue, given its tendency to favor one side of this issue. He will support the original motion.

Rep. Patrick noted that currently St. Alphonsus and St. Luke’s work well together. He directed a question to **Rep. Rusche**, asking whether one or the other of the hospitals could get into a larger network and effectively eliminate the smaller hospital. Rep. Rusche said if the larger network had a product with a certain specific attribute, a competitor could develop a product with different attributes. Each would be able to maintain its own specific product which may be aimed at a particular market segment.

Rep. Jarvis stated his support of the original motion, saying he believes passage of H 528 may be the best way to bring all parties together and provide the motivation to work on the issue.

Rep. Henderson said the question needs to be dealt with this year; if it is referred to a task force or an interim committee, the issue will resurface next year, still unresolved. He said if there is a middle ground, it will be reached only if H 528 is passed, in order to open a debate on the issue. He said this involves improving health care access, quality of care, and costs for Idaho citizens. If the legislation is moved to the floor for a debate, Rep. Henderson said that will force discussions of any middle ground. He said the citizens of Idaho deserve action to make this debate happen.

Rep. Thompson expressed support for the original motion, saying this debate has been going on for 16 years. He supports moving forward to deal with the issue, noting that his consideration is for the health care consumers of Idaho.

Rep. Gibbs stated that when last year's bill was held in committee, there was not a pending threat or pending legislation to do away with the "any willing provider" statutes. He said a properly constituted task force will bring results because they know there is now a real threat of doing away with AWP.

**VOTE ON
SUBSTITUTE
MOTION:**

Chairman Black called for a vote on the substitute motion; a roll call vote was requested. **Substitute motion failed** on a vote of **6 aye** and **11 nay**. **Voting in favor** of the substitute motion: **Reps. Collins, Bilbao, Gibbs, Smith (30), Rusche, and Cronin**. **Voting in opposition** to the substitute motion: **Reps. Henderson, Chadderdon (Sims), Crane, Mathews, Patrick, Bayer, Jarvis, Palmer, Thompson, Durst and Chairman Black**.

**VOTE ON
ORIGINAL
MOTION:**

A roll call vote was requested on the original motion, to send **H 528** to the floor with a **DO PASS** recommendation. The **original motion passed** on a vote of **12 aye** and **5 nay**. **Voting in favor** of the motion: **Reps. Henderson, Collins, Chadderdon (Sims), Crane, Mathews, Patrick, Bayer, Jarvis, Palmer, Thompson, Durst and Chairman Black**. **Voting in opposition** to the motion: **Reps. Bilbao, Gibbs, Smith (30), Rusche, and Cronin**.

Chairman Black stated that last year's proposed legislation should have served as a sort of "shot across the bow" of the parties involved in this issue. He said today's vote on H 528 will serve as a torpedo, and he hopes the message being sent will resonate and will serve to open further discussion. He said he is not convinced that the Health Care Task Force is the proper venue for such a discussion. Chairman Black said this issue will require the proper perspective and depth of understanding. He said he thinks not all legislators have the required experience and knowledge concerning all possible ramifications of this issue, and he favors further study in collaboration with those experts who do have the necessary knowledge and experience.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 5:50 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

DATE: March 1, 2010

TIME: 1:30 p.m.

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin

**ABSENT/
EXCUSED:** Rep. Durst

GUESTS: Skip Smyser, Idaho State Dental Association; Bill Roden, Delta Dental; Joie McGarvin, America's Health Insurance Plans; Steve Keys, Division of Building Safety; Martin Bilbao, Connolly Smyser; Dr. Steve Bruce, Dr. Greg Bengtson, Dr. Rick Ferguson, Dr. Scott Kido, Dr. Quinn Dufurrena, Idaho State Dental Association, Fairy Hitchcock, Hitchcock Family Advocates; Sarah Fuhriman, Roden Law Office; Julie Taylor, Blue Cross of Idaho; Shad Priest, Department of Insurance; Bill Deal, Department of Insurance; Erik Makrush, Idaho Association of Building Officials; Julie Pipal, Independent Electrical Contractors of Idaho; Jack Lyman, Idaho Mining Association

Meeting was called to order at 1:35 p.m. by Chairman Black.

H 529 **Skip Smyser**, an attorney appearing on behalf of the Idaho State Dental Association (ISDA), presented **H 529**. Mr. Smyser said the 900 members of ISDA, a voluntary association, represent over 80% of the licensed dentists in Idaho. He testified that H 529 will codify existing practice by clarifying that a person contracting with a dentist cannot set the rate for a procedure that is not covered by that contract. He said contracts currently have the ability to set rates for non-covered services. The bill also defines what a covered service is. Mr. Smyser said the insurance industry has no opposition to the bill.

Responding to committee questions, Mr. Smyser said this legislation will not prevent a dentist from negotiating discounted prices with patients who pay for their own dental services. Asked whether the business community has expressed any concern about possible impact on costs, Mr. Smyser said no one from the business community has communicated any such concern. He said this problem is just beginning to surface in other parts of the country, and the Dental Association wants to provide a legislative fix by codifying what is already current practice, since it is not a matter that could be handled through a Department of Insurance administrative rule. Mr. Smyser said he has been in communication with the state of Rhode Island, one of the states where this problem has arisen.

Dr. Quinn Dufurrena, Executive Director of the Idaho State Dental Association and a dentist, testified **in support of H 529**, saying that the Dental Association supports the passage of this legislation.

In response to committee questions, Dr. Dufurrena said this legislation will not affect ERISA, which is regulated at the federal level.

Joie McGarvin, representing America's Health Insurance Plans (AHIP), testified **in opposition to H 529**. AHIP is a national association that represents nearly 1,300 members who provide health care benefits to 200 million Americans. She said this bill affects the consumer, not the health plans, and it will cause Idahoans to pay more for non-covered services. She said it is anti-consumer because it would ban insurers from negotiating discounts for non-covered services. She said both Blue Cross and Regence Blue Shield are neutral on the bill. She stated that AHIP cannot support charging patients more for contracted services than the dentists have agreed to.

Ms. McGarvin said a number of states, including Mississippi, Colorado, Virginia, Washington and Oregon have defeated legislation similar to H 529. She also said a dentist has a right to charge whatever is appropriate, but if he has agreed to a fee schedule, then he needs to abide by the fee schedule that he agreed to.

Ms. McGarvin presented an example of how the legislation will affect consumer costs. She proposed the scenario of two patients, both using the same dentist, but Patient A has a dental plan that covers routine cleaning, fillings, and xrays, and Patient B has a plan that covers all those things and also dental crowns. Their dentist is on a "preferred provider" list. Ms. McGarvin said when Patient B goes to the dentist and needs a crown, the dentist's office will tell him the "reasonable and customary" fee for a crown is \$1,500, and his plan will pay 50% of that charge. If Patient A needs a crown, she will be charged the same amount, \$1,500, but the procedure is not covered so she will be responsible for the entire amount. Ms. McGarvin said if this bill passes, Patient A could be charged \$2,500 instead of the \$1,500 reasonable and customary fee, using the same dentist, the same insurance carrier, for the same procedure.

If this bill passes, Ms. McGarvin said dentists will no longer have to meet the terms and conditions of their current contracts. Further, it will place the state government in the middle of a legal relationship between two parties.

Responding to committee questions, Ms. McGarvin said Blue Cross and Blue Shield are not taking a position on the legislation because they are not concerned with non-covered services. She said if dentists do not have contracts with companies, they are free to set their own fee schedules, charging whatever they see fit. She agreed that they may charge either more or less for services than might be charged under a contract, and said this legislation is about allowing dentists to charge what they see fit for non-covered services.

Bill Roden, an attorney appearing on behalf of Delta Dental of Idaho, testified **in support of H 529**. Mr. Roden pointed out that Delta Dental of Idaho is a member of AHIP and normally agrees with its positions, but not in this case. He said this bill responds to a situation in which dentists want to control prices for services for which they aren't contracted. Mr. Roden said it doesn't seem appropriate that Delta Dental could force a dentist to stick to a fee schedule for services that aren't covered.

Mr. Roden said in the situation where the amount allowed by a plan is exhausted after a patient receives two crowns, for example, this bill will provide some kind of rate agreement specifying that the third crown will be charged at the same rate as the first two. The dentist would have to adhere to the same price for that third crown, even though the insurance company would not make payment for that crown and the patient would have to pay for it. Mr. Roden said the bill is fair to consumers because they will get the benefit of negotiated rates. He also noted that this bill would have no effect on ERISA or self-funded plans.

Responding to committee questions, Mr. Roden said Delta has never tried to regulate rates charged for non-covered services, and they do not require providers to adhere to a price schedule that is not under covered services. He said a patient will get discounted rates on services only if those services are covered under his policy. This bill will confirm that practice.

Answering further questions, Mr. Roden agreed that people with two different coverages, even though they may be with the same company, may pay different amounts for their dental procedures. This is a function of the contract. Services most commonly covered are such things as cleaning, x-rays, and extractions. Those not covered are things like root canals.

Steve Bruce, a dentist in Boise for 33 years and a member of Delta Dental, testified **in support of H 529**. Dr. Bruce stated that Delta Dental and the Idaho State Dental Association are opposed to mandating fees for noncovered services. He said Blue Cross and Regence Blue Shield do not cover noncovered services such as veneers, implants or whitening. Mr. Bruce said he is not addressing services that occur after a maximum has been reached; he said he charges the same amount for third or fourth or subsequent crowns as he does for first and second crowns. He said other states were trying to include services after the maximum allowable. "Non-covered" services are generally those that are somewhat elective; most plans cover all preventive services, but some may not cover crowns.

Dr. Bruce said about 30-35% of patients do not have dental insurance. He said those uninsured patients should not dictate to him what he can charge for procedures for which they are not covered. He stated that if H 529 does not pass, patients will be more at risk because more companies will add lists of non-covered services.

Greg Bengston, a dental practitioner from Lewiston, testified **in support of H 529**. He said Idaho currently enjoys a surplus of dentists, even though there is no dental school in the state. The average dentist/patient ratio nationwide is 1/2,400, but in Idaho it is 1/1,900. Dr. Bengston estimated there is currently a 20% surplus of dentists in Idaho, which creates competition and provides an incentive for dentists to contract with insurance companies. He reported that about 68% of Idaho dentists contract with Medicaid, far higher than in other states. Dr. Bengston said dental fees have held steady in Idaho; he has not increased fees for the past two years.

Dr. Bengston gave statistics to illustrate that most dental school graduates prefer to practice in larger metropolitan areas rather than rural areas, saying less than 5% of graduates are willing to practice in areas with less than 5,000 population. He also said only 10% of dentists in Idaho are female,

although 45% of dental school graduates are female. One reason most dentists gravitate to larger areas is the high cost of their education and initial practice setup. Dental education costs can be as high as \$450,000, and setting up a new practice averages \$472,000. Thus, a new dentist makes an investment of between \$750,000 and \$1,000,000 to go into practice.

Dr. Bengston said he believes Idaho will suffer from a shortage of dentists in the future, and this legislation will help keep Idaho competitive with neighboring states. He said passage of H 529 is necessary to ensure that the dental industry and dentists can freely negotiate favorable rates for the people of Idaho.

Responding to committee comments and questions, Dr. Bengston said while it is true that Idaho State University is affiliated with Creighton University's dental school, that program sponsors only eight dental students for Idaho, and none of them are obligated to return to Idaho to practice.

Rick Ferguson, President of the Idaho State Dental Association and a periodontist in private practice in Idaho for 28 years, testified **in support of H 529**. Dr. Ferguson said only about half of his practice involves patients with insurance coverage.

Responding to questions, Dr. Ferguson said his uninsured patients pay in a variety of ways, including some who pay cash. He is not aware of what percentage of dental patients statewide are insured. Asked whether this bill will result in patient costs going down, Dr. Ferguson said he does not expect that to happen. He does not think that is the issue for the dental profession; rather, it concerns fairness in negotiating for covered services. He said in most practices, the fee charged is the same regardless of whether a procedure is covered or not. The dentist's job is diagnosis, treatment, and delivery of service. Dr. Ferguson said his fees remain the same for two patients, even though one patient's policy covers that procedure and the other's policy does not.

Dr. Scott Kido, a Nampa dentist who has been in practice with his wife for 28 years, testified **in support of H 529**. Dr. Kido said some dentists are financially struggling now. He also pointed out the surplus of hygienists, saying that BSU has a top-notch dental assistant program but they can't place their graduates because of an oversupply. Dr. Kido also testified that he felt compelled to sign a contract to become a "preferred provider" in order to keep some of his patients, since they would not be able to afford treatment otherwise.

Bill Deal, Director of the Department of Insurance, was asked to state whether the Department had reviewed this legislation. Mr. Deal said his function is regulatory and it does not routinely review legislation such as this. They have not reviewed this bill and the Department is neutral on H 529.

Mr. Smyser was recognized to conclude his testimony on **H 529**. He said this bill will codify current practice in dentistry in Idaho. He said it is an attempt to keep an insurance company from coming to Idaho and telling employers that they will set the prices even for procedures that are not covered by their policies. He noted that dentists do not have to sign a contract if they don't want to do so. However, individual dentists can't

negotiate with Blue Cross. In smaller towns like Parma, dental patients have few options if their dentist does not contract with insurance companies.

MOTION: **Rep. Thompson** moved to send **H 529** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Rep. Bayer** will sponsor the bill on the floor.

H 431: **Bill Deal**, Director of the Department of Insurance, presented **H 431**, a bill dealing with insurance records. He characterized this as a housekeeping bill, saying it clarifies the status of records available to the public. Mr. Deal stated the legislation says the Director will prepare a report following an examination, and a title agent or insurer has 28 days for review and comment. The agent can also request a hearing. Only after the agent or insurer signs off on the examination report will it be made available to the public. Mr. Deal said all working papers and other records are not available and are exempt from the public records act. He also pointed out that annual and quarterly reports required for self-funded health plans are available to the public; the bill offers a clarification of the procedure to follow.

MOTION: **Rep. Collins** moved to send **H 431** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Rep. Cronin** will sponsor the bill on the floor.

H 424: **Mr. Deal** then presented **H 424**, a housekeeping bill. He said this bill repeals an old code section, found to be unconstitutional by a 2009 Idaho Supreme Court decision, that made life insurance payable for the benefit of a married woman the separate property of the woman. The court decision found this to be in violation of the 14th amendment. Mr. Deal was asked who appealed the matter to the Supreme Court; he responded that the court case was Banner Life vs. Mark Wallace Dixon.

MOTION: **Rep. Thompson** moved to send **H 424** to the floor with a **DO PASS** recommendation; motion carried on voice vote. **Rep. Thompson** will sponsor the bill on the floor.

H 474: **Steve Keys**, Deputy Director of the Division of Building Safety, presented **H 474**. He said this bill expands the definition of a plumbing system to specifically include water heaters and associated venting of water heaters. He said this clarification is needed because the HVAC statute specifically references water heaters and venting, but does not recognize that plumbers had traditionally installed the venting for water heaters that those plumbers installed. Mr. Keys said both the Plumbing Board and the HVAC Board support this legislation.

MOTION: **Rep. Palmer** moved to send **H 474** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Rep. Palmer** will sponsor the bill on the floor.

H 475: **Mr. Keys** presented **H 475**, saying it expands the definition of plumbing systems to include medical gas and medical vacuum systems, and clarifies minimum qualifications for plumbing inspectors. Mr. Keys said the bill defines these systems and specifies that installers of medical gas and medical vacuum systems must complete an approved training course as specified. It requires that the inspector certification must be maintained and

also requires that installers carry their certification on the job sites.

Responding to committee questions, Mr. Keys said the legislation is being sought by the Plumbing Board in response to situations in which medical gas and medical vacuum systems are being installed in clinics or offices. He said when such systems are installed in large facilities such as hospitals, they are fully inspected, but in smaller facilities an inspection may not be performed. He said he is not aware of any specific problems that have arisen from such installations to date. Mr. Keys said since an inspector would not have a record of a third-party certification, which the state is willing to recognize, the installer would have to keep documentation of his certification. He said from the state's point of view there is no certification above the level of plumber that is necessary to do these installations.

Erik Makrush, Idaho Association of Building Officials, testified **in opposition to H 475**. Mr. Makrush said when the 2003 Uniform Plumbing Code was adopted in Idaho, Chapter 13, which deals with medical gas and vacuum systems, was not excluded. Therefore, it is not necessary to make a separate provision in the Code to deal with these systems. In his opinion, there is no justification or reason to require certification, as this bill will do. He said this will increase costs for local jurisdictions. Mr. Makrush said his organization does not oppose inspections but they do oppose the process that is requiring inspections and the certification to do so.

MOTION: **Rep. Palmer** moved to **HOLD H 475** in committee.

During committee discussion and questions, Mr. Keys said there is no specific reference in Code to medical gas or medical vacuum systems. He said as it now stands, a plumbing inspector has no authority over the installation of these two systems, and this change will allow that. Mr. Keys said currently the Uniform Plumbing Code is adopted through IAPMO, so it makes sense to have certification through that entity. Asked about the fiscal note on the bill's statement of purpose, Mr. Keys said there will be a minimal additional permit fee for these inspections; the figure he has heard is \$130. However, he was not able to estimate how many inspections are done because his division is currently not required to perform them.

VOTE ON MOTION: **Chairman Black** called for a vote on the motion to **HOLD H 475**; **motion carried on voice vote**.

H 476: **Mr. Keys** presented **H 476**, a bill that amends the provisions of the plumbing statute to reflect current practice dealing with deposit of funds, as directed by Idaho Code 59-1014 and the State Treasurer's Office. He said this represents a cleanup of existing language in the plumbing statute. Responding to a question, Mr. Keys said the code requires funds to be deposited daily.

MOTION: **Rep. Jarvis** moved to send **H 476** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Rep. Jarvis** will sponsor the bill on the floor.

H 553: **Mr. Keys** presented **H 553**, noting that this bill is identical to the previous bill except it deals with the electrical statute.

MOTION: **Rep. Collins** moved to send **H 553** to the floor with a **DO PASS** recommendation; **motion carried on voice vote.** **Rep. Jarvis** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:10 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

- DATE:** March 3, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room EW41
- MEMBERS:** Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin
- ABSENT/
EXCUSED:** None
- GUESTS:** Roger Hales, Idaho Bureau of Occupational Licenses; Don Dietrich, Department of Commerce; Tana Cory, Bureau of Occupational Licenses; Dennis Bostwick, Idaho Barber Board; Joanna Guilfooy, PERSI, Roger Madsen, Department of Labor
- Meeting was called to order at 1:55 p.m. by Chairman Black.
- H 426:** **Tana Cory**, Bureau Chief at the Bureau of Occupational Licenses, presented **H 426**, explaining that this bill will change the method of payment, but not the amount, to members of the Board of Morticians. Their payment will now become an honorarium rather than a salary; this will eliminate the requirement that they participate in the PERSI retirement system, which legally limits their ability to maintain a personal Individual Retirement Account (IRA).
- MOTION:** **Rep. Rusche** moved to send **H 426** to the floor with a **DO PASS** recommendation; **motion carried on voice vote.**
- H 428:** **Ms. Cory** presented **H 428**, legislation to remove the members of the Drinking Water and Wastewater Professionals Board from PERSI by changing their compensation from salary to honorarium.
- MOTION:** **Rep. Rusche** moved to send **H 428** to the floor with a **DO PASS** recommendation; **motion carried on voice vote.**
- H 429:** **Ms. Cory** presented **H 429**, similar legislation to the two previous bills, which would remove members of the Liquefied Petroleum Gas Safety Board from the PERSI retirement system by changing their compensation from salary to honorarium.
- MOTION:** **Rep. Rusche** moved to send **H 429** to the floor with a **DO PASS** recommendation; **motion carried on voice vote.**
- H 549:** **Rep. Rusche** was recognized to present **H 549**, a bill intended to allow the Department of Commerce to assist small businesses by offering them office space for incubator purposes. Rep. Rusche said some valid concerns about the bill were brought to his attention by the Department. He said that, given

the concerns, he invited the Department of Commerce and the Department of Labor to provide reports to the committee on what their departments are doing in terms of job growth and recovery.

Don Dietrich, Director of the Department of Commerce, was invited to give testimony on **H 549** and talk about his Department's work. Mr. Dietrich said the Department cannot support portions of the bill because, with 50 employees in one location, there is simply no extra office space that could accommodate business incubators as envisioned by H 549.

Mr. Dietrich reported on job creation in Idaho and the Governor's Project 60 initiative. He said his Department puts out a lot of promotional material and showed examples of some of them, including a state travel guide, a pamphlet called "Doing Business in Idaho" in English and Spanish, and a publication called "Gem State Prospector." Mr. Dietrich said Idaho has focused its recruiting efforts on certain business sectors such as wind, solar, geothermal, and biomass. He said there are 107 companies currently in the recruiting pipeline, which represents 70% more than one year ago. Mr. Dietrich said his Department works in coordination with the Department of Labor and all other agencies, as required by Project 60.

Project 60 is a three-tiered plan. First, it looks for systemic opportunities, companies inside the state of Idaho, that could be developed. Second, it engages in domestic recruitment, inviting U.S. companies to move to Idaho. Mr. Dietrich said recent tax increases in Oregon, and similar high taxes in the state of Washington, have created opportunities for Idaho to attract businesses from those two states and others nearby. Finally, Project 60 is involved in international efforts to attract businesses from around the world. He said there are three full-time international representatives, with trade offices in Mexico, Shanghai, and Taiwan. Mr. Dietrich said one of the few places where money is moving is in the international market.

Among the Department of Commerce's other resources is assistance for small businesses with market intelligence on a daily basis. Mr. Dietrich said the Department's website contains daily current information on business developments around the state and nation, and even internationally. They also offer a guide on how to start a new business, and they have a technical assistance center that can help small businesses in procuring contracts. The Department's business development team spends time in various regions of Idaho to provide assistance to those in outlying areas. They also depend upon other resources such as the Small Business Development Center, the Service Corps of Retired Executives (SCORE), the regional economic development districts, the Small Business Administration, and the Idaho Rural Partnership.

Mr. Dietrich stated that his Department also holds conferences, regional forums, and webinars to encourage business development. Three major summits have been held, on Business, Innovation, and Finance, and will soon hold a Small Business Summit as well. He noted that there are already 12 active business incubators in the state and two more on the drawing board. These are operating at an average of 77% efficiency; some are 100% occupied and others have a much lower level of participation. Mr. Dietrich said the Department tries to make sure they are not duplicating these efforts.

Responding to committee questions, Mr. Dietrich said the Department has a business plan with specific targets for job growth. He noted that every region of the state of Idaho is different; for instance, northern Idaho has suffered loss of jobs in the sawmill industry. Those regions are encouraged to consider jobs outside that industry, and efforts have been made to recruit the recreational technology industry. Generally speaking they target smaller companies that would fit into small communities and try to find suitable jobs for certain areas. He said there are 68,000 unemployed in Idaho, and it will be a combination of large and small employers who will be able to hire these people.

Mr. Dietrich said that, although the public sector per se does not directly create jobs, it is important that they have maintained a business-friendly climate with low costs and a stable tax base. These factors make Idaho more competitive in attracting businesses. He also mentioned that the Idaho National Laboratory (INL) is a real asset to the state. The technologies that are being developed there, as well as at Idaho's universities, need to be better dispersed; in addition, adequate seed capital is necessary to encourage further development .

Mr. Dietrich said sometimes rural areas have more difficulty in accessing business incubators, although he pointed out there is a great incubator located in Salmon, Idaho. He said the incubators are pretty well dispersed throughout the state at the present time. Mr. Dietrich said his department is neutral on H 549, although he pointed out that their offices do not have "extra" office space to accommodate what is envisioned in the bill. He said the Department of Commerce can and does help in other ways; for instance, one of their services is Small Business Innovative Research (SBIR) grants.

Roger Madsen, director of the Department of Labor, was recognized to report on his department's work. Mr. Madsen said his Department **does not support H 549**, because they are prohibited by federal law from using state facilities for this type of activity. He said the Department of Labor is anxious to support economic and workforce development. He shared some Idaho unemployment statistics, saying in 2009 the weekly unemployment benefits payout was \$12.5 million, but this year it has risen to \$16.4 million per week, well above previous years. Disability payments are running about \$10 million per week, an annual economic impact of \$1.2 billion.

Mr. Madsen reported that the Department has hired disadvantaged and/or low-income youth for summer employment, to work on well over 100 projects. They have received several million federal dollars for retraining of Idahoans who lose their jobs. Mr. Madsen said the number of new hires in a good month in Idaho is about 20,000; last month's total was 8,400. By contrast, the job applicants numbered 124,000, up from 84,000 just a couple of years ago. He reported that they are noticing some improvement in the job market, with more listings in local employment offices.

Responding to questions from the committee, Mr. Madsen said he had met with Rep. Rusche to explain why the Department could not support the proposed legislation, since they are barred from participating in private sector efforts. He said the Department does encourage efforts like those envisioned in this bill. Asked about the title of an upcoming jobs event, "Hot Rods, Hot Jobs and Hot Dogs," Mr. Madsen said the titles vary from location

to location. In north Idaho, for instance, an event was entitled “Hamburgers, Hot Dogs and Hard Hats.”

Mr. Madsen was asked to elaborate on the federal guidelines that prohibit sharing office space with private enterprise. He read from an Attorney General’s opinion that stated, in part, “No department or unit of a department may share space with any private business or organization” without the permission of the Governor.

Committee members commended Mr. Madsen on his Department’s work and on the helpfulness and courteous demeanor of his staff in dealing with constituent problems. They also thanked him for his informative presentation and the discussion it had engendered. Mr. Madsen said he did not want to discourage committee members from coming up with other innovative ideas. He said the fifth extension of unemployment benefits had just been signed at the federal level, and unemployed workers are now eligible to receive up to 99 weeks of benefits.

Asked to comment on his Department’s coordination with Idaho’s colleges and technical schools in order to assure a fully prepared work force, Mr. Madsen said the Work Force Development Council includes a representative from higher education, as well as AFL-CIO and IACI representatives. He said his Department encourages employers to take advantage of the College of Southern Idaho and North Idaho College for technical and jobs training.

Rep. Rusche was recognized to conclude his presentation on **H 549**. He said the hearing had given the committee an opportunity to hear from agencies of the state government who are charged with work force development and job creation. He said it is clear that the proposed program is not viable and said the bill would best be held in committee.

MOTION:

Rep. Collins moved to **HOLD H 549** in committee; **motion carried on voice vote**. **Rep. Durst** noted that he could not support the motion since he is a co-sponsor of the bill. He noted his frustration that, although there is a lot of discussion about the lack of jobs, there seems to be little progress on projects he and others have been trying to develop.

H 459:

Roger Hales, an attorney representing the Bureau of Occupational Licenses, presented **H 459**, on behalf of the State Board of Barber Examiners. Mr. Hales explained that the Board created a new license for a “barber stylist” which allows a barber to use chemicals in his profession, for such things as permanents and colors. This bill clarifies some of the qualifications for a barber instructor license and a barber stylist instructor license. It also raises the instructor/student ratio, at the request of one of the barber colleges in the state. Mr. Hales said this is necessary because there is not a sufficient number of instructors. Finally, the bill will remove Board members from the PERSI retirement system. Mr. Hales introduced Board member **Dennis Bostwick**.

Answering committee questions, **Mr. Hales** said the student/instructor ratio needs to be raised because there is a shortage of instructors and schools cannot operate without sufficient instructors. He said school owners have fully discussed this and the Board is comfortable with the proposed higher ratio. This ratio applies to the number of students allowed in a classroom,

but does not refer to supervision while students are working with the public. Students will also have to pass an examination before they will be licensed.

Dennis Bostwick, State Board of Barber Examiners, was recognized to answer a question about the number of students who complete the barbering course each year in Idaho. He said the number is somewhere between 40 and 50 per year. He also said there is only one barber school in Idaho, which currently has three instructors.

MOTION: **Rep. Gibbs** moved to send **H 459** to the floor with a **DO PASS** recommendation; **motion carried on voice vote.**

H 460: **Mr. Hales** presented **H 460** on behalf of the Board of Architects. Its purpose is to clarify a license exception. Mr. Hales explained that currently an individual can design a residence up to three units (tri-plex), not to exceed two stories high. This bill will increase the maximum height to three stories. He said the change was requested by a local building official. Since the International Residential Building Code also specifies three stories, this will provide consistency with that Code. Mr. Hales said most builders and others are aware of the Building Code requirements but are not always aware of state law. He pointed out that these structures are still required to be inspected by local officials and will still have to meet fire code restrictions, so the change will not jeopardize public health or safety. He said the change is fully supported by the Board, and he is not aware of any opposition.

MOTION: **Rep. Chadderdon** moved to send **H 460** to the floor with a **DO PASS** recommendation; **motion carried on voice vote.**

H 461: **Mr. Hales** presented **H 461**, on behalf of the Bureau of Occupational Licensing. He explained that this bill's intent is to allow some efficiencies and savings with regard to disciplinary matters. Currently the law says the Bureau must cooperate with certain state agencies. This proposed legislation will clarify that cooperation by saying the Bureau can share information, and will expand the number of state agencies with which they can share. Mr. Hales explained sometimes there are a number of agencies investigating an issue such as health care fraud. Those being investigated may hold a license, issued through the Bureau. This bill will clarify that the Bureau can share information with the Federal Bureau of Investigation, for instance. Under present law it is unclear whether they can cooperate with federal agencies or even state agencies such as the State Police.

In answer to questions from the committee, Mr. Hales said the term "may" was used instead of the term "shall" in order to give the Bureau Chief some discretion in the matter of information sharing. He noted there could be a circumstance where a federal agency is demanding that the Bureau cooperates and Idaho's state official may not be comfortable doing so. Although this would be an exception and would probably be rare, the legislation would allow some discretion in the matter.

Mr. Hales said during the initial stages of an investigation into a license applicant's fitness, information submitted is confidential, but it makes sense to cooperate with other agencies at that stage. Mr. Hales said in the past he has advised the Bureau that they couldn't share information unless a federal agency subpoenaed the information, which could delay investigations.

In further testimony, Mr. Hales said the term “shall” was previously used because the cooperation was limited to certain types of state agencies. However, since the cooperation is now being extended to include federal agencies and state agencies from other states, it now makes more sense to use “may” and give the Bureau discretion. He said there are instances in which the Bureau does need to cooperate with the federal government, for instance, in cases of health care fraud and related issues. He said cooperation also allows the State of Idaho to “piggyback” its efforts and avoid spending its resources in duplicating investigative efforts.

Chairman Black said it sometimes becomes essential for stage agencies to be able to do investigations, given the reality of interstate businesses, contractors, and so forth. Idaho’s licensing entities need to be able to check with other states to see what kind of problems these businesses may be bringing with them. With regard to recent Department of Finance and Real Estate Commission investigations, those have been generated by the upturn in business and activity in those sectors, which have in turn spurred a lot of borderline or illegal activities.

Mr. Hales summarized his testimony by saying this is an issue that has been lingering for some time, and the legislation is meant to allow the Bureau to be more efficient but still protect the public.

MOTION: **Rep. Rusche** moved to send **H 461** to the floor with a **DO PASS** recommendation; **motion carried on voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:35 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

DATE: March 5, 2010

TIME: Upon Adjournment of the House

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin

**ABSENT/
EXCUSED:** Reps. Collins, Crane, Bayer, Palmer, Durst and Cronin

GUESTS: Jeanne Jackson-Heim, private citizen; Mandy Wood, private citizen; Bill Hatch, C. Kelly Pearce, and Jeff Fitzlaff, Division of Building Safety; Dennis Butterfield, Meridian Plumbing; Rick Martinez, Larry Hardley, Ken Appleby, Mike Kelly, Michael Goodale, and Richard Kober, Local #296; Rod Clay, Plumbers & Pipefitters; Ray Coon, San-Ray Plumbing/Treasure Valley Master Plumbers; Jerry Peterson, Idaho Building Trades; Mark Zaleski and Harvey L. Samuelson, Local #291; Julie Pipal, Independent Electrical Contractors; Woody Richards, Surplus Line Association; Jeremy Pisca, Idaho Building Contractors Association; Miguel Legarreta, Realtors

Meeting was called to order at 12:05 p.m. by Chairman Black.

H 501: **Kerry Ellen Elliott**, representing the Idaho Association of Counties, presented **H 501**. She requested that the bill be **HELD** and asked that a work group be formed to address county option for electrical and plumbing inspections, focusing on the issue of why counties should not enjoy the same inspection authority as cities currently do. Ms. Elliott said she had contacted all stakeholders she is aware of and has been met with a positive reaction to the idea of a work group; in addition, Reps. Thompson and Patrick have agreed to be included in the group. The Association has also invited Kelly Pearce from the Division of Building Safety to address the Idaho Association of Commissioners and Clerks meeting in June. She said she hopes to have results to report by the next legislative session.

Jeremy Pisca, representing the Idaho Building Contractors Association, testified **in opposition to H 501**. Mr. Pisca said he would be willing to work with Ms. Elliott on the study group. One of Mr. Pisca's concerns is that there is no guarantee on what the inspection fees would be; they could be higher or lower than present fees. He pointed out that under Idaho law one can charge a fee only in proportion to the service provided; anything in excess would be considered an unlawful tax. Mr. Pisca suggested codifying this by putting it into the statute.

Jerry Peterson, representing the Southwest Idaho Building Trades, addressed the committee regarding this legislation, asking to have his organization added to the list of interested parties.

Ray Coon, a plumber and member of the Treasure Valley Master Plumbers

Association, stated that his organization would also like to be included on the list of interested parties who would participate in the study group. He noted that plumbers' associations from north Idaho and southwest Idaho might also like to be included. Mr. Coon testified that he does not see the need for this legislation because if it goes into effect, some of the smaller counties will not perform the inspections, which will lead to more inspection services falling onto the Division of Building Safety. This, in turn, may increase the Division's need for greater funding from JFAC.

MOTION: **Rep. Thompson** moved to **HOLD H 501** in committee, with the recommendation that a study group be formed by the interested parties to resolve the issues surrounding this proposed legislation. Motion carried on voice vote. **Rep. Jarvis** requested that he be recorded as voting nay.

H 554: **Jeanne Jackson-Heim** presented **H 554**, which would remove some of the required personal identifying information from public notices for name changes. Ms. Jackson-Heim stated that current law requires a person to file documentation with the court and also file a public notice in the newspaper for four weeks, listing his or her date and place of birth, home address, and the names and addresses of near relatives. She said this type of information is often used for online identification as well, and publishing it could leave open the possibility of identity theft. She testified that this legislation will not change any of the court filing requirements; it will only remove some of the identifying information from the public notice. The information will still be available from court records.

Ms. Jackson-Heim said she researched whether or not collection agencies would have any concerns with this bill, and she reported that they did not. She contacted Rich Fairbanks, Idaho Collectors Association, who said they never look at name change publications, since most of their research is now done online. She also provided statistics, published in a recent Idaho Statesman article, on the increase in identity theft cases in the past year.

Mandy Wood, a private citizen, testified **in support of H 554**. She stated she had recently filed for a name change due to a divorce. Included in the information she was required to publish were her birth date, her physical home address, her father's name and address and her mother's name and address. She said that two weeks into the four-week publication cycle, she received a letter from a convict at the Idaho State Penitentiary, stating that he was reading the legal notices, was looking for new friends, and was giving her his address. He also told her his parole date of April 2009. Ms. Wood said when that date arrived, she was nervous that he might try to contact her, based on the information in the legal notice.

MOTION: **Rep. Patrick** moved to send **H 554** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Rep. Patrick** will sponsor the bill on the floor.

H 462: **Woody Richards**, an attorney representing the Surplus Lines Association, presented **H 462**. Mr. Richards testified that surplus line companies are insurers of last resort, covering unusual risks such as a BSU quarterback, a dancer's legs, or a ski area. Because of these unusual risks, the Department of Insurance does not provide financial backing for surplus lines companies in case of their insolvency. When surplus line companies

become insolvent, they rely on the companies' assets to pay claims.

Mr. Richards said Idaho Code provides notice to purchasers that there is no coverage in case of insolvency. The purpose of H 462 is to allow this notice to be printed in 12-point bold type, rather than in red ink, which is the current requirement. Due to advances in electronic signatures and the manner in which policies are distributed, red ink no longer works well for this process. Mr. Richards said there is no opposition to this legislation from the Department of Insurance or other insurance companies.

Asked whether he had considered using 14-point type rather than 12-point, Mr. Richards said they did consider that, but the 12-point requirement would be consistent with other documents that are distributed to senior citizens and others.

MOTION: **Rep. Cronin** moved to send **H 462** to the floor with a **DO PASS** recommendation; **motion carried on voice vote.** **Rep. Cronin** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 12:27 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

- DATE:** March 9, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room EW41
- MEMBERS:** Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin
- ABSENT/
EXCUSED:** Rep. Gibbs
- GUESTS:** Alan Hart, private citizen; Linda Austin, private citizen; Elizabeth Loop and Sheila Thomason, First Rate Property Management; Julie Taylor, Blue Cross of Idaho; Barbara Jordan, Idaho Trial Lawyers Association; Mike Rampelberg, private citizen; John Mackey, private citizen; John Eaton, Idaho Association of Realtors; Kathie Garrett, Idaho Academy of Family Physicians; Jim Trent, State Farm Insurance; Geoffrey Wardle, Building Owners and Managers Association; Phil Barber, American Insurance Association; Owen Jones, Dream Catcher Properties; David Price, Idaho Association of Chiropractic Physicians; Jim W. Reiner, National Association of Residential Property Managers; Mike Kane, Property Casualty Insurers Association; Paul Jackson, Farmers Insurance; Kurt Holzer, Idaho Trial Lawyers Association; Rebecca Cleverdon, private citizen; Ryan Fitzgerald, Idaho Association of Chiropractic Physicians; McKinsey Miller, Regence Blue Shield of Idaho; Miguel Legarreta, Realtors; Woody Richards, American Family, Allstate, and Farm Bureau Insurance Companies
- Meeting was called to order by Chairman Black at 1:32 p.m.
- MOTION:** **Rep. Bilbao** moved to approve the minutes of February 25; motion carried on voice vote.
- MOTION:** **Rep. Bilbao** moved to approve the minutes of March 1, March 3 and March 5; motion carried on voice vote.
- H 505:** **Rep. Wendy Jaquet** presented **H 505**, legislation that would require landlords to transfer the interest accrued on a tenant's security deposit to the tenant on a yearly basis. Rep. Jaquet explained that in Ketchum, which she represents, a security deposit on a long-term lease, plus a first-and-last-month-rent payment, might total as much as \$8,000 to \$10,000, and this is a considerable sum of money that would be earning interest for someone other than the tenant. Using the sum of \$8,000, she said the interest accrued in one year's time, assuming a 3% rate, would be \$240.
- Rep. Jaquet explained that she is proposing two changes to her original proposal. One would set a minimum threshold of \$1,500 before the requirement would be in effect, and the other would require that rent be current at the time of the interest computation. The effective date of H 505 would be July 1, 2010. Rep. Jaquet said this legislation will assure that the

tenant will receive the full value of his deposit, rather than devalued money. She noted that a number of other states have passed a similar requirement, including New Hampshire, New Jersey, North Dakota, Illinois, Virginia, Massachusetts and California.

Responding to questions from the committee, Rep. Jaquet said the new requirements would not be retroactive but would apply only to new move-ins, and only for deposits in excess of \$1,500. She said she did not know how many rental agencies this would affect in the state of Idaho, but she had talked to property management agencies in her area, who said they plan to implement this practice even if the legislation fails. She said she is not aware of how the legislation affects triple net fees in lease arrangements. The legislation would, however, cover all landlord/tenant contracts, both residential and commercial.

Alan Hart, a private citizen from District 19, Precinct 15 in Ada County, testified **in opposition to H 505**. Mr. Hart expressed four concerns with the bill. First, he thinks it may be unconstitutional. Second, it would take away the gift of free agency. Third, he stated there is already enough abuse of government authority, which should be limited. Fourth, the legislation implies that the buyer and seller are not competent to negotiate a satisfactory and mutually agreeable contract. Mr. Hart said he had been a landlord in the past, and landlords do not need any more problems to deal with, which this legislation would cause them.

Asked about the ethics of taking someone else's money for a security deposit and not returning the earnings, Mr. Hart said landlords have a lot of expenses to cover. He said the amount of interest earned on a \$1,000 deposit would be only about \$5 per year, in the current interest environment. He expressed his opinion that renters in Blaine County can negotiate with their landlords if they want to make such arrangements for return of interest.

Linda Austin, a private citizen and owner of five rental properties, testified **in opposition to H 505**. She said she had contacted three local banks and was told the current interest rate on a regular savings account is one-half of one percent, which would result in earnings of \$2.50 per year on a \$500 deposit. She said the bookkeeping involved for such small amounts would be difficult, particularly for small businesses; large management companies might have to hire another person just to implement the requirement. She also questioned whether she would have to issue a Form 1099 to report the interest paid to a tenant. She said the security deposit is considered just that, a security deposit, while other required payments such as a cleaning deposit or last month's rent are not a part of the security deposit.

John Eaton, representing the Idaho Association of Realtors, testified **in opposition to H 505**. Mr. Eaton said his association's legislative committee had reviewed the legislation and they are unanimous in their opposition. It is their position that the same objective can be accomplished without a government mandate; it could be worked out as part of any lease agreement between tenants and landlords. He expressed a concern about the necessity of a Form 1099 being issued for the interest payment, and he noted that the amount of interest would be minimal, somewhere around one-half of one percent at the current time. He said this legislation will create an administrative nightmare for landlords, and he asked the committee to hold

the bill.

Answering committee questions, Mr. Eaton said most security deposits are held in non-interest-bearing accounts because the service charges on savings accounts have service charges that may be higher than the earned interest each year. He also pointed out that the bill says the landlord "shall pay" interest on the deposits, thus eliminating the option of keeping security deposits in non-interest-bearing accounts.

Jeffrey Wardle, Government Affairs Chairman for the Building Owners and Managers Association of Boise, testified **in opposition to H 505**. Mr. Wardle stated that commercial leases are different from residential agreements; under the "triple net" lease agreement, the tenant is obliged to pay rent plus all costs associated with ownership and maintenance of the building. This bill raises the question of whether any interest earned on those deposit amounts would fall under the provisions of the requirement that interest be returned to the tenant. He also pointed out that even on a deposit amount of \$10,000, the earning in one year would be only \$100, and the costs associated with maintaining a savings account and processing the return of interest would be higher than that amount. Mr. Wardle also said the bill may create a private right of action in case of a miscalculation of the interest amount. He said this matter could be negotiated between the contracting parties, rather than having the state of Idaho involved.

Mr. Wardle gave an example of one of their members who owns a building with 35 different tenants. According to his calculation, the interest earned per year on their deposits would be approximately \$60, which would mean a refund of less than \$1.75 per tenant per year. To complicate matters, each of the leases comes due at a different time of year, so the landlord would have to refund portions of the interest at different times of the year. He said the bookkeeping costs would exceed the interest generated.

Responding to committee questions, Mr. Wardle said in the current economic climate landlords are not placing security deposit funds into interest-bearing accounts. He said this was true even in past years when interest earnings were much greater than the current 1%. He said these funds may be commingled with other funds or, if they are kept separate, they are put into non-interest-bearing accounts.

Jim Reimer, appearing on behalf of the National Association of Residential Property Managers (NARPM), testified **in opposition to H 505**. He said the local chapter of NARPM has 80 property managers who manage well over 1,000 units. Mr. Reimer said the administrative costs to oversee these deposits would not justify the expense of disbursement, and the interest payout would be too much of an administrative burden.

Rebecca Cleverdon, who owns several rental units and who has been working in property management for ten years, testified **in opposition to H 505**. She said often a tenant's security deposit has to cover damages or unpaid rent, and those sums are devalued for the landlords as well. She stated that none of the property owners she knows keeps money in interest-bearing accounts. She also noted the inconvenience and cost to a landlord to pay out the small amount of accrued interest. She said her current money market account is earning .65% interest, and if she is required to refund that

small amount of interest to tenants, she would have to implement some type of fee to cover the cost of doing the accounting. Ms. Cleverdon stated she would also have to either issue a Form 1099 to the tenants or would have to pay income tax on the interest herself.

Don Johnson, previously a CPA and property manager for hundreds of properties, testified in **opposition to H 505**, saying some type of fee would have to be implemented to cover administrative costs. He said multiple accounts would have to be opened, each with its own service charges, and the accounting would be a nightmare. Mr. Johnson said the amounts of his security deposits are rarely over \$500, with some as low as \$100, and they are not held in interest-bearing accounts. He said the amount of interest earned on such deposits would be minimal, and he also expressed concern about the question of the Form 1099.

Rep. Jaquet was recognized to conclude her presentation on **H 505**. She thanked the committee for the opportunity to present this legislation, which was drafted in response to a constituent's concern. She said she was surprised to learn that most security deposits are held in non-interest-bearing accounts. Rep. Jaquet said this is still an issue of fairness and equity for tenants. She said she appreciates the possible administrative burden that this would place on landlords but said her amended version would require interest to be returned only on deposits of \$1,500 or greater.

MOTION: **Rep. Rusche** moved to send **H 505** to General Orders with committee amendments attached.

SUBSTITUTE MOTION: **Rep. Crane** offered a **substitute motion**, to **HOLD H 505** in committee.

Rep. Durst argued in support of the original motion, saying he appreciates the message behind this legislation and noting that Rep. Jaquet did propose amending the bill to recognize that interest amounts on very small security deposits may be more trouble than they are worth. **Rep. Mathews** argued in support of the substitute motion, saying that although arguments on both sides seemed sincere, he thinks the problems associated with the legislation make it advisable to hold the bill in committee.

In compliance with Rule 38, **Reps. Palmer, Chadderdon, Jarvis, Mathews** and **Chairman Black** declared that they own rental property.

VOTE ON SUBSTITUTE MOTION: A roll call vote was requested on the substitute motion, to **HOLD H 505** in committee. By a vote of **12 aye and 3 nay**, with two members absent, the **substitute motion passed**. Voting in favor of the substitute motion: **Reps. Henderson, Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Jarvis, Palmer, Thompson** and **Chairman Black**. Voting in opposition to the substitute motion: **Reps. Rusche, Durst and Cronin**. **Reps. Gibbs and Smith (30)** were absent.

H 587: **Ryan Fitzgerald**, appearing on behalf of the Idaho Association of Chiropractic Physicians, presented **H 587**. Mr. Fitzgerald said he had worked with other organizations to develop a consensus, including podiatrists, occupational therapists, physical therapists, and chiropractors. He said the Idaho Medical Association and Idaho Hospital Association favor

the bill, but the Idaho Trial Lawyers Association does not. Mr. Fitzgerald stated the three main goals of the legislation are health care choice for patients, payment for providers without burdening the courts, and the lowering of health care costs.

Dr. David Price, a board-certified chiropractor licensed in Idaho since 1982, testified **in support of H 587**. Dr. Price said this bill will establish a lien mechanism for licensed entry-point health care providers to recoup their expenses for treatment that is unpaid. Currently the only means available to them is to take the patients to court. He explained that chiropractors often treat people following car accidents, with the agreement that they will be paid later, when the patient's settlement is paid. Many of these people may be unemployed or lack health insurance, and it is a burden to expect payment at the time of service. He said the lien authority is limited to injuries for which there is a legal action, a claim or a suit. In many cases the chiropractors are asked by an attorney to accept a lower fee because the settlement amount is not high enough to cover attorney fees and other expenses.

Dr. Price said the current situation has caused many medical professionals to avoid treating patients in these cases, since they may not be able to recoup the expenses. This, in turn, reduces the patient's choice of medical providers. He said Idaho's doctors, nursing homes and hospitals are allowed to use liens to recover costs, which is understandable given that they are often first providers of care and cannot refuse their services. Dr. Price pointed out that the legislation is drafted to include a subordination clause to make sure those providers maintain their first lien right.

Responding to a question from the committee, Dr. Price said under the current practice patients are asked to retain an attorney, since the chiropractor's interest is protected only if an attorney is involved. This increases the settlement proceedings and, in turn, increases related health care costs.

Phil Barber, representing the American Insurance Association, an organization of property and casualty insurers, testified **in opposition to H 587**. Mr. Barber said he had also been authorized to testify on behalf of Farmers Insurance, PCI, and State Farm Insurance. He stated that liens in the law arise out of a contractual relationship between two parties. Exceptions to this are first responder hospitals and doctors, who do not have time to enter into a contract. They must provide care and then look for payment. Mr. Barber said that in this instance, one contract is between their members and insurers, and a second contract is between a chiropractic services provider and a patient. He said that because the services of the chiropractor are not time-sensitive, there is time to "vet" the customer, including doing a credit check and taking steps to protect themselves.

Mr. Barber pointed out the problems of liens in the case of an automobile accident that takes place in Canyon County, but treatment for which may take place in Ada County. In this case, a lien would be filed in Ada County but a lawsuit may be filed in Canyon County. He said this legislation will also increase litigation over such things as "reasonable fees" and therefore will delay payments to plaintiffs. He said the current system is better because it allows an arm's length negotiation between those who are party to the contract.

Kurt Holzer, representing the Idaho Trail Lawyers Association, testified **in opposition to H 587** and he encouraged the committee to hold the bill in committee, as they had previously done with similar legislation in 1999 and 2006. He said the bill attempts to provide special rights that would allow the state to utilize its authority to perform collection activities for providers who have an opportunity to enter into contracts and assignments. Mr. Holzer said not every chiropractor or physical therapist is of high quality, and sometimes billings from minor injury collisions will be \$15,000 to \$17,000. He said these claims have substantially less value. He also said this will enhance the number of cases that will go to court.

Woody Richards, representing American Family Insurance, Allstate Insurance and Farm Bureau Mutual Insurance, testified **in opposition to H 587**, and he urged the committee to hold the bill.

Dr. Price was recognized to conclude his testimony on **H 587**. In response to the statement that this type of legislation has been unsuccessfully proposed earlier, Dr. Price said the issues centered around cost containment and disagreement on bill amounts. He said that since those earlier attempts the state Chiropractic Board has established a peer review committee, which allows patients to request a review of their treatment or billing amounts. Dr. Price said assignment of benefits is applicable only if an attorney is involved, and insurance companies are not obligated to honor assignment of benefits. Dr. Price said the chiropractors and other entry professionals are not asking for special privileges, but only those that have already been granted to medical doctors and hospitals. With regard to having ample time for credit checks and other vetting, he said one-third of all auto accident cases come to chiropractic physicians and in many cases they are the first responders. Finally, Dr. Price said this lien provision has worked for other medical professionals and he asked the committee to pass H 587.

Responding to a question, Dr. Price said he should have used the term “first entry” rather than “first responder.” He said not all accident injuries are treated by ambulance; sometimes these patients are brought to chiropractic clinics rather than to emergency rooms for treatment after an accident.

MOTION: **Rep. Durst** moved to **HOLD H 587** in committee; **motion carried on voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:50 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

DATE: March 11, 2010

TIME: Upon Adjournment of the House

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin

**ABSENT/
EXCUSED:** None

GUESTS: Gavin Gee & Marilyn Chastain, Department of Finance; Patrick Grace & Steve Keys, Division of Building Safety; Dave Whaley, Idaho AFL-CIO; Pat Hughes, private citizen; Patricia McKernan, private citizen; Corwin Brown, Idaho Mobile and Manufactured Homeowners Association; Jack Lyman, Idaho Housing Alliance; Benny Antunes, Mark Zaleski & Greg Oyama, International Brotherhood of Electrical Workers; Christine Tiddens, Catholic Charities of Idaho; Miguel Legarreta, Realtors; Jerry Peterson, Idaho Building Trades; Lyn Darrington, City of Boise

Meeting was called to order at 2:20 p.m. by Chairman Black.

MOTION: **Rep. Cronin** moved to approve the minutes of March 9, with the following correction: on page 2, second paragraph, the word "retroactive" should be "retroactive." Motion carried on voice vote.

Julie Pipal, representing the Independent Electrical Contractors of Idaho, was recognized to address **H 619**, a bill dealing with license procedures for contractors and technicians who install low-voltage wiring for information transport systems such as telephones and data communications. Ms. Pipal informed the committee that some concerns had been raised by some interested parties who were not included in the negotiations on this bill. She said there is more work remaining to do on the legislation and she is hopeful that a new proposed bill will be ready for the next session of the Legislature.

MOTION: **Rep. Collins** moved to **HOLD H 619** in committee; **motion carried on voice vote.**

H 580: **Rep. Phylis King** presented **H 580**. She stated the biggest problem for people living in mobile homes arises when the owner of a mobile home park sells the property or otherwise changes its rules. In that case, homeowners are displaced if they cannot comply with new rules. It is costly to move a mobile home, between \$5,000 and \$15,000, and there are few other places to move them. Homeowners sometimes have to abandon their homes, even if they still owe on the mortgage. Rep. King said property rights need to be balanced with homeowners' rights.

Rep. King testified that mobile home residents have formed an association

to pursue three goals. First, they will share information about current laws, as well as the rights and responsibilities of landlords and residents. Second, they will develop a list of grievances so they can inform the legislature on those issues. Third, they will explore possibilities of converting mobile home parks to tenant-owned properties. Rep. King reported on results of a survey taken in 2008 by the Idaho Mobile Manufactured Homeowners Association, asking whether mobile home owners had a written lease agreement and a copy of their parks' rules. The 41 respondents indicated that most parks are good communities but some are not as fair as others. 25 respondents indicated they are notified when park rules are changed; eight said they are not. Rep. King said the purpose of H 580 is to have the landlords provide a copy of park rules before a person signs a lease and moves into the park.

Pat Hughes, past secretary of the Idaho Manufactured Homeowners Association, testified **in support of H 580**. He stated that, although he was presented with a list of rules of his park, other parks in the state do not provide any information before tenants move in. Later the tenants are found to be in violation of a rule; and they are generally given three days to correct the situation and, if it is not corrected, they have 20 days to vacate. Mr. Hughes noted the difficulty of moving a mobile home in that short amount of time. He said supplying the rule ahead of time would not cost anyone anything, and he asked the committee to consider H 580 as a matter of fairness to tenants. Responding to a question about how a landlord would be able to verify that the rules had been supplied as required, Mr. Hughes said the landlord could require the tenant to sign a copy of the rules as proof that he or she received them.

Rep. King pointed out that the \$50 penalty is contained in an amendment she is proposing to the original bill. Asked how the prosecuting attorney would enforce this requirement, and whether the \$50 fine applied to "each such failure" would mean for each rule the tenant was not informed about, Rep. King stated that she depended on Legislative Services to write those provisions. She said the committee is free to change them or reject them.

Patricia McKernan, a member of the board of the Idaho Mobile Manufactured Homeowners Association, testified **in support of H 580**. She recounted instances where people were given a three-day notice to paint, or to re-landscape an entire yard. She said there is no possible way of accomplishing the work in that time frame. She also stated that managers and owners intimidate tenants, especially the elderly. She said the park rules need to be stated fairly so everyone knows the landlord's expectations.

Corwyn Brown, current owner of a mobile home in a legally licensed park, testified **in support of H 580**. He said he is a member of a homeowner's association that is trying to work toward continuity of rules from park to park. He stated there is a lack of management and a lack of enforcement of the rules. Mr. Brown said as a mobile home tenant, he should be afforded the same rights and protections as any consumer of goods and services.

Jack Lyman, representing the Idaho Housing Alliance, testified **in opposition to H 580**. Mr. Lyman pointed out that mobile home owners do not have "mortgages" since a mobile home is not classified as real property but rather as personal property. The only time a manufactured home becomes real property is if it is permanently affixed on a foundation. The

loan on a mobile home is more similar to an automobile loan. He said in order to get a mortgage loan, the length of a lease must exceed the length of the mortgage.

Mr. Lyman said the Idaho Housing Alliance opposes H 580 because it is an inappropriate intrusion of government in contracts between private parties. The code now requires landlords to provide certain information to a tenant upon request; H 580 will change this to a mandatory requirement. He said the legislation is unnecessary and redundant in view of current code provisions. Mr. Lyman pointed out the code section which already requires that the rules of the park be provided as part of a rental agreement between a landlord and a tenant. He said the rules are not enforceable unless they are part of a signed rental agreement.

Mr. Lyman also read a portion of existing code that imposed an obligation of good faith, and said this section provides a mechanism for either landlords or tenants to seek judicial relief and enforcement of the provisions of the law. He said H 580 would provide no meaningful benefits to landlords or tenants, and he asked that it be held in committee.

Responding to committee questions, Mr. Lyman distinguished between the requirement to provide the specified information, which he thinks is overly burdensome, and the requirement to provide park rules, which he believes is duplicative and redundant. He said, for instance, that it is not a part of a standard lease to provide zoning information. He noted that in 1993, when the current statute was negotiated, the agreement was to provide such information upon request. Mr. Lyman said providing all the specified information to everyone, whether they want it or not, does involve some cost and some effort. He does not believe the legislature should be intruding on a contractual relationship.

Answering further questions, Mr. Lyman said his clients have no problem providing park rules to tenants; that is why they agreed to the current law. He said often a general description of the types of homes and the boundaries of the space will be included in rules, although more frequently the "rules" include such things as information about the community center and its use, yard requirements, home painting requirements, and other items of this nature. Mr. Lyman said zoning, boundaries and other information is available to anyone upon request, but this bill will make provision of that information mandatory.

Rep. King was recognized to conclude her testimony on **H 580**. She referred to the differences between the rules of various parks and stated her belief that they should be universal from community to community. Rules governing such items as pets, noise, fencing, awnings, and traffic should be given to a prospective tenant before he or she purchases a home within a community or moves into one. She referenced the current landlord/tenant act which contains the three-day and 20-day notice provisions, and stated she thinks this is reasonable. However, these provisions are being used for more frivolous reasons to force tenants to vacate their homes. She did agree that H 580 would not address that problem. She noted that the issue is more one of timing; H 580 will require that information is provided before a tenant signs a lease. Asked why the Statement of Purpose uses the word "ask" but the bill states requirements, Rep. King said she probably should have used the word "shall" in the bill's Statement of Purpose.

MOTION: **Rep. Jarvis** moved to send **H 580** to the floor with a **DO PASS** recommendation, without the proposed amendment to impose a penalty.

SUBSTITUTE MOTION: **Rep. Crane** offered a substitute motion, to **HOLD H 580** in committee.

AMENDED SUBSTITUTE MOTION: **Rep. Durst** offered an amended substitute motion, to send **H 580** to the floor without recommendation.

Rep. Patrick argued in support of the substitute motion, saying it seems as if H 580 will not substantially change current practice. **Rep. Durst** stated it seems the question is not whether the rules are provided, but when. He said it would not be a burden to provide the rules before a tenant enters into a lease agreement. **Rep. Crane** argued in support of the substitute motion, noting that current code already specifies that tenants can obtain a copy of park rules. It is up to the tenant to ask for them, and the government should not mandate their provision, especially with a penalty for failure to provide. **Rep. Chadderdon** agreed that the legislation seems to be duplicating a provision already in the law.

Rep. Bilbao argued in support of the substitute motion to hold H 580, saying a homeowner has a responsibility to investigate before deciding to locate in a certain park. Owners should be responsible for finding out financial information, park regulations, zoning, covenants, and other details. If the information is not agreeable to the owner, he can walk away without signing a lease. He said the government should not step in with one more control over individuals' lives and decisions.

VOTE ON AMENDED SUBSTITUTE MOTION: **Chairman Black** called for a vote on the amended substitute motion, to send **H 580** to the floor with no recommendation. **Motion failed on voice vote.**

VOTE ON SUBSTITUTE MOTION: **Chairman Black** called for a vote on the substitute motion, to **HOLD H 580** in committee; **motion carried on voice vote.**

H 581: **Rep. King** presented **H 581**, a bill that will limit any rule change restricting the type or size of a tenant's manufactured or mobile home if the tenant was in compliance with the park rules prior to adoption or amendment of the rule.

Rep. Bilbao testified in support of **H 581**, relating his experiences with a mobile home park in his district in Emmett. He stated there are some very good parks in Emmett but also some older parks that are not as nice. He said a major problem arises when a park is sold and the new owner decides to implement new rules. These rules currently can be applied to all residents, even those who entered into an agreement with the previous owner, with different rules in place. **Rep. Bilbao** said senior citizens in particular, because of their limited income, cannot afford to buy a new unit that would be in compliance with new rules. It is not a reasonable option to ask them to move their homes out of the park because of new rules.

Responding to questions, **Rep. Bilbao** said current park residents do not

always realize there is a law to address this problem. He confirmed that this bill addresses only size and type of mobile home, but not such things as rent, rules on animals, and so forth.

Jack Lyman, appearing on behalf of the Idaho Housing Alliance, testified **in support of H 581**, saying it is an appropriate measure to assure that an existing tenant is not vulnerable to eviction merely because the type or size of the home is inconsistent with new requirements adopted by a landlord. He noted that an existing owner can change the rules but, under existing law, if a tenant does not agree with the change, the landlord cannot enforce it for 90 days. After the 90 days, however, the new rule can be imposed. Mr. Lyman said this legislation is necessary so a tenant is not evicted in cases such as this, and he urged the committee to send the bill to the floor.

MOTION: **Rep. Mathews** moved to send **H 581** to the floor with a **DO PASS** recommendation; **motion carried on voice vote.**

H 473: **Gavin Gee**, Director of the Department of Finance, presented **H 473**. He said the purpose of the bill is to set up a contingency fund for the Department of Finance, from which to pay the costs of specialized services in enforcement cases. He said these services are necessary in order to protect both consumers and investors. Mr. Gee said expert witnesses or unique legal expertise are expensive but necessary in some enforcement actions. The special fund will be limited to \$300,000, which will be generated from fines, civil penalties, and other enforcement actions. Mr. Gee noted the increase in complex securities cases in recent years, some of them in foreign jurisdictions, as well as complicated real estate cases such as DBSI. He said the Department has to hire experts outside the Attorney General's office for these cases. In recent years this expertise has been paid from the Department's general operating budget, but that has caused budget shortfalls. Mr. Gee said he believes it is prudent to set aside funds to cover these expenses, and he noted this legislation was crafted with help from the Division of Financial Management.

Responding to committee questions, Mr. Gee said the Department paid out \$200,000 in the past year in enforcement costs. Although they did not have to pay the \$3 million cost of the forensic audit that was sought in the DBSI bankruptcy case, Mr. Gee pointed to it as an example of the high costs that can be involved in such cases. Mr. Gee said the \$300,000 special enforcement fund will not appear as part of the Department's base budget, but will be a stand-alone fund.

Mr. Gee stated the Department of Finance is a dedicated fund agency, which means they receive no General Fund moneys. Their income is derived from license and registration fees as well as fines; any excess funds revert to the General Fund each year. He said the Department has contributed \$50,000,000 to the General Fund since 1994. Some of this excess would be held back for the enforcement fund. Asked how long it would take the Department to build the fund to \$300,000, Mr. Gee said it should be funded over the next two years, and perhaps sooner.

Responding to further questions, Mr. Gee said the enforcement fund will be a continuously appropriated fund for a limited purpose. They will not go into the Department's general budget and cannot be used to pay salaries or other

operating expenses. Rather, the funds will be available to pay extraordinary expenses such as legal counsel. He said some years they may not use any of this fund; other years they may use it all and be required to pay additional enforcement expenses out of their operating budget for that year. Mr. Gee said other agencies have similar special funds set up, including the Department of Agriculture, the Board of Medicine, and the Petroleum Clean Water Trust Fund.

During further questioning, Mr. Gee said the fund would be built up from fines and settlements, but \$300,000 would be the cap in any given fiscal year. Anything collected in fines and settlements beyond that cap will revert to the General Fund. Asked whether this might create a conflict of interest, since the Department benefits financially from enforcement, Mr. Gee said currently any funds received from fines go to a dedicated fund; for the past 15 or 16 years it has reverted to the General Fund. He said the Department does not depend on these funds and does not include them in their budget, since they do not know how much the amount will be from year to year.

Asked why the Department needs a special fund, Mr. Gee said their dedicated fund budget does not include approval for extraordinary expenses. This bill will create a contingency fund for those kinds of expenses that are not able to be funded in the general operating budget. He said the Department has had several of these cases recently and is likely to have more because of the economy. Mr. Gee said last year the Department recovered over \$128 million in enforcement cases; this flows back to the Idaho economy.

Mr. Gee said the Department has not had to go back to JFAC to request a supplemental appropriation. Instead, they have absorbed extraordinary expenses, which has hurt their ability to carry out normal examinations and investigations. He said the Department will not be spending any more than they have in the past, but they will have the funds available when they need them for extraordinary expenditures. He agreed that having funds available to mount a strong legal case gives the Department the ability to recover more in settlements.

Committee members expressed support for the special investigation fund, saying it is important to assure that the Department has the tools they need during times of concern about financial organizations. It is advisable to maintain a separate fund that will not be mingled with funds for other activities; this will provide greater transparency.

MOTION:

Rep. Smith moved to send **H 473** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Rep. Smith (30)** will sponsor the bill on the floor. **Reps. Bayer, Jarvis and Palmer** requested that they be recorded as voting no.

H 502:

Steve Keys, Deputy Administrator of the Division of Building Safety, presented **H 502**, which changes compensation for members of the Modular Building Advisory Board from the \$25 per day salary they currently receive to a \$50 per day honorarium. Mr. Keys said \$50 per day is the same compensation that other board members at the Division receive. This change will allow the board members to continue participation in private retirement programs by eliminating their participation in PERSI.

MOTION: **Rep. Gibbs** moved to send **H 502** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Rep. Gibbs** will sponsor the bill on the floor.

H 503: **Mr. Keys** presented **H 503** , which allows the Division to establish a fee for examinations delivered by the agency instead of through third-party testing organizations. The administrator currently has the authority to deliver exams but lacks explicit authority to charge for the exams. **Mr. Keys** said the third-party providers charge between \$75 and \$100 per exam; this bill will establish a fee of \$75 until fees are established in rule. He said the Division is working to exert greater control over the administration of exams, due to complaints regarding the services provided by current third-party test providers.

Asked what problems had been encountered with the testing procedure, **Mr. Keys** said there were some issues with timely responses from test providers as well as changes in providers, which results in a change of testing sites. He said the Division is charged by statute to deliver examinations across the state. In addition to using their offices outside of Boise, they also anticipate developing relationships with the community colleges around the state. **Mr. Keys** said the expected revenue from testing fees is expected to cover the expenses of the program, but there will likely not be a big surplus. No new employees will be added to administer the tests. Although the fee is set at \$75, **Mr. Keys** said the Division hopes to lower that fee at some point.

In accordance with House Rule 38, **Rep. Crane** disclosed that he will be taking these proposed tests.

MOTION: **Rep. Cronin** moved to send **H 503** to the floor with a **DO PASS** recommendation. **Rep. Chadderdon** will sponsor the bill on the floor. **Reps. Bayer** and **Palmer** requested that they be recorded as voting no.

H 504: **Mr. Keys** presented **H 504**, which simplifies the process for dealing with serious school safety issues as they are recognized in Idaho. **Mr. Keys** said this will enable the administrator of the Division to hire an engineering consultant directly instead of working through the Department of Administration. He said currently when a school safety inspector discovers a defect, the inspector reports back to the Department of Administration, which hires an outside consultant. The consultant reports back to the Department of Administration, which notifies the school district and the Division of Building Safety of the findings.

MOTION: **Rep. Jarvis** moved to send **H 504** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Reps. Jarvis** and **Thompson** will co-sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:05 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

DATE: March 15, 2010

TIME: 1:30 p.m.

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin

**ABSENT/
EXCUSED:** None.

GUESTS: Mark Larson, State Fire Marshal; Scott Buck, Idaho Fire Chiefs; Justin Ruen, Association of Idaho Cities; Kim Coster and Jeanne Jackson-Heim, Idaho Real Estate Commission; Miguel Legarreta, Realtors

Meeting was called to order at 1:30 p.m. by Chairman Black.

S 1325: **Rep. Lynn Luker** presented **S 1325**, a bill that has been developed in cooperation with the Association of Idaho Cities, representatives from the insurance industry, fire district chiefs and others. Rep. Luker said S 1325 deals with two aspects of the International Fire Code that have overlapped into the building code, namely, fire road access and water supply. Current code requires an access road of 20 feet wide with a certain radius at the end. It also specifies certain water supply requirements, either a well or a big tank, if there is no hydrant. Rep. Luker said rural homeowners have encountered problems in certain jurisdictions where fire district officials insist on their roads complying with the rules. Some homeowners choose to go without fire protection rather than comply.

Rep. Luker said the legislation will exempt single family homes built on parcels of five acres or more, in unincorporated regions outside of city impact. It will also allow counties to broaden the exemption by reducing the minimum parcel area. Homeowners can still voluntarily comply. Rep. Luker said the insurance industry does not have a problem with the legislation, since insurance companies will rate properties based on their distance from a fire house.

Responding to questions from the committee, Rep. Luker said the five-acre minimum was chosen for the exemption because when homes are built on smaller lots, they are closer together and pose a possible danger to their neighbors. He said the five-acre size was a compromise that met city and county safety concerns and also matched requirements in other codes. Asked whether a homeowner who chose to "take a chance" is costing other homeowners higher premiums, Rep. Luker said the insurance company will rate the risk and factor it into the premium. He said homeowners are grandfathered in when an area of impact changes; they would not have to meet the new requirements. However, if a five-acre lot is parceled off and sold as smaller lots, the county or city may have to determine whether the exemption still applies. Rep. Luker said if a county decides to further reduce

the acreage requirement they would have to use the normal ordinance provisions, including whatever public notice is required.

Mark Larson, State Fire Marshal, was recognized to respond to committee questions. He stated he was involved with the study group that developed **S 1325** and he concurred with the consensus of the group. Mr. Larson said the exemption applies to a requirement for access road or water supply, but does nothing in terms of the provider of emergency services, whether fire, medical or other. He said fire protection people would still try to access a property even if the road leading to it is not in compliance. He could not render a legal opinion, however, about whether or not the fire department has a right to say they will not provide coverage in such a case. Mr. Larson said the bill would not require more rigid construction standards for properties that receive the exemption contained in this bill.

Mr. Larson said there will be some modifications to the Fire Code proposed during rulemaking. These modifications will define a "driveway," will specify how many homes can be served by a single driveway, and will specify turning radii, among other things. Mr. Larson said S 1325 is the first part of a series of changes that will be proposed in the future.

Justin Ruen, appearing on behalf of the Association of Idaho Cities, testified **in support of S 1325**, saying the Association appreciates the efforts involved in drafting this legislation.

Scott Buck, representing the Idaho Fire Chiefs Association, testified **in support of S 1325**. Mr. Buck said the fire chiefs support this legislation.

Rep. Luker was recognized to conclude his testimony on **S 1325**. In response to an earlier question, he said building codes are adopted by counties and administered by them. The fire code, on the other hand, is adopted on a statewide basis; unless an exemption is granted, everyone is covered. Rep. Luker said there are five counties in Idaho who have not adopted building codes, but they are still subject to the fire code.

MOTION:

Rep. Mathews moved to send **S 1325** to the floor with a **DO PASS** recommendation.

Rep. Durst spoke in opposition to the motion, saying he is concerned about granting exemptions to fire codes. He said although some areas are rural today, they could become more highly developed in the near future. Exemptions may put firefighters and other homeowners at risk.

Rep. Jarvis spoke in support of the motion, saying he was aware of the broad base of people who worked on the legislation, and he thinks they should be supported.

Rep. Cronin stated his opinion that if a homeowner "opts out" by not conforming to the regulations, the fire districts should be absolved of some of their responsibility for protection. He said this could be considered in the future.

VOTE ON MOTION:

Chairman Black called for a vote on the motion to send **S 1325** to the floor with a DO PASS recommendation; **motion carried on voice vote. Rep.**

Luker will sponsor the bill on the floor. **Rep. Durst** requested that he be recorded as voting no.

S 1248: **Jeanne Jackson-Heim**, Executive Director of the Idaho Real Estate Commission, presented **S 1248**. This bill will make two changes to licensing requirements. First, it adds a review process for license applicants who have ever had a professional license permanently revoked for fraud, misrepresentation or dishonest or dishonorable dealing. Second, it clarifies that a general military court martial is equivalent to a felony conviction for licensing purposes.

Ms. Jackson-Heim said she is not aware of procedures in other states, but she noted that currently those who have had a license revoked have to wait only five years before they reapply for licensing. Therefore, "permanent" license revocation is not really permanent. As long as applicants meet the other requirements, they must be licensed. She said under the provisions of S 1248, the Board would now have the ability to review applicants on a case-by-case basis.

Miguel Legarreta, representing the Ada County Association of Realtors, testified in support of **S 1248**, saying the Idaho Association of Realtors stands in support of all legislation presented by the Commission at this meeting.

MOTION: **Rep. Rusche** moved to send **S 1248** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Rep. Rusche** will sponsor the bill on the floor.

S 1250: **Ms. Jackson-Heim** presented **S 1250**, which contains a number of technical corrections to remove obsolete references and make grammatical changes. For instance, current code includes references to "sub-agents" which no longer exist. Another obsolete requirement is to arrange completed courses in alphabetical order; this function can be easily sorted in a spreadsheet.

MOTION: **Rep. Cronin** moved to send **S 1250** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Rep. Cronin** will sponsor the bill on the floor.

S 1251: **Ms. Jackson-Heim** presented **S 1251**, which deals with the disposition of subdivided lands. Ms. Jackson-Heim said sellers of timeshare products and out-of-state subdivision lots must register with the Idaho Real Estate Commission. She said these filings are quite voluminous, sometimes filling one or more file boxes. Ms. Jackson-Heim reviewed several changes contained in the bill, including such things as a five-day right of rescission, bond requirements, and registration requirements. The bill also grants administrative authority to the Commission to enforce the provisions of the Act. Ms. Jackson-Heim told the committee about an online registry that allows filing documents to be submitted one time and have them stored on a server. The Commission is trying to incentivize the use of this registry.

Responding to committee questions, Ms. Jackson-Heim said timeshares marketed in Idaho must comply with Idaho's regulations. If a person travels to another state to purchase a timeshare, however, the company is not

subject to Idaho's laws. Offers on the internet usually come from large companies who are well aware of the laws and who comply with all state laws. She said the \$100,000 bond is a compliance bond which will offer some recourse to consumers if a project is not completed. Ms. Jackson-Heim said the benefactor of the bond is individual citizens, not the Commission.

MOTION: **Rep. Mathews** moved to send **S 1251** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Rep. Mathews** will sponsor the bill on the floor.

S 1323: **Ms. Jackson-Heim** presented **S 1323**, which amends several sections of the license law. First, it establishes an audit procedure by which the Commission can determine whether licensees carry errors and omissions (E&O) insurance. It also stipulates that a broker license can be a license upgrade rather than a new license, and it clarifies other provisions of continuing education requirements. Finally, it contains a clarification on the time frame for disclosures by licensees who are buying or selling property for their own benefit.

Responding to questions from the committee, Ms. Jackson-Heim said the Commission requests proposals from insurance companies for its E&O policy. The company chosen must cover everyone who applies through the Commission. About 25% of licensees choose to obtain E&O coverage through other vendors. She said the Commission does not receive any financial benefit from the contracted insurance carriers. Ms. Jackson-Heim said the group insurance policy renews every year on October 1, and after that date the Commission receives a list of licensees who have not renewed their coverage. The Commission can then inactivate those licenses. This legislation will allow the Commission to inactivate licenses for those licensees who do not participate in the group coverage, since the independent carriers are required to notify the Commission at least 30 days before cancelling a licensee's policy.

MOTION: **Rep. Patrick** moved to send **S 1323** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Rep. Patrick** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:35 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

DATE: March 17, 2010

TIME: 1:30 p.m.

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin

**ABSENT/
EXCUSED:** Rep. Durst

GUESTS: John Mackey, United Heritage Life Insurance Company; Woody Richards, Allstate Insurance Company; Mike Kane, Property Casualty Insurers Association of America

Meeting was called to order at 1:37 p.m. by Chairman Black.

MOTION: Rep. Bilbao moved to approve the minutes of March 15; motion carried on voice vote.

S 1327 **Sen. Tim Corder** presented **S 1327**, a bill that places Idaho in conformance with national suitability standards for the sale of annuities. Sen. Corder explained that his involvement with this issue began because of an 85-year-old Elmore County resident who was sold an annuity with a 15-year penalty clause. Although the gentleman agreed to the provisions of the annuity, it was not a suitable investment for him to make. Sen. Corder said S 1327 delineates minimum requirements for disclosure of information prior to an annuity sale and will serve to determine the annuity's suitability for the individual buying it. The legislation is based on a template developed by the National Council of Life Insurers that lays out the criteria for suitability and the questions that should be asked of an investor as well as the information that needs to be disclosed. Sen. Corder said the legislation does not aim to take away an individual's responsibility or his free choice; rather, it will enable the consumer to make a fully informed choice. Sen. Corder also pointed out that the legislation will give the Department of Insurance an additional tool to monitor companies offering these products and to address complaints from consumers.

Asked what type of documentation will be provided to prove that the suitability questions were asked, Sen. Corder said the Department of Insurance will promulgate rules to include the suitability questions and disclosure requirements.

John Mackey, representing United Heritage Life Insurance Company, testified in support of **S 1327**. Mr. Mackey said the purpose of the legislation is to require insurance companies selling fixed annuities to Idaho residents to provide them with a full and accurate disclosure of the features of the annuity being marketed. He said this disclosure will take the form of a buyer's guide and a product-specific disclosure document that will help

them make a more informed decision regarding their purchase of a fixed annuity product. The legislation is based on model legislation from the National Association of Insurance Commissioners; similar legislation has been adopted in 25 other states. Mr. Mackey said the bill has been reviewed by the Department of Insurance and he is not aware of any opposition.

Responding to questions from the committee, Mr. Mackey said S 1327 applies only to fixed annuities, which would include indexed annuities. He said variable annuities are covered by a different set of rules because they are equity products. He said the practice of his company is to attach the disclosure document to the annuity application, which is kept on file for the life of the annuity.

Shad Priest, Deputy Director of the Department of Insurance, pointed out a section of the bill on page 2, lines 30-32, which requires companies to maintain a signed copy of the disclosure document for the life of the contract. He said each company is responsible for producing its own disclosure forms, which then must be approved by the Department.

MOTION: **Rep. Thompson** moved to send **S 1327** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Rep. Thompson** will sponsor the bill on the floor.

S 1357 **Trent Wright**, appearing on behalf of the Idaho Automobile Dealers Association and the Idaho RV Dealers Association, **presented S 1357**. Mr. Wright reminded the committee of similar legislation proposed last year and noted that all parties were not in agreement on the specifics of that bill. Since that time, according to Mr. Wright, the parties have worked out some of the details of the legislation. In addition, there has been a decrease in advertising for automobile service contracts in Idaho. Mr. Wright said a recent report pointed out that most of the 140 to 145 national groups who engaged in deceptive phone and mail offerings have been regulated or have terminated their businesses. Now there are only about 20 to 25 of these businesses still active nationally.

Mr. Wright explained details of the legislation, saying it states certain practices that cannot be included in mailings. For instance, an offer cannot say that an owner's warranty is about to expire. Another provision of S 1357 will require that a company selling a service contract have a liability policy through an insurance company licensed in the state of Idaho, and specifies the amount of reserves that these insurance companies need to have. This is based on model language used in other states. It will assure that service contracts will still be honored by dealerships in the event that service contract companies go out of business. Mr. Wright said the Department of Insurance has reviewed the proposed legislation, and he is aware of no opposition.

In response to questions from the committee, Mr. Wright said service contract companies use a wide variety of business models. It is hoped that the most common one will be to contract with auto dealerships who have a reputation for good service and a sound track record. He said the reserve amount of \$15 million is a minimum that can be increased.

Mike Kane, representing the Property Casualty Insurance Association of

America, testified **in support of S 1357**. Mr. Kane said he was actively involved in last year's efforts to regulate auto service contract offers. He said last year's law will sunset on July 1, to be replaced with S 1357. Mr. Kane pointed out that this bill is made up of an insurance section and an enforcement section. He said S 1357 specifies that companies cannot engage in deceptive conduct, makes doing so a misdemeanor crime, and adds a civil penalty of \$1,000 per day.

Responding to a question from the committee, Mr. Kane said S 1357 contains all new language and none of it will sunset on July 1. He said the bill requires certain levels of reserves for insurance companies, rather than relying on accounting methods as was previously done.

MOTION: **Rep. Collins** moved to send **S 1357** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Rep. Patrick** will sponsor the bill on the floor.

MOTION: **Rep. Smith (30)** moved to approve the minutes of March 11, with the following correction: near the bottom of page 3, Rep. King was recognized to conclude testimony on **H 580** rather than on H 581; **motion carried on voice vote**.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:15 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary

MINUTES

HOUSE BUSINESS COMMITTEE

DATE: March 25, 2010

TIME: 1:30 p.m.

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao, Chadderdon, Crane, Mathews, Patrick, Bayer, Gibbs, Jarvis, Palmer, Thompson, Smith (30), Rusche, Durst, Cronin

**ABSENT/
EXCUSED:** Rep. Patrick, Rep. Durst

GUESTS: Jack Trent & Wendy Trent, private citizens; Mark Borwning, Colby Cameron, & Pat Sullivan, Sullivan & Reberger; Pat Sullivan, Associated General Contractors; Drew Thomas, Risch Pisca; Tim Mason, Division of Public Works; Bruce Newcomb, Boise State University

Meeting was called to order at 4:00 p.m. by Chairman Black.

MOTION: Rep. Smith (30) moved to approve the minutes of March 17; motion carried by voice vote.

S 1401a **Tim Mason**, Administrator for the Division of Public Works, presented **S 1401a**, dealing with prequalification for bidders on certain public works projects. Mr. Mason said a measure was passed several years ago, in anticipation of the capitol restoration project, that allows prequalification of bidders on public projects. Because the capitol restoration would involve a large number of specialty projects, this offered some confidence that those specialty contractors would be competent. Another provision allowed the category of construction manager at risk, but this provision sunsets at the end of the restoration project. Mr. Mason said the prequalification is still a viable statute but it needs to be enhanced to make it more sensible.

Mr. Mason outlined three basic changes being made to the prequalification statute. First, language is being added to specify that the Department of Administration's Division of Public Works and the respective state agency involved in the project will be the two parties responsible for deciding what is in the best interest of the state. This would be a joint agreement; if there is disagreement between the two parties, the project does not move forward. Second, specific qualifications for contractors are added, such as past performance, quality, timeliness, reliability and safety record. Third, notification requirements are added. Mr. Mason said contractors will propose that they are qualified, and an evaluation will be made to decide which of them are, in fact, qualified for the project. All qualified bidders will then submit sealed bids, and the lowest bidder chosen from among qualified bidders is awarded the project. Mr. Mason said S 1401a was developed with input and approval from the Associated General Contractors.

Responding to questions from the committee, Mr. Mason said these changes

apply to state level projects and do not change any existing provisions with regard to local public works projects. He stated that the criteria have to be somewhat subjective; for instance, an evaluation has to be made based on a company's experience and performance on a particular type of project. He said if a project is awarded based only on the low bid, the state may be compelled to award a job to a contractor who has never had experience working on a highly specialized project such as a research lab. The prequalification process is able to translate subjective factors into an objective "score" which can then be used to determine a contractor's qualifications for a particular project. Mr. Mason said this is not dissimilar to the method already used to choose architects and construction managers.

Answering further questions, Mr. Mason said all projects over \$100,000 or any projects involving Permanent Building Fund funds go through the Division of Public Works. He said the prequalification provisions in this legislation were taken from similar measures in Utah and Florida. He said Utah has not used the low bidder method of choosing contractors for about ten years. Utah assigns criteria including past experience, financial stability, and prior work for the state, and arrives at a composite score. Mr. Mason also explained the difference between a "responsible" bidder and a "responsive" bidder, noting that a bid is "responsive" if it is submitted on time and a bidder is "responsible" if he holds a public works license.

MOTION: After declaring, in conformity with Rule 38, that his company holds a public works license, **Rep. Crane** moved to send **S 1401a** to the floor with a **DO PASS** recommendation; **motion carried on voice vote**. **Chairman Black** will sponsor the bill on the floor.

Presentation: **Rep. Brian Cronin** was recognized to present information on the Idaho Entrepreneur Finance Act, a draft of which was distributed to committee members. **Chairman Black** noted that a similar concept has been in place in Utah, and he believes the idea may have merit for Idaho as well.

Rep. Cronin explained this is not a "micro" loan approach; rather, it deals with loans in the amount of \$100,000 to \$500,000, made to growing companies who need working capital quickly. This type of funding is not readily available due to recent credit collapses and freezes on bank lending. He stated the importance of having entrepreneur funding in the state of Idaho, since often companies who acquire financing from outside the state are later required to move closer to the venture capital company that has provided financing. Idaho has small "angel" investor funds, but this act would make available larger sums designed to finance larger projects.

If enacted, the Entrepreneur Finance Act would create a fund through an independent public body corporate and politic, similar to the mechanism used to set up the Idaho Housing Finance Association. This new entity will be free of General Fund monies and will relieve the state from debt obligations. The Act will stipulate how a board would be created, will guarantee that the investment would come back to the bank and will guarantee the rate of return. Rep. Cronin explained that the contingent tax credits could be redeemed only if the fund is unable to meet its promised annual rate of return. He said Utah's "Fund of Funds" has not had to redeem any of its contingent tax credits during the history of their program. Rep. Cronin gave other details of the proposed Act, which will include a sunset

provision. The board of trustees will be required to include members representing the geographic diversity of the state, and their powers, duties and obligations will be spelled out in the Act. He said this Act will set up a mechanism to use private capital and to create a quasi-nongovernmental entity to administer the program.

Jack Trent, a certified public accountant, testified on **S 1401a**. He stated he had spent 20 years in Utah before moving back to Idaho and he had observed the success of Utah's program. He said Utah's program, which has been in place since the mid-1990s, became profitable and became a private organization. There are still some issues to work out in Idaho's plan, including the issue of transferability. Idaho's program will not provide low-interest or subsidized loans. These loans will be aimed at companies with an aggressive growth plan who can handle higher interest loans.

In answer to a committee question, Mr. Trent said Utah's program started with a \$10 million government fund and a \$2 million-per-year budget. After a number of years, the program was on a firm financial footing and it was able to become a private entity.

Chairman Black stated this idea, if it is as successful here as it has proven to be in Utah, will offer a great building block for new companies in Idaho. He suggested it could be explored in greater depth during next year's legislative session.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 4:45 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary