

# Senate Commerce & Human Resources Committee

Minutes  
2010



## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** January 14, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:** Senator Lodge

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

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

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

**MINUTES:**  
**RS19209** **Relating to Idaho Real Estate License Law**  
**Jeanne Jackson-Heim, Director, Idaho Real Estate Commission,** stated that **RS19209** currently gives the Commission the ability in their license law to allow the Commissioners to review an applicant for license who has previously had a felony conviction. There is a defined term in the license law for permit revocation of license, but it is not really permanent. It actually means after five years we must re-license that applicant, no questions asked. We are requesting to add a provision allowing our Commissioners an opportunity to review a license application for anyone who previously had a professional license revoked for fraud, misrepresentation, dishonest or dishonorable dealings. Unfortunately, we have had some individuals come from other states that have been revoked elsewhere and are also repeat offenders in Idaho.

**MOTION:** **Senator Stegner** moved that **RS19209** be introduced to print. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

**RS19210** **Relating to Idaho Real Estate License Law**  
**Ms. Jackson-Heim** said the first change in **RS19210** pertains to the errors and omissions insurance that our licensees are required to maintain. Our agency is entitled by the law to ask the licensees for proof of that insurance. Unfortunately, many times they do not respond to our requests for proof and we haven't had the tools to encourage their compliance. We are asking for the ability to inactivate a license if we

request proof of insurance and the licensee does not comply.

The next three changes would be to our licensee education requirements. Our Commissioners want to establish that a broker license is an upgrade from an Idaho sales license, rather than a new license. Current sales associates obtaining a broker license would have the benefit of being able to retain the same license renewal date along with renewal period for continuing education requirements.

The next change deletes a section of our license law that is in conflict with a more generous provision regarding professional licenses for military personnel.

The final change would be to define when a licensee must make the required disclosure when buying or selling property for their benefit. They would be required to make that disclosure at the time an offer is presented.

**Senator Goedde** questioned the short time period of 10-days for the licensee to respond with a proof of insurance. It might take them more than 10-days to acquire a certificate of insurance. **Ms. Jackson-Heim** explained that if the agent would contact the Commission and ask for an extended time to provide the proof of insurance they would consider that a response. **Senator Cameron** said 10-days is not a very long period for a licensee to produce a proof of insurance and asked **Ms. Jackson-Heim** if it would be possible to extend that time requirement to 45 days. **Ms. Jackson-Heim** responded that 45 days is a very long time for an agent to be conducting business without insurance. **Senator Goedde** asked if one of the representatives from the real estate organization in the audience would like to testify concerning their review of this RS and are they in support of its passage. **John Eaton, Idaho Association of Realtors**, stated that his Association is aware of this legislation and they will review the legislation next week and he does not anticipate that they will have objections.

**MOTION:** **Senator Goedde** moved that **RS19210** be introduced to print. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**. **Senator Cameron** requested that he be recorded as voting **nay**.

**RS 19211** **Relating to Idaho Real Estate License Law**  
**Ms. Jackson-Heim** stated that **RS19211** contains a number of technical corrections to their license law, primarily to eliminate obsolete references.

**MOTION:** **Senator Goedde** moved that **RS19211** be introduced to print. The motion was seconded by **Senator LeFavor**. The motion carried by **Voice Vote**.

**RS19217C1** **Relating to the Subdivision Lands Disposition Act**

**Ms. Jackson-Heim** introduced **Craig Boyack, Chief Investigator**, to present **RS19217C1**. **Mr. Boyack** advised that the **Real Estate Commission** also administers Idaho's Subdivided Lands Disposition Act. This section of the law provides that subdivided lands, mainly timeshares, that are offered or sold in Idaho, must first be registered with the Idaho Real Estate Commission. This Act has not been significantly updated or revised since its enactment in 1972. The key changes that the Commission proposes are:

Provide purchasers a five-day right of rescission when they buy a timeshare or a subdivided land outside the State of Idaho.

Require registrants to notify the Commission if they have ever been liable for fraud or dishonest dealings involving a land transaction.

Requesting administrative authority to enforce the provisions of the Act, including authority to issue administrative subpoenas, issue cease and desist orders, revoke registrations, and assess costs and attorney fees in administrative cases.

Grants specific authority for the commission to contract for the use of the web-based file management system to accept registration documents.

Include violations of Subdivided Lands Act into the Consumer Protection Act which would grant them state authority to prosecute companies which violate the Act.

**Senator Cameron** questioned how the Commission would enforce a situation of an Idaho consumer who flies to Las Vegas and he purchases a timeshare on the strip. **Mr. Boyack** answered this Act would protect our citizens from business practices of these companies that approach our citizens in Idaho such as advertising, electronic promotions, door to door, presentations in hotel arenas to sell these timeshares. When citizens leave our State and participate in these transactions outside of the State the Commission has very little jurisdiction over those sales.

**MOTION:** **Senator Cameron** moved that **RS19217C1** be introduced to print. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**.

**RS19204** **Wayne Hammon, Acting Administrator, Division of Human Resources**, stated that **RS19204** allows the Division to increase the number of hours an employee can donate to another employee. In 2009, 364 employees across the State of Idaho received benefits from this program. There were 1,190 employees that donated leave hours to these 364 individuals, 268 of these employees donated a maximum allowable of 40 hours. In the current fiscal year, 201 employees have received donated leave from 783 of their coworkers and 134 employees have donated the maximum leave. If this maximum cap of 40 hours was lifted, employees would be willing to donate additional leave to their coworkers.

In this legislation the Division is asking that the cap be increased to 80 hours. All the other rules and regulations in this legislation would remain the same.

**Vice Chairman Coiner** asked about the emergency clause in this legislation. **Mr. Hammon** answered this year 134 employees have already received the count, by adding this emergency clause it would allow them to contribute more in the current fiscal year.

**Carol Youtz, representing the Board of Veterinary Medicine,** addressed the Committee stating that she has not yet had the need to be a recipient of donated leave but believes that any employee who wishes to donate their leave to coworkers should be able to donate an unlimited amount of hours. There should be no cap on coworker's generosity to their fellow coworkers.

**Senator Cameron** asked if there is a fiscal impact to increasing the hours from 40 to 80? **Mr. Hammon** answered the Division believes that there is no fiscal impact on the bill. Typically employees who are donating the leave have worked for the State the longest and have a higher salary than those who will be receiving the leave. They are exchanging hour for hour not dollar for dollar. It will save some money.

**Senator Malepeai** asked **Mr. Hammon** if there was any reason why the Division might not allow the unlimited donation of hours as **Ms. Youtz** has requested. **Mr. Hammon** responded administratively it might cause a challenge, but they certainly will consider this suggestion before the completion of the legislation.

**MOTION:** **Senator LeFavor** moved that **RS19204** be introduced to print. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

**RS19224** **Mr. Hammon** said currently when the Division receives applicants for positions, only the top ten most qualified individuals are forwarded to the hiring agencies. The Division is seeking to increase that number to as many as 50. In the past, Human Resources would advertise up to 250 positions a month and have an average of 16 applicants per position. The top ten qualified individuals made sense. At present they are only filling approximately 84 positions per month with an average of 65 applicants per position because of the economy. With more individuals applying for a position the line between 10 and 11 is getting very thin. The agencies have asked to look at applicants number 11, 12 and 13 and so on. By giving the agencies a wider pool to interview from, they will get the most qualified applicant to fill the position.

**MOTION:** **Vice Chairman Coiner** moved that **RS19224** be introduced to print. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

**ADJOURNED:**      There being no further business, the meeting adjourned at 2:18 p.m.

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** January 19, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:** Chairman Andreason

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

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

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

**MINUTES:** **Vice Chairman Coiner** recognized **Karen Ballard, Administrator, Department of Commerce**, to present Pending Rules Dockets 28-0203-0901 and 28-0203-0901.

**DOCKET NO.** **Rules of Idaho Regional Travel and Convention Grant Program**

**28-0203-0901**  
**28-0203-0903** **Ms. Ballard** said this is a repeal and rewrite of this rule replacing obsolete language and references. Presently the rules contain administrative details that require legislative action to modify or update eligible projects such as pod-casting, electronic billboards and active media. That is specifically what we wanted to remove from the rules in the definition section which describes various pieces of the grant components for advertising brochures and hospitality training. The items have been moved into the *ITC Grant Handbook* for the convenience of access for the grant program users. This is a comprehensive document that takes the former details of the rules and incorporates them into guidelines with specific information regarding accountability and reimbursement. In consideration of the extensive changes to the rule it was determined that a repeal and rewrite of the rules was most appropriate.

**Senator Cameron** asked for clarification of why the word obligated had been stricken in sentence "The grant will take effect upon the date of award. Grant monies cannot be obligated or expended until that date." An entity that would be a recipient of a grant which would have the

opportunity to enter contracts prior to that date thereby obligating right of payment. **Ms. Ballard** answered they did not want participants to enter into contracts depending on grant monies to pay for these obligations. The grant is no guarantee that just because they obligated the monies the grant would pay for it.

**MOTION:** **Senator Cameron** moved to approve Docket No.28-0203-0901 and 28-0203-0903. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**Vice Chairman Coiner** recognized **Barbara Porter, Executive Director, Board of Accountancy**, to present Pending Rules Docket 01-0101-0901.

**01-0101-0901**

**Ms. Porter** stated the first change is modifying how the Board identifies the applicable AICPA Professional Standards and the professional standards issued by the Public Company Accountability Oversight Board (PCAOB). The change removes the reference to a calendar year in relation to these two sets of professional standards. The reference year was put into the rules a few years ago. However, it has become apparent to the Board that regulatory authority has been jeopardized by doing so. The Board receives complaints against licensees for professional services provided at a particular point in time. This work must be done in accordance to the standards in place for those services at that point in time. These standards can change at various points throughout the year. By putting a discrete calendar year in the Board's rules, licensees are being held to standards that may not have been in place at the time services were provided. Our national model has language that says standards should be incorporated "as applicable under the circumstances and at the time of services". This change will bring Idaho's rules into compliance with the national model.

The second change cleans up Rules –6 and 616 to make our references match current *Idaho Code* section numbering in the Public Records Act.

The last change is to update Rule 502 on the age at which licensees may be granted a retired license. The Idaho Accountancy Act states they may do so at age 55, and this updates our rule to match out act.

**MOTION:** **Senator LeFavor** moved to approve Docket No.01-0101-0901. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

**Vice Chairman Coiner** recognized **Steve Keys, Deputy Administrator, Division of Building Safety**, to present Pending Rules Dockets 07-0103-0901, 07-0104-0901,07-0106-0901,07-0205-0901,07-0205-0902,07-0205-0903,07-0301-0901,07-0301-0902,07-0301-0903,07-0303-0901, 07-0311-0901,07-0311-0902,07-0312-0901,07-0402-0901,07-0501-0901,07-0601-0901,07-0701-0901, and 07-0701-0902 .

**07-0103-0901**

**Mr. Keys** stated that this rules was promulgated as a temporary rule to implement a staggered system for the renewal of electrical contractor's



licenses. The implementation of this system was occasioned by changes to Section 54-1008 (6) *Idaho Code*. The change also results in better distribution of the license renewal workload and minimizes the need for supplemental staff to handle that seasonal workload. This change took effect with the license renewals originally due in July of last year, and has worked out well. The division is aware of no opposition to this docket.

**07-0104-0901**

Like the previous docket, this change implements a staggered renewal system for contractors' licenses; in this case it is specific to electrical specialty contractors. The information and explanation for the previous docket are applicable to this docket as well.

**MOTION:**

**Senator LeFavor** moved to approve Docket No.07-0103-0901 and 07-0104-0901. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**07-0106-0901**

**Mr. Keys** said this pending rule amends the 2008 National Electrical Code, and provides additional clarification relative to the definition of a crawlspace. The language mimics language proposed for the 2011 NEC, addressing an issue that has been brought forward by the electrical industry. This change recognizes the difference in hazards for wiring installed in crawlspaces as opposed to exposed wiring installed in basements. The change lowers installation costs for contractors without adversely affecting safety. The Division is aware of no opposition to this docket.

**MOTION:**

**Senator Stegner** moved to approve Docket No. 07-0106-0901. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**.

**07-0205-0901**

**Mr. Keys** stated in the past, practical examinations have been exclusively delivered in a field setting, concurrent with the installation of a plumbing system. With the downturn in construction, the industry and the Plumbing Board have recognized that an alternative delivery system for the examination is needed, along with a concise definition of what the examination should encompass. This change defines the requirements for the practical exam, and allows for the administration of the practical examination in a lab setting. This change will allow qualifiers for a journeyman's license to complete their examination requirements without having to rely on the availability of a particular plumbing project to facilitate the test. The change is widely supported by the plumbing industry.

**MOTION:**

**Senator Stegner** moved to approve Docket No. 07-0205-0901. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**.

**07-0205-0902**

This pending rule establishes continuing education requirements for journeyman and contractor licensees under the authority granted to the Idaho Plumbing Board in Section 54-2609, *Idaho Code* as modified last session. Under this rule, a journeyman plumber is required to complete

eight (8) hours of continuing education during each three (3) year license cycle. Four (4) hours of the eight (8) must be related to changes in the plumbing code. Contractors must complete sixteen (16) hours of continuing education during a three (3) year license period. Journeymen are also given the option of completing an examination in lieu of the class time. This proposal has been widely supported by the plumbing industry.

**MOTION:**

**Senator Malepeai** moved to approve Docket No.07-0205-902. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

**07-0205-0903**

**Mr. Keys** said this docket reflects corrections to the existing administrative rule language to align the rule provisions with the changes made to Section 54-2614A, *Idaho Code*, in last years session. Specifically the change addressed the change in apprentice registration from an annual requirement to a multi-year registration five (5) years for a plumbing apprentice, and three (3) years for a plumbing specialty apprentice.

**Senator Cameron** stated that 4 years or 8,000 hours of work experience makes this rule too restrictive for those entering into the trade. **Mr. Keys** answered that the change is for 8,000 and four years experience.....

**MOTION:**

**Senator Goedde** moved to approve Docket No. 07-0205-0903. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**. **Senator Cameron** voted nay. The motion carried.

**Senator Cameron** requested that he be recorded as voting **nay**.

**07-0301-0901**

Ann: which nay vote do you want me to use?

**Mr. Keys** stated this change in rule adopts the 2009 editions of the International Building Code (IBC), the International Residential Code (IRC), International Energy Conservation Code (IECC), and the International Existing Building Code (IEBC). These new editions of the code have been adopted via the negotiated rulemaking scenario outlined in Section 39-4109, *Idaho Code*, and with the approval of the Legislature would become effective January 1,2011. The results of the negotiated process are reflected in the amendments to the IRC embodied in this proposal. Subsequent to the negotiated rulemaking process, Department of Building Safety and the Building Code Board were made aware of concerns from the log home industry that the 2009 energy code provisions as stipulated would adversely affect their industry. In recognition of those concerns, the Division and the chairman and vice chairman of the Building Code Board met with industry representatives, and legislators, including the chairman and vice chairman of this committee.

The follow-up rule proposal specifically addresses the concerns brought forward by the log home industry, and allows for the log homes to satisfy energy code requirements. Because the effective date for implementation of the new codes is January 1, 2011, the Department of Building Safety

would be able, contingent on approval by the Board and subsequently from the Governor's office, to make sure log homes are not adversely impacted.

The adoption of these new editions with the embodied amendments, and the changes reflected in the attachment has received broad-based support from parties involved in the negotiated rule making process.

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** January 21, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

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

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

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:31 p.m.

**MINUTES:** **Vice Chairman Coiner** recognized **Dennis Porter, Manager, Department of Commerce**, to present Pending Rule Docket 28-0201-0901.

**DOCKET NO.**  
**28-0201-0901** **Mr. Porter** stated this is an overview to increase our job creation amount. Currently the code sites us to create jobs. The Idaho Community Development Block Grant Program (ICDBG) allows the Department to help fund infrastructure to facilitate business development expansion. The Department will provide up to \$10,000 per new hire for a business that is creating jobs. In this rule they are asking for an increase of this amount up to \$30,000 per new hire. The increase in the funds would help a developing business add a rail spur, water line, water tank or sewer line. The second item change is the administrative cost reimbursement in the administrative code. It allows the Department to deduct 2% of the \$100,000 that a state can take for administering a program. The last change they are making in this rule is to the program income. The program income is identified in our state administrative plan and it is also identified in the Code of Federal Regulations (CFR) so that makes two parallel rules that they deal with and they want to simplify their processes to fall back on the federal rule which is a rule that dictates the program. They also want to fall back on the federal rule for conflict of interest issues.

**Senator Goedde** asked if the Department raises the cap from \$10,000 to \$30,000, will that limit the number of jobs that would be able to be funded by this program? **Mr. Porter** answered they limit the amount of money

they will provide for job creation to \$500,000. This increase in per new hire funding would allow a company to have funds of \$300,000 for improvements if they hired 10 individuals verses \$100,000 from the old dollar amount.

**MOTION:** **Senator Lodge** moved to approve Docket No. 28-0201-0901. The motion was seconded by **Senator LeFavor**. The motion carried by **Voice Vote**.

**Vice Chairman Coiner** recognized **David Curtis P.E., Executive Director, Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors**, to present Pending Rules Dockets 10-0101-0901 and 10-0102-0901.

**10-0101-0901**

**Mr. Curtis** said the Board negotiated rulemaking on this docket in preparation for the conversion of the license and interpretation exam to a computer based format rather than the current paper and pencil. The proposed changes would provide in a number of places flexibility for the Board to accept an examination offered at different frequencies, duration and organization or test type than the current examination. The proposed changes make technical corrections and removes obsolete language to clarify that an individual must first be licensed as a professional engineer. In Idaho a professional engineer must be qualified in a base discipline before taking the examination to become a professional engineer or a special qualified instructional engineer. The docket has been modified to indicate that the examinations are no longer administered directly by the Board or its staff, but by a third party vendor. Finally, language has been added to declare the Boards right to pursue disciplinary action.

**Senator Stegner** asked could you clarify the examination dates which have been struck out for an annual or a semi-annual exam at an exact timely place. The Board then inserts language of times and places to be chosen by the Board and special examinations during the year as necessary. One of the reasons we have rules is so individuals know what the parameters are for an entity. The Board has removed any reference to an annual examination and are asking to let the Board make determination on examination periods when they are compelled. How will the Board satisfy the intent of the original rule by providing examinations on a predicable basis for individuals to apply and take the examination in a timely manner? **Mr. Curtis** noted that they are one of the last professions that still use a paper and a pencil examination. There are limitations associated with this type of an examination and they currently only give the examination twice a year. The National Counsel of Examiners for Engineering and Surveying will be converting to computerized tests. When they do that the Board will be able to offer testing more frequently than annually and semi-annually. These examinations will be administered by a third party vendor and applicants will register to take the examination during a window and with the current language that mandates annual or semi-annual examinations it would preclude the Board and they would be in violation of the rule if they were to use an examination that was offered four times a year.

**Senator Goedde** had concerns about the duration of the examination. How can an examination time-frame be 16 hours and what happens to the person who finishes the examination before that time is up. **Mr. Curtis** responded if the individual finishes, for example, the four hour morning session he is free to leave the testing area. The length of the examination should be determined in psychometrical principals conducted for professional activities knowledge study to determine what the competency areas are and then determine what is minimum competency. How many questions would be necessary in order to establish minimum competency. By converting to the computer based testing to redo the professional activities college studies and prepare psychometrical defensible duration.

**MOTION:** **Senator Lodge** moved to approve Docket No. 01-0101-0901. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**.

**10-0102-0901** **Mr. Curtis** advised that this rule has to do with professional responsibility of the Board. It clarifies the definitions of deceit, incompetence and misconduct. Also clearly defines obligations of engineers and land surveyors in reports, statements or testimony and communication with clients. It makes technical corrections in spelling and grammar.

**MOTION:** **Senator Goedde** moved to approve Docket No. 10-0102-0901. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

**Vice Chairman Coiner** recognized **Shad Priest, Deputy Director, Department of Insurance**, to present Pending Rules Dockets 18-0113-0901, 18-0153-0901, 18-0154-0901, and 18-0155-0901.

**18-0113-0901** **Mr. Priest** stated life settlement transactions involve an individual who has a life insurance policy, sells the beneficial interest in that policy to a third party investor who has no other relationship to this individual. These settlements are done by the elderly or individuals who have a very serious illness and do not expect to live a long time. This has become a booming market in recent years and there are some large companies that are soliciting these types of policies for securitizing them. Last year legislation was adopted that regulates these types of transactions. These are complex transactions and they involve the individual who owns the life settlement policy, a life settlement broker, life settlement provider which would purchase the policy and then the investor. The rule's main objective was to prevent Stranger Originator Life Insurance (STOLI) transactions. Elderly individuals were being solicited by the life settlement providers to go out and purchase an insurance policy and then turn around and sell the policy to a STOLI provider.

The rule defines some key terms that are used in statute. It sets forth standards to follow for registering life settlement brokers and providers. The law requires that life settlement brokers and providers first be licensed to transact life insurance in Idaho. The rule addresses the

format for filing the forms for these transactions, disclosure, language and it also sets out procedures for a policy owner to rescind a life settlement transaction. If the policy is sold within two years after purchase, there are certain exit documentation that the life settlement provider will have to produce to show that they have met the criteria for selling the policy before the two year period.

**Senator Cameron** asked if there is any notification for the existing carrier that his policy may be sold to an entity providing life settlement services. **Mr. Priest** clarified that the law requires them to notify the carrier of the policy.

**MOTION:** **Senator LeFavor** moved to approve Docket No. 18-0113-0901. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

**18-0153-0901** **Mr. Priest** advised that this rule is an amendment to a rule that governs the continuing education that is required of insurance agents and brokers. They must accumulate 24 hours of continuing education credits every two years. Class requirements are listed in the rule. Public adjusters must be licensed and continuing education requirements. On-line courses for continuing education have been reviewed and listed as appropriate and their education hours available on-line.

**Senator Cameron** asked for clarification about the last two points of the rule. The committee feels that an individual could attend a CEC course in person and get 8 hours worth of credit, but if they go on-line they want to make sure that they take an exam to indicate that they are able to go back and access the materials to pass the exam. **Mr. Priest** responded that if the individual takes an on-line exam, you would not be able to go back and access the course specifically. There are no requirements for a person attending a CEC course in-person to take an exam. Jim Genetti answered when you go to a classroom course they anticipate that the class director monitor that you are paying attention. If you are taking a course on-line there is no one monitoring your attentiveness to the course presentation testing. At the end of the on-line course is the verification that you understand the material.

**MOTION:** **Senator Goedde** moved to approve Docket No. 18-0153-0901. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

**18-0154-0901** **Mr. Priest** stated this rule implements a model rulemaking done by the National Associations of Insurance Commissioners who govern Medicare supplement policies. Three federal law changes that effect these rule changes: 1) Medicare Improvements for Patience and Providers Act; 2) Medicare Prescription Drug Improvement Modernization Act; and 3) Genetic Information Law. Also transition from the old Medicare supplement policies to the new policies. Another big change is non-discrimination of the State Information Law for Genetic Information.

**MOTION:** **Senator Cameron** moved to approve Docket No. 18-0154-0901. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**.

**18-0155-0901** **Mr. Priest** said this is a repeal of an existing rule and this repeal comes about because of changes made in the law last year for day care facilities. The Fire Marshall will no longer have rulemaking authority for these facilities. The Department of Health and Welfare will handle the fire safety standards for day cares.

**MOTION:** **Senator Goedde** moved to approve Docket No. 18-0155-0901. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

**Vice Chairman Coiner** recognized **Scott McDougall, Benefits Manager, Industrial Commission**, to present Pending Rules Dockets 17-0208-0902 and **Patti Vaughn, Medical Fee Schedule Analyst**, presenting 17-0208-0903.

**17-0208-0902** **Mr. McDougall** stated the Commission is asking for a change in the information they receive from client's counsel in regard to lump sum settlements. The information would be required in the Attorney Fee Memorandum that is currently submitted with every lump sum settlement. The Commission needs the full disclosure of the information to make a determination as to whether the settlement is in the best interest of all parties.

**MOTION:** **Senator Smyser** moved to approve Docket No. 17-0208-0902. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**.

**17-0208-0903** **Ms. Vaugh** said this fee schedule for physician reimbursement for services related to the treatment of Idaho's injured workers. Section 72-803, *Idaho Code*, requires fees for physician services to be based on the Resource Based Relative Value System (RBRVS) reimbursement method used by Medicare and various other payers. Furthermore, the fees are to be adjusted each year using the same update method used by the Department of Health and Welfare as set forth in Section 56-136, *Idaho Code*.

Approval of this rule will ensure that the conversion factors in effect by temporary rule since July 1, 2008, will remain in effect until such time that an annual adjustment is approved, there will be no annual increase for 2010.

The Commission has been communicating with the family physicians regarding the disparity in the conversion factors . A possible solution may be a phased approach toward a reduction in the number of conversion factors.

**Senator Goedde** asked what the additional load of employers were when these increased rates were adopted. Is there a way to find that number? **Ms. Vaugh** answered that at present they do not have that information but



could look at this if they could access some data. **Senator Goedde** stated he had sat in on a negotiated rule at the end of session when family physicians addressed the Industrial Commission with their concerns about the disparity in pay ranges between themselves and specialty practices. This disparity strongly favors young people going into the specialty field because of the financial incentive. The original RBRVS was based on a single conversion factor and then measured the relative value of each one of the services. You can see by these factors before you that some fees have been artificially inflated and in some to a point that they are out of hand. The Family Physician codes are meager compared to some of the other procedures.

**MOTION:** **Senator Goedde** moved to approve Docket No. 17-0208-0903. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

**Vice Chairman Coiner** recognized **Bob Fick, Communication Manager, Department of Labor**, to present Pending Rules Dockets 09-0130-0901, 09-0130-0902, 09-0135-0901, 09-0135-0902 and 09-0301-0901.

**09-0130-0901** **Mr. Fick** advised that this rule clarifies that the designation of benefits of a deceased claimant will become property of the estate. Currently the rule authorizes the payment of these benefits to the administrator of the estate. There has been some misunderstanding on occasion in the past about the term "personnel representative" when neighbors and other individuals deem themselves as the administrator or representative and have asked to have these benefits signed over to them.

**MOTION:** **Senator LeFavor** moved to approve Docket No. 09-0130-0901. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

**09-0130-0902** **Mr. Fick** said this rule brings the Department into conformance with the Unemployment Insurance Modernization Bill which was passed last year. The Bill extended benefits to laid-off part-time workers who want to continue to just seek part-time work.

**MOTION;** **Chairman Andreason** moved to approve Docket No. 09-0130-0902. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**09-0135-0901** **Mr. Fick** said this change does not change the rule, it changes how it is set out in the rules themselves. It is a test to determine whether lodging can be calculated as part of an employee's gross income as wages.

**MOTION:** **Senator Malepeai** moved to approve Docket No. 09-0135-0901. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**09-0135-0902** **Mr. Fick** stated this rule clarifies the purpose of Unemployment Insurance Tax that the tax is due only on wages that are actually paid in a quarter not wages that were earned in a quarter. This is different than the calculation for wages for benefit eligibility, in that case wages that are

earned are used for the benefit eligibility. In this case the wages have to be paid to become taxable.

**MOTION:** **Senator Lodge** moved to approve Docket No. 09-0135-0902. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**.

**09-0301-0901** **Mr. Fick** advised that this repeals the rules that were put in place for the operation of the Rural Broadband Development Matching Fund Program that was authorized by the Legislature in 2007 in the amount of \$5 million to fund and administer the program. The money from that fund has been dispersed in the State in 2008. There was \$100,000 left in the fund and it has been returned to the General Fund. This concludes the program.

**MOTION:** **Senator Cameron** moved to approve Docket No. 09-0301-0901. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**.

**MOTION:** **Senator Smyser** moved to approved the minutes of January 14, 2010. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

**ADJOURNED:** There being no further business, the meeting adjourned at 2:46 p.m.

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** January 26, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:** Senator Lodge

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

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

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

**MINUTES:** **Vice Chairman Coiner** recognized **Shad Priest, Deputy Director, Department of Insurance**, to present Temp Rules Docket 18-0105-0901 and Fee Rules Dockets 18-0144-0901 and 18-0144-902.

**DOCKET NO.**

**18-0105-0901** **Mr. Priest** advised this rule implements the 2009 Health Carrier External Review Act which took effect January 1, 2010. This legislation was passed last year in order to give the right to individuals who have had a health claim denied by their carrier to have that denial reviewed. The denial will be reviewed by an independent review organization selected by the Department of Insurance. The denials that fall within this right are: denials based on a claim being designated experimental, investigational or the treatment deemed medically unnecessary. This rule implements this law and can be categorized in three sections: 1) We have standardized disclosures and notices for health insurers to use when they send notices. 2) Establishes an application process for external review organizations that want to handle external reviews in Idaho. 3) It requires annual reports for the independent review organization and health carriers regarding the independent review process. These reports will allow the Department to track how many of these reviews are filed each year in the State and how they are mitigated. The Department has kept this rule as a temporary rule this year because it is a brand new process and there may be issues that come up that need to be addressed in rule next year.

**Senator LeFavour** said the font size on Page 5 and 8 is 10-point font, would you consider a bigger font to make it easier to read? **Mr. Priest** responded that they were not considering changing the font size in the

rule.

**MOTION:** **Senator Goedde** moved to approve Docket No. 18-0105-0901. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**. **Senator LeFavour** requested that she be recorded as voting **nay**.

**18-0144-0901** **Mr. Priest** stated this is a new fee for the Department that arose out of the Life Settlements Law that was passed last year. Life settlement brokers represent the individual who wants to sell their life insurance policy. Life settlement providers are the entities that purchase these life settlements and then sell them to investors. Under this law the Director is authorized to impose fees on both these entities. The life settlement broker will pay a registration fee of \$300 and then an \$80 fee every two years to maintain their registration. Life settlement providers will pay a registration fee of \$500 with a \$300 renewal fee every two years.

**MOTION:** **Senator Stegner** moved to approve Docket No. 18-0144-0901. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**18-0144-0902** **Mr. Priest** said this is also a new fee that authorizes the Director to adopt a fee in respect to independent review organizations that want to register to hear Health Care External Reviews in Idaho. The fee has been set for \$500 and a bi-annual renewal fee of \$300.

**MOTION:** **Senator Goedde** moved to approve Docket No. 18-0144-0902. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

**Vice Chairman Coiner** recognized **Jeanne Jackson-Heim, Executive Director, Idaho Real Estate Commission**, to present Pending Rules Dockets 33-0101-0901, 33-0101-0902, 33-0102-0901 and Fee Rules Docket 33-0103-0901.

**33-0101-0901** **Ms. Jackson-Heim** said Section 54-2018 of the Commission's license law states the Commission may accept a late license renewal application "subject to such conditions as the Commission may require." This new rule would spell out those conditions and sets forth the practice the Commission has followed for many years. Right now, we are handling late renewals with staff mailing the required paperwork to the licensee after the license is reviewed. Sometimes they don't respond, and we have to nag them to return the paperwork. This is not a good use of staff time and we want to be more efficient. This rule would let us collect the late renewal paperwork at the same time the license is renewed. Since most of our licensees now are renewing online, we can also automate the process for further cost savings. We think the rule will help clarify our process for our licensees, and hopefully it will even cut down on the number of late renewals.

**MOTION:** **Chairman Andreason** moved to approve Docket No. 33-0101-0901. The motion was seconded by **Senator Malepeai**. The motion carried by **Voice Vote**.

**33-0101-0902** **Ms. Jackson-Heim** said real estate licensees on active status are required to maintain errors and omissions insurance. This pending rule would add an affirmative statement that a late renewal of the required insurance is considered a failure to maintain insurance. Again, this is not something new, but we want to make sure it is spelled out in plain language so there is no confusion.

**MOTION:** **Senator Stegner** moved to approve Docket No. 33-0101-0902. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

**33-0102-0901** **Ms. Jackson-Heim** stated the Commission has quite a few licensees who live in border areas or out of state. When a licensee has a disciplinary action, and his regular attorney is not admitted in Idaho, this rule would provide a mechanism for the out-of-state attorney to represent the licensee before the Commission on a one-time basis. The process would be handled through the State Bar Association's established procedures for out-of-state attorneys.

**MOTION:** **Senator Malepeai** moved to approve Docket No. 33-0102-0901. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

**33-0103-0901** **Ms. Jackson-Heim** said in addition to the real estate license law, the Real Estate Commission also administers the 1972 Subdivided Lands Disposition Act. The Act requires sellers of timeshare products and out-of-state subdivision lots to register their products with the Real Estate Commission before those products can be marketed to Idaho residents. The vast majority of the filings we get are timeshare offerings for out-of-state resort areas. Most states require this type of registration, and the registrations are often quite voluminous, sometime filling one or more file boxes. When these registrations are sent to us, we are required to keep the records for a number of years, and they take up a lot of space in our office.

We belong to a group called ARELLO, the Association of Real Estate License Law Officials. Its members are real estate regulators in the United States, Canada, and other foreign countries. In a joint effort with the time share industry, ARELLO created an online Time Share Registry that allows timeshare sellers to upload their registration filings electronically one time, rather than making multiple copies of each filing and sending a copy to each jurisdiction. The Commission participates in the Registry, and we can access documents and approve a registration online.

We have a companion piece of legislation, Senate Bill 1251, which makes updates to the Subdivided Lands Act. One of the changes would increase the maximum filing fee for a timeshare registration. The fee rule before you today would then allow a 25% discount in the filing fee as an incentive for using the Time Share Registry.

**MOTION:** **Senator Cameron** moved to approve Docket No. 33-0103-0901. The motion was seconded by **Senator Stegner**. The motion carried by **Voice**

**Vote.**

**Vice Chairman Coiner** recognized **Scott McDougall**, **Benefits Manager, Industrial Commission**, to present Pending Rules Docket 17-0203-0901.

**17-0203-0901**

**Mr. McDougall** advised that there are six specific changes that the Commission is addressing in this rule change. 1) Requires self-insured employers to maintain licensed resident claims adjuster. Insurance companies that are domiciled in Idaho and have their own claims adjusters those adjusters do not have to be licensed. Insurance companies from out of state contract with a TBA and they adjust both sides. Those adjusters, who are not employees of the insurance company must be licensed by the Department of Insurance. Self insured employers are able to designate any employee to adjust those claims. This rule change is to insure in the future any self insured must have a licensed adjuster. 2) Medical reports are often mailed out-of-state for scanning and for medical review purposes. The proposed change would be that any report received by the adjusting office needs to be date stamped when it is received at any office authorized by the adjusting office. 3) Sureties, upon approval, designated one in-state adjuster to service their claims. Sureties usually have more than one adjuster or later assign additional adjusters and often change adjusters for certain employers without the changes being reported to the Commission. This creates a problem of identification of the correct adjuster for the claimant and the Commission. This change in the rule would require prompt and accurate reporting of each adjuster for each policyholder of the surety.

**Larry James** advised that the change in item 4) concerning rules providing for the custody by banks of certain securities specifically addresses a request by Argonaut Insurance Company which is no longer in business in Idaho. The Commission is removing this section of the rule. 5) **Don Robbins, Financial Officer, Industrial Commission**, In Section 72-327, *Idaho Code*, the State Insurance Fund, mandates that every authorized self-insurer, and every surety authorized to transact workers' compensation insurance in Idaho shall report annually to the Industrial Commission the total gross amount of indemnity benefits paid on Idaho workers' compensation claims during the applicable reporting period. 6) Is just housekeeping and removing obsolete language.

**Senator Cameron** asked why bring these changes in rule format rather than statute? **Mr. McDougall** responded that it is addressed in the rule "third party adjusters must be licensed" but it does not address licensees for self insured. **Senator Cameron** inquired do you believe the statute gives you the authority to issue this type of rule. **Mr. McDougall** said yes and the Industrial Commission had to go back to the statute that controls this rule, but he could not name the specific paragraphs out of that statute that allows the authority.

**MOTION:**

**Senator Smyser** moved to approve Docket No. 17-0203-0901. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Senator Cameron** requested that he be recorded as voting **nay**.

**Vice Chairman Coiner** recognized **Steve Keys, Deputy Administrator, Department of Building Safety**, to present Pending Rules Dockets 17-0801-0901, 17-0802-0901, 17-0803-0901, 17-0805-0901, 17-0808-0901, 17-0809-0901, 17-0810-0901 and 17-0816-0901.

**17-0801-0901**

**Mr. Keys** stated he has the pleasure today to present eight administrative rule dockets reflecting technical changes to the Idaho Minimum Safety Standards and Practices for Logging. This program functions primarily as a consultative endeavor, with enforcement actions being the last resort. The Logging Safety program has been a model State program in that, since its inception, the accident rate and workmen's compensation insurance rates for loggers have decreased substantially. Also, in its investigations of logging industry accidents in Idaho, OSHA routinely refers to the Idaho Minimum Standards in lieu of its own assorted standards. The logging industry is very vocal in support of this program, and is especially supportive of these safety standards that are written by loggers for loggers. The changes in the Idaho Minimum Safety Standards and Practices for Logging have been widely vetted with industry participants over the past couple of years, with the resulting changes reflected in the dockets you are reviewing today.

**Mr. Keys** characterized these individual dockets as very closely related, and technical in nature; he is prepared to navigate through each of the changes individually, but will defer to the Committee, as to how you wish to proceed. This is the book that contains these standards and this book is distributed widely to logging contractors and loggers throughout the State of Idaho. It was last updated in July of 1997. Over the course of the last few years, the logging industry has gone through the entire book and updated in these dockets to reflect current practices and changes that have occurred in the industry.

**Senator Goedde** asked for explanation as to why the Deputy of Department of Building Safety is presenting an Industrial Commission rule? **Mr. Keys** explained the rules are promulgated under the authority of the Industrial Commission and there is an agreement of understanding between the Industrial Commission and the Department of Building Safety. The Division of Building Safety does the field work relating to the enforcement of these rules.

**MOTION:**

**Chairman Andreason** moved to approve Docket Nos. 17-0801-0901, 17-0802-0901, 17-0803-0901, 17-0805-0901, 17-0808-0901, 17-0809-0901, 17-0810-0901 and 17-0816-0901. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

**Vice Chairman Coiner** recognized **Teresa Luna, Chief of Staff, Department of Administration**, to present Pending Rule Docket 38-0301-0901.

**38-0301-0901**

**Ms. Luna** stated as a result of **HB173**, that was passed in 2009, the Department of Administration was directed to promulgate rules for determining eligibility of active personnel, retired personnel, dependence of such active and retired personnel for participation in any group plan. The proposed rule sets eligibility for participation in the State's Group

Insurance Program and eligibility for procedures for reimbursing a Medicare eligible retiree or their Medicare eligible dependent spouse for expenses in excess of \$2,000 once they have reached the Medicare Part D Coverage Gap. The proposed rule regarding eligibility for participation in the Group Insurance Plan places definitions from the current group insurance contract into rule. The definitions cover active and retired employees and their dependents, effective and termination dates of coverage, dates of hire and Medicare eligibility. A new definition has been added for the monthly retiree subsidy of \$155 to report the amended to 67-5761 and a definition of the Part D Medicare Coverage Gap. The definition of eligible active employee includes a change in hours and months that an employee must work to be eligible for group insurance. This definition will require an employee work 20 hours or more each week and have an expected term of employment exceeding five consecutive months, instead of any five months in a calendar year; which is consistent with PERSI's eligibility rule. The rules presented in Section 040 are a result of a compromise reached last year while working to pass **HB173**. These rules outline provision for reimbursing expenses in excess of \$2,000 out-of-pocket for those retirees falling into the Medicare Part D Coverage Gap. It provides definition of who is eligible for reimbursement and all participants will need to submit with their petition a reimbursement request. It also outlines filing deadlines and the appeals process for any claims that might be denied. Those appeals will ultimately be reviewed by the group insurance in a group committee that will make the final decision on the claim for reimbursement. Funding for up to \$8,000 for this rule has been set aside from group insurance reserve and this rule will be in place for two years.

**Chairman Andreason** said you stated some pretty healthy savings, could you tell the Committee where you will acquire these savings?

**Ms. Luna** said the Department made a change from the State's Prescription Drug Plan into an ordinary plan which saved us \$400,000 per year in the cost of the contract. **Chairman Andreason** said you just quoted a savings, but where does it come from? **Ms. Luna** answered the savings is a compilation of a few different things that group insurance chose. Part of the savings came from the retiree legislation. The State is no longer paying that part of the retiree program for those who have moved onto Medicare so there is that savings to the State, and there are savings in the contract of moving to a formulary plan. The part-time employees eligibility change will save \$2.7 million this year and an estimated savings of \$5 million next year. **Chairman Andreason** stated for clarification does that mean the savings come from the retirees and part-time workers? **Ms. Luna** said the part-time employees are now paying a higher premium based on the hours they work; this costs the State less. They have moved the retirees that are now Medicare eligible off of the State's plan and onto a private plan so the State is no longer obligated to pay the \$155 benefit. These are savings to the State and incurred by the part-timers and by the retirees. **Chairman Andreason** asked if there were any employees unable to receive insurance under these new rules? **Ms. Luna** responded that they have not denied access to the plan for anyone based on these rules.



**Senator LeFavour** asked what is the increase in the premium to a part-time worker. **Ms. Luna** stated total coverage for employee, spouse and children for an employee working full-time or more than 36 hours per week, the PPO Plan would pay \$103 for their premium. For an employee working 28-35.9 hours per week covering a family that premium would be \$244. An employee working 20 to 27.9 hours covering a family that premium is \$385. **Senator LeFavour** asked how long has this been in place and have you seen employees unable to afford the premium? **Ms. Luna** advised this premium adjustment went into effect November 2009 and the Department has seen an increase of about 3% of our part-time employees that have declined coverage. **Senator LeFavour** asked have you calculated in your savings, which is approximately \$150,000 savings for the Department, the increased costs to the indigent fund by the loss of this insurance. The Department may have negligible or negative savings by adopting this policy. **Ms. Luna** replied they had not made those calculations.

**Senator Goedde** asked would you expect every part-time worker that declines the insurance to then be qualified for indigent care? **Ms. Luna** responded that she did not have an answer to this question. **Senator Goedde** stated he did not see anything in the rule that talks about a waiting period for eligible state employees, is there a specific time? **Ms. Luna** replied that an employee coming onto the plan is eligible for the plan on the first day of the month following their hire. **Senator Goedde** inquired if the Department had looked at a potential savings for a 60 day wait to be eligible for the insurance plan. **Ms. Luna** said not that she is aware of, but she would be happy to look into that savings.

**Senator Cameron** asked **Ms. Luna** to point to the exact section that addresses the change in part-time employees in this rule? **Ms. Luna** said these rules do not deal with part-time eligibility in any way. These rules specifically address the change from a five month inside a calendar year to five consecutive months. The change only deals with adding the retirees subsidy of \$155 and the prescription drug program. **Senator Cameron** stated in the opening description of the rule and the fiscal impact of the rule the last sentence states "plus the pro-rata contribution changes for part-time employees, effective November 2009, where is that in this rule? **Ms. Luna** asked to yield to **Cynthia Ness** with the **Department of Administration** who advised that the biggest change in the fiscal impact statement is working the five consecutive months to be eligible for benefits and more than 20-hours per month that creates the \$150,000 savings. The rest of the savings that are included in the impact statement are a wrap-up of the savings to the State as a result of other changes that are not related to this rule. **Senator Cameron** asked will there be a rule to address the part-time employee issue and, if so, where is that rule? **Ms. Luna** responded that there will not be a rule presented to deal with the changes with the part-time employees. **Senator Cameron** said can you spell out the guidelines for how the Department will determine which issues they will promulgate a rule on and which issues they will not? **Ms. Luna** stated we were directed last year, as a result of **HB173**, to promulgate rules determining eligibility, retired personnel and dependents and their participation in the plan. The part-

time changes do not address eligibility at all. They address the percentage that an employee pays based on how many hours they work. Part-time employees are still eligible based on the five calendar months of estimated employment, but there have been no changes to eligibility made for employees. **Senator Cameron** stated it is a change in methodology as to how the Department is administering the plan and how they are charging the employees whether they be part-time or not. Why would these changes not be addressed either in rule or a statutory change. **Ms. Luna** stated that in statute it gives the Director of the Department of Administration the authority to negotiate changes to the group insurance plan.

**Senator Malepeai** asked how many part-time employees will be effected by this change? **Ms. Luna** said it depends on the time of year that part-time employees are counted because they have so many seasonal employees. An average number to use would be 2500.

**MOTION:**

**Chairman Andreason** moved to hold in Committee Docket No. 38-0301-0901. The motion was seconded by **Senator LeFavour**. The motion carried by **Voice Vote**.

**Ms. Luna** advised that she did not want to confuse the issue concerning the Committee's questions about the part-time employees. Understand that they are separate and apart from these rules that we are presenting here today. The only eligibility rule in these rules is simply changing the requirement from five calendar months of employment to five consecutive months of employment. This rule addresses the retirees movement from the State Insurance Plan to the Medicare Plan with a \$2,000 reimbursement which is part of the compromise that the Department made with the retirees last year. This rule has nothing to do with part-timers. **Ms. Luna** would be happy to come back and discuss this issue with the Committee at length.

**Senator Stegner** stated **Ms. Luna** you placed the part-time employees in your rule under the fiscal note. The Committee is just responding to this note. There is some question concerning the authority of the Director to make this unilateral decision without bringing it through the rule process for review by the Legislature. When will the Committee have an opportunity to discuss this change with you other than right now. **Senator Stegner** asked for the very specific statutory authority that the Department is basing this determination on and if you do not have this information, he is prepared to hold this rule until you come back and present the information. This is pertinent to our decision making process concerning this rule. **Ms. Luna** stated she would like to separate the two issues. **Senator Stegner** responded that by holding this rule we invite you to come back before this Committee and present the statutory authority assigned to the Director in this particular case. **Senator Stegner** said the Director having the unilateral authority to change the State Plan without Legislative input he finds troubling and would like some explanation of that authority.

**ADJOURNED:**

There being no further business, the meeting adjourned at 2:47 p.m.

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** January 28, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:** Senator LeFavour

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

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:40 p.m.

**MINUTES:** **Vice Chairman Coiner** recognized **Roger Hale, General Counsel, Bureau of Occupational Licenses**, to present Pending Rules Dockets 24-0101-0901, 24-0401-0901, 24-0701-0801, 24-0701-0901, 24-0801-0901, Temp Rules Dockets 24-0101-0902 and 24-2501-0901 and Fee Rules Dockets 24-1801-0901 and 24-2201-0901.

**DOCKET NO.**

**24-0101-0901** **Mr. Hale** stated the Board of Architectural Examiners is updating an incorporation by reference the latest version the National Council of Architectural Registration Boards (NCARB) Handbook for Interns and Architects. Second, they are revising their contact information and website.

**MOTION:** **Senator Smyser** moved to approve Docket No. 24-0101-0901. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**.

**24-0401-0901** **Mr. Hale** advised the 2009 Legislature passed S1073, which added "practice " to Section 54-827, *Idaho Code*. This allows the Board of Cosmetology to issue permits to practice, demonstrate or teach cosmetology. It also allows the Board to designate an agent and establish requirements for a permit.

**MOTION:** **Senator Lodge** moved to approve Docket No. 24-0401-0901. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

**24-0701-0801** **Mr. Hale** said the Legislature approved a change to Section 004 for the CLARB model rules of professional conduct as amended February 2007. Subsection 425.01 was not updated at that time and has created a conflict of requirements. This change will protect public safety by removing the ambiguity and specifying the appropriate code of

professional conduct.

**Senator Goedde** moved to approve Docket No. 24-0701-0801. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**.

**24-0701-0901** **Mr. Hale** stated this rule changes the contact information of the Board of Landscape Architects. Additionally, the Board is trying to clarify the four references needed to be licensed in Idaho. Two of the references must be licensed landscape architects, not necessarily from Idaho. The other two references could be acquired from licensed architects or engineers.

**MOTION:** **Senator Smyser** moved to approve Docket No. 24-0701-0901. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

**24-0801-0901** **Mr. Hale** explained that for the first time the Board of Morticians is adopting continuing education requirements. The Mortician Association made this request to the Board.

**Senator Goedde** asked would there be any problem with the availability of the course work to acquire the hours needed? **Mr. Hale** responded he did not believe there would be any problem since they had been working close with the Association regarding the requirements. **Senator Goedde** asked are their similar requirements in other states and are there any on-line opportunities to pick-up the education hours.? **Mr. Hale** stated he did not know what other states required but there are on-line opportunities to acquire the course hours if the course has a test to verify completion.

**Senator Cameron** stated that most continuing education requirements are generally focus on the improvement of that particular profession. The Morticians continuing education requirements may be taken in Business Management, Social Science, and Public Health and Technical to name a few. **Mr. Hale** responded that there is language in Section 03 speaking to the education that must be germane to the license held. The two types of licensees the Board deals with is the funeral director who has a lot of contact with the family so Social Science would be very applicable. The mortician is the broadest license and can do the embalming and funeral director duties.

**MOTION:** **Chairman Andreason** moved to approve Docket No. 24-0801-0901. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**24-0101-0902** **Mr. Hale** said the reason this rule is temporary is it is putting into effect a piece of legislation **H92** that was passed last year. **H92** allows an individual who has the appropriate education and has entered the internship program to begin the Architectural Registration Examination testing process. This national exam has multiple parts and it takes an architect considerable time to get through the exam. This will benefit the applicants by allowing them to start the process earlier.

**MOTION:** **Senator Smyser** moved to approve Docket No. 24-0101-0902. The motion was seconded by **Senator Malepeai**. The motion carried by

**Voice Vote.**

**24-2501-0901**

**Mr. Hale** advised that in 2009 the Legislature passed **S1133** which created the State Driving Businesses Licensure Board. This temporary rule went into effect with the law change. These rules are consistent with what licensure boards adopt. The rule has the standard sections contact information, changes in licensee information, definitions, organization of the board, and applications provision. The initial application fee is \$50, the instructor fee and renewal fee is \$50, the business license fee and renewal fee is \$500. The rule spells out the curriculum components for the instruction and the nature of the instruction and also includes the apprenticeship training and discipline.

**Senator Goedde** stated on Page 29, item 04a the insurance coverages that are suggested need to be changed from medical insurance to medical payments. This is a nomenclature for a particular line of coverage on an auto policy. In 04b the suggestion is that it is \$100,000 of property damage and liability, those words are reversed. On line 04c bodily injury and property damage appear again confusing the stipulation. This makes it unclear what kind of property damage and liability coverage is carried, is it \$100,000 or \$500,000. Insured motorist language has been left out of the rule. This rule is important to adopt on a temporary basis, but the insurance coverage language needs to be corrected. **Mr. Mike Lyles, Chairman of the Idaho Licenses Board**, said the terminology for the insurance portion of this rule was taken from the Department of Education rules and using their language. **Senator Goedde** advised that the Department of Education rules need to be corrected with the correct insurance language.

**MOTION:**

**Senator Goedde** moved to approve Docket No. 24-2501-0901. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

**24-1801-0901**

**Mr. Hale** stated this rule has been changed to reflect certain federal requirements that govern the Real Estate Appraiser Board. The Board has updated the Uniform Appraisal Practice and added information to their definitions, revising residential unit to include a kitchen and a bathroom. There is a license renewal increase of \$100 taking that fee from the \$250 to \$350. Finally, all the new education requirements have been added by the mandated federal changes.

**Mr. Hale** informed the Committee that the Real Estate Appraiser Board is currently \$31,000 in the red. The Board is proposing \$100 fee increase based upon 768 licensees which will generate \$76,000. The shortfall of funds was created by federal government which required that the Board audit the continuing education. Also compounding the shortfall was 210 complaints of misconduct by appraisers which had to go to a hearing before the Board. Other complaints that the Board has had to investigate have risen 20% with the downturn of the economy and failure of bank loans and mortgages.

**MOTION:**

**Senator Cameron** moved to approve Docket No. 24-1801-0901. The

motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**24-2201-0901**

**Mr. Hale** advised again we have a Board which is in a deficit balance of \$130,000 in the red. Keep in mind that this Board was established in 2005. This Board licenses liquid petroleum gas dealers and the facilities commercially that handle the gas. There are two classes of facilities: 1) Small facility such as gas station, grocery store, and rental stores; and 2) Large bulk facility that would possess 10,000 gallons or more of petroleum. The Board was instructed in the rule to go inspect all the petroleum facilities in the State to make sure they were complying with National Liquified Petroleum Gas Safety Board. There were numerous facilities around the State and some had to be inspected a number of times to make sure they became compliant. The Board will no longer inspect annually but will reinspect every three years, unless there has been an issue in the past. The Board is proposing to increase a number of their fees: Annual renewal license fee from \$50 to \$100; bulk storage facility license fee from \$200 to \$400; the dealer fee from \$50 to \$75; and the endorsement fee from \$50 to \$75. The Board believes that they will increase their dedicated funds by approximately \$33,000.

**MOTION:**

**Senator Malepeai** moved to approve Docket No. 24-2201-0901. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**Vice Chairman Coiner** recognized **Al Caine, Industrial Safety Program Manager, Division of Building Safety**, to present Pending Rules Dockets 17-0601-0901, 17-0602-0901, 17-0603-0901 and 17-0605-0901.

**17-0601-0901,  
17-0602-0901,  
17-0603-0901,  
17-0605-0901**

The five dockets that you have before you are proposals to repeal the current administrative rules related to boiler and pressure vessel inspections. These inspections are performed by insurance company employees that are commissioned in Idaho upon verification of their certification by the National Board of Boiler and Pressure Vessel Inspectors. This program, such as it is, is currently funded through the Industrial Commission by Worker's Compensation funds.

*Idaho Code*, Section 72-720 (which is the statutory basis for these rules) regulates the workplace safety of "equipment or machinery" remains unchanged and in effect. So, the current authority to address an unsafe condition of a boiler by statute would remain unchanged.

The repeal of these rules will eliminate an ineffective program, that is not self-funded, with no direct means of enforcement, and will have very little, if any negative impact on safety.

**MOTION:**

**Senator Stegner** moved to amend the agenda by adding rules docket no. 17-0604-0901. **Senator Stegner** moved that the amended agenda include consideration of rules docket no. 17-0604-0901. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**.

**MOTION:**

**Senator Goedde** moved to approve Docket No. 17-0601-0901, 17-0602-0901, 17-0603-0901, 17-0604-0901 and 17-0605-0901. The motion was

seconded by **Senator Malepeai**. The motion carried by **Voice Vote**.

**ADJOURNED:** There being no further business, the meeting adjourned at 2:40 p.m.

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary



MINUTES

**SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE**

**DATE:** February 4, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

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

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:37 p.m.

**MINUTES:** **Chairman Andreason** welcomed **Joy Fisher** gubernatorial appointment to the **Public Employees Retirement System of Idaho Board** to serve a term commencing August 13, 2009 and expiring July 1, 2014.

**Ms. Fisher** stated her primary responsibilities are the administration of the endowment foundation and other financial matters relating to this issue.

**Senator Cameron** inquired that as an employee of the University of Idaho, are you on the PERSI System? **Ms. Fisher** replied that she is on the PERSI System. **Senator Cameron** said some of the issues that the fund may be facing are potential raises in rates and the conflict in that issue plus the cost of living increases that are wanted/needed by the retirees, could you tell me your thoughts on these issues? **Ms. Fisher** understands what is involved in the actuarial calculations. Based on the performance of the fund as of June 30, 2009 it is very important for the trustees dialog with the employers, members and the retirees that they understand the need to keep the fund strong.

**RS19397** **Relating to Annuity Contracts**  
**RS19414** **Relating to Annuity Contracts**  
**RS19367** **Relating to the International Fire Code**  
**RS19406** **Relating to State Government and State Affairs**  
**RS19474** **Relating to Idaho Real Estate License Law**

**MOTION:** **Senator Cameron** moved that **RS19397, RS19414, RS19367, RS19406, and RS19474** be introduced to print. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

**Vice Chairman Coiner** recognized **Don Drum, Executive Director, Public Employees Retirement System of Idaho (PERSI)**, to present Pending Rules Dockets 59-0103-0901, 59-0105-0901, 59-0106-0902 and Temp Rules 59-0106-0901.

**DOCKET NO.  
59-0103-0901**

**Mr. Drum** advised that this rule adds an additional employee contribution rate of .04% of salary for public safety officers, which is required pursuant of Section 59-13452A, *Idaho Code*. Section 59-1353A, *Idaho Code*, was enacted in last years Legislative Session in S1111 to provide a one-time \$100,000 disability benefit for public safety officers injured in the line of duty. The benefit shall be funded by public safety officer contributions of .04%, which calculates to approximately \$20.00 per year.

**Senator Cameron** asked for clarification to the Committee of the \$100,000 disability benefit. The legislation benefits a peace officer who has a spouse, but if the peace officer is unmarried there is no benefit paid. **Mr. Drum** responded that indeed **Senator Cameron** is correct that a peace officer who is unmarried will not receive the \$100,000 benefit. **Senator Cameron** asked is the definition of an immediate family found in the act or is it a rules definition. **Mr. Drum** replied that the definition is found in the act. **Senator Cameron** stated that this was not the intention of what the Legislature passed, even though it might be what the law reads.

**MOTION:**

**Senator Cameron** stated that he would like to request unanimous consent to hold this rule so the Committee can decide how it should be addressed either through an adjustment in the rule or a statutory adjustment. The Legislature decided to pay the \$100,000 benefit for peace officers and there was no intention that the benefit would only be available if they were married or had children. **Vice Chairman Coiner** stated that without objection the rule will be held in Committee.

**59-0105-0901**

**Mr. Drum** stated this docket adds a new subsection to clarify the repayment of waiting period payments, which are subject to the same interest as repayment and separation benefits. This does not reflect a substantial change but a technical clarification of this rule. The clarification was needed because many long term staff of PERSI are leaving and this is the practice that has been in place for many years.

**MOTION:**

**Senator Lodge** moved to approve Docket No. 59-0105-0901. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**.

**59-0106-0902**

**Mr. Drum** explained that this docket makes a change related to unused sick leave fund. The main substantive part of this rule was to remove the reference group and insurance to describe the type of insurance sick leave dollars can be used to pay for benefits. This change is pursuant to changes made last Legislative Session in **HB173**, *Idaho Code*, Section 67-5333, in regards to retiree health insurance. The docket also removes the obligation of PERSI to deduct health care premiums from retirement benefits once unused sick leave dollars are exhausted.

**MOTION:**

**Senator Cameron** moved to approve Docket No. 59-0106-0902. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**.

**59-0106-0901**

**Mr. Drum** said this docket will delay the scheduled increase of contribution rates paid by public schools to the unused sick leave fund.

The last actuarial valuation was done in 2008 and indicates that the current rates are adequate to fund the benefits provided. PERSI recommends that the rule be delayed. The next valuation will be done this summer and at that time the actuary was to suggest that they increase rates. PERSI will bring a rule back at a future Legislative Session.

**MOTION:** **Senator Cameron** moved to approve Docket No. 59-0106-0901. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

**07-0205-0901** **Vice Chairman Coiner** stated that problems have come up with this rule since the Committee passed it. **Senator Stegner** moved to reconsider Docket No. **07-0205-0901**. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Stegner** moved to reject Docket No. **07-0205-0901**. The motion was seconded by **Senator Goedde**. **Senator LeFavour** asked that it be clarified for the record that the originator of the docket has requested the withdrawal of the legislation. The motion carried by **Voice Vote**.

**Vice Chairman Coiner** recognized **Gavin Gee, Director, Department of Finance**, to present Pending Rules Docket 12-0110-0901.

**12-0110-0901** **Mr. Gee** advised that **Mike Larson, Finance Bureau Chief**, is the principal drafter of the Docket No. 12-0110-0901 which you see before you today. There is nothing in this docket in the Department's view that addresses the business of third party short sales services to homeowner. The Department amended these rules because in 2008 the US Congress passed the Secured and Fair Enforcement for Mortgage Licensing Act (SAFE) Act in response to the mortgage and sub-prime mortgage crises and subsequent mortgage meltdown. US Congress required the states to adopt at least the minimum standards of the Federal SAFE Act. In 2009 the Idaho Residential Mortgage Practices Act was amended to include model state language, which was approved by the US Department of Housing and Urban Developments (HUD) adopting standards of the SAFE Act into Idaho law. With the amended law in effect it was necessary to amend the rules under the act for consistency with the law.

In brief summary, the rules contain new language pertaining to continuing education requirements for loan originators. This function is handled, by law, through the Nationwide Mortgage Licensing System. The rules had language to ensure that individuals who were required to be licensed, but fail to do so, are held to the same standard as those who are licensed. This is consistent with language in the Idaho Residential Mortgages Practices Act. The rules add a definition of application under the law. The rules require certain disclosures by loan modification service providers and have limits on application and cancellation fees to help avoid abuse of consumers. This language interprets existing fee limitation language in the statute. Nothing in the rules addresses third party short sale services to homeowners. Short sale activities are handled in the Idaho Residential Mortgages Practices Act, not the rules.

Certain arguments have been made in opposition to the rules and **Mr.**

**Gee** touched on those briefly. These rules somehow conflict with statutes on rules administered by HUD. HUD has accessed the Idaho SAFE Act that was adopted in 2009 and has provided two comments on areas of these rules. After consideration by the Legislature, the Department is required to submit these rules to HUD for its review for compliance with the SAFE Act's standards. To date, there has been no determination by HUD that there is conflict between this pending rule and the Acts requirements. Changing the word implement to interpret in the scope section of the rule is conceived as a power grab by the Department of Finance. Adding the language "persons required license under the act" is also perceived as another power grab. The reason the language is necessary is to ensure the individual is covered by the law if they fail or refuse to get a license and that they are held to the same standard as those who are licensed.

**Senator Stegner** asked for clarification that the federal government in response to the housing, lending and financial crises required the passage by states of legislation that is now before this Committee in rule. **Mr. Gee** responded that this is correct, the federal government passed a law and in that law it mandates states to pass a law consistent with the federal law. To date, 49 states have passed this law. **Senator Stegner** said that when the federal government passes a mandate like this they have a significant stick or carrot that compels states to comply. **Mr. Larson** said Idaho had a law in place to license both individual and mortgage company loan originators. The carrot to the states was the federal government did not want to come in and preempt all of those states that had already been licensing the industry. The reason for licensing the industry was to regulate the mortgage industry. The stick was if a state did not pass a law, that was consistent with the federal law, then HUD, under federal law, would come in and initiate the law at the state level. Minimum licensing standards would be adopted by the states, enforced by the states and would have ongoing HUD oversight. Not only do they have to approve our law, but also the rules, and they review the Departments enforcement and administration of the law.

**Senator Goedde** asked **Mr. Gee** to explain to the Committee how the Department would address an individual that is involved in a license practice, but did not have a license. Would you still have oversight of their business dealings? **Mr. Gee** responded that they would still have jurisdiction under the rule and all the authority. The Department has only seven active investigations related to short sales activity. The Department has not taken the enforcement action against someone involved in a short sale. Short sale and related mortgage fraud is becoming more of a problem. The Department has taken a number of enforcement actions against mortgage modification scams, foreclosure rescue scams, and outright scams.

**Senator Stegner** requested a brief overview of the rule by **Mr. Larson**. **Mr. Larson, Finance Bureau Chief, Department of Finance**, advised that most of the rule consists of strike-outs in the continuing education requirements because those requirements have been changed to the

Federal SAFE Act minimum requirements for continuing education for license loan originators. The education is in Idaho Statutes SAFE Act and speaks specifically to continuing education. The rest of the changes are technical wording changes and **Mr. Larson** proceeded to point them out in the rule. Page 127, a change from implement to interpret, definition of application in relation to a residential mortgage loan or loan modification means a request for a residential mortgage loan or loan modification and any form or document representing such a request. Page 128 the definition of closing means a licensee or person required to be licensed under the Act. The Act speaks in terms of these licenses. Page 135 addresses deceptive advertising definitions of bait and switch advertising, struck out old language and moved to the Idaho Attorney General's definition. Page 136 includes loan modification confirmation imposing a requirement on individuals and licensee's that engage in loan modification services. Page 137 defines restrictions on fees.

In the Act there are restrictions on fees where the licensee is prohibited from charging up front fees except for application and cancellation fees. In the rule the Department does not specify a specific dollar amount, but specifies the application must include the actual costs incurred in the processing of that application. Cancellation fees may only be charged at the time a borrower requests a release from the service. A fee must be relevant to actual costs incurred by the licensee for services provided to the borrower up to their request for release from service.

**Shane Davila, Boise Business Owner**, spoke in opposition to the rule claiming it has generated much concern and confusion for him and other individuals in short sale transactions. **Mr. Davila** said he is a real estate investor who acquires property through the short sale process and will resell the property for a marginal profit, not a commission. He does not collect a fee to modify a loan or an application fee. He presents a purchase and sale contract with the price to purchase the property at a more adjusted, normalized value for the present market. The offer must be signed by the individual that owns the property and then forwarded to the bank. **Mr. Davila** explained that he and other colleagues have been contacted by the Department of Finance and have been told they must cease doing business. **Vice Chairman Coiner** stated that **Mr. Davila's** opposition stems more from the interpretation of the law and not the rule before the Committee. **Mr. Davila** responded that he does not fully understand the rules as they now exist and believes some of them are taken out of context.

The Committee held a lengthy question and answer session with **Mr. Davila** regarding his business process of investing in real estate and how his business practice might be effected more by the law than by the rule in front of the Committee. **Vice Chairman Coiner** inquired of **Mr. Larson** how **Mr. Davila's** business practices are regulated under the law? **Mr. Larson** advised that the foreclosure issue is a new piece of legislation to the Department. Mainly the Department is interested in the transaction where a third party steps between the distressed homeowner and the lender representing that they can help the homeowner with a way to get out of their mortgage loan. They represent the distressed homeowner by

asking them to sign over title or deed to their property and the third party says they will provide them a service. The service is that the third party will be representing the homeowner between them and their lender through a power of attorney or an authorization. The third party is trying to compromise an existing obligation between the homeowner and their lender. The third party action would be governed and enforced under the law not this rule. The Department is not against short sales. They play a very important and vital role when everything has been disclosed properly.

In closing comments of the questioning, **Senator Stegner** asked for clarity from **Mr. Davila** asking if he was a licensed individual dealing in foreclosure transactions? **Mr. Davila** advised that he is not licensed under the Department of Finance nor is he a licensed real estate agent. **Mr. Davila** said he is a professional home buyer and he has not had to be licensed in order to purchase homes. **Senator Stegner** stated that the law is not asking individuals who are buying homes to be licensed. The Department is asking individuals to license based on a specific representation they are making to homeowners about being able to modify the existing mortgage on a home.

**Vice Chairman Coiner** informed the audience that the Committee had run out of time for this rule review. This agenda item will be continued on Tuesday, February 9, 2010 agenda.

**MOTION:** **Senator Smyser** moved to approve the minutes of January 21, 2010. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

**MOTION:** **Senator LeFavour** moved to approve the minutes of January 19, 2010. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

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

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** February 9, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:** Senator Malepeai

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

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

**MINUTES:**

**GUBERNATORIAL APPOINTMENT:** **Chairman Andreason** asked the Committee if they wanted to interview **John T. Cowden** to be appointed to the Idaho Personnel Commission, since he is a reappointment? **Mr. Cowden** is also a snowbird and is out of the State at this time. **Senator Lodge** asked if the Committee would be willing to interview him in a conference call. **Chairman Andreason** stated that the conference call would be scheduled for the interview.

**GUBERNATORIAL APPOINTMENT:** **Chairman Andreason** announced that the Committee was ready to take action on the appointment of **Joy Fisher** to the Public Employee Retirement System of Idaho Board. **Ms. Fisher** had appeared at the February 4, 2010 Committee meeting and had been appointed to serve a term commencing July 1, 2009 and expiring July 1, 2015.

**MOTION:** **Senator Lodge** moved to send the gubernatorial appointment of **Joy Fisher** to the Public Employee Retirement System of Idaho Board to the floor with the recommendation that it be confirmed by the Senate. **Senator Smyser** seconded the motion. The motion passed by **Voice Vote**. **Senator Lodge** will be the sponsor of the candidate.

**RS19269** **Relating to Insurance Contracts**  
**Senator Hill** said this legislation before you is an insurance mandate. If we are going to avoid a national health care system, the insurance companies need to act more responsibly. When there are those few that choose not to, then we need to encourage them to act and that is what this legislation addresses. All insurance policies cover prosthetic devices for those patients who have lost a limb. There are a few insurance companies who refuse to pay for replacements or repairs to such devices. Their refusal for replacement or repairs can make the following example take place. Example: A ten year old child is in an accident and he lost his leg and is fitted with a prosthetic device. Now the child is 14 years old, he has grown eight inches in that four years. How well is the prosthetic

device serving him now? The insurance company informs the parents that they will not fix the prosthetic or replace the device. Their insurance policy states that a policyholder is allowed one prosthetic device per lifetime. The mandate legislation would require insurance companies to provide coverage for prosthetic, at least equal, to the coverage provided by Medicare. The Medicare requirements state "general payment shall be made for the replacement of prosthetic devices which are artificial limbs or for the replacement of any part of such devices, if an ordering physician determines that the provision of a replacement device or the replacement part of such a device is necessary." Because of any of the following: 1) a change in the physiological condition of the patient; 2) an irreparable change to the condition of the device or a part of the device; 3) the condition of the device or part of the device requires comparison of such repairs would be more than 60% of the cost of replacement device or as the case may be of the part being replaced."

**Senator Goedde** asked **Senator Hill** if he had a list of insurance companies that are declining to replace or repair the prosthetic devices. Are they ERISA companies or are the companies regulated by the Idaho Department of Insurance. **Senator Hill** replied that he was not aware which companies are not providing the prosthetic replacement. Blue Cross of Idaho covers this type of replacement and repairs. **Senator Goedde** stated that the State of Idaho does not have oversight of health plans that are offered through ERISA. **Senator Goedde** was reluctant to support an insurance mandate that might not correct the problem.

**Senator Cameron** stated his concern over any mandate bill no matter how important the legislation. **Senator Cameron** has two basic concerns: 1) ERISA plans are self-funded plans that are exempt from state regulation. The additional mandates placed on the industry will create more of an unlevel playing field between companies that are regulated by the State and those that cannot be regulated by the State. Therefore, driving up costs to those companies that are regulated and pushing individuals toward plans that are not regulated by the State. 2) It puts employers at a noncompetitive disadvantage if they are buying their coverage from a regulated insurance company versus one that is not regulated.

**Senator Cameron** said how was the fiscal impact amount calculated? **Senator Hill** responded that they used a study on an identical bill from New Jersey which had hired an actuarial company to inform them of the fiscal impact. This actuarial report for the New Jersey impact was found to be accurate and could be relied upon to supply the fiscal impact number for the legislation.

**Senator Cameron** commented that after discussing a proposed mandate with the industry very often they find out that the industry already provides the mandated item or they provide it satisfactorily enough that the Legislature ends up not having to pass a law. If companies provide the item already, it does not have the same actuarial effect to the premium.

**MOTION:**

**Senator Stegner** moved that **RS19269** be introduced to print. The



motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**S1323**

**Relating to Idaho Real Estate License Law**

**Jeanne Jackson-Heim, Executive Director, Idaho Real Estate Commission**, advised S1323 amends several sections of the license law pertaining to errors and omissions insurance, continuing education, new broker licenses and required disclosures of licensed status.

The first change starting on the bottom of page 1 relates to insurance coverage for our licensees. All real estate licensees with an active license are required to maintain errors and omissions insurance as a condition of licensure. The Commission makes a group insurance policy available, but equivalent independent coverage is also allowed, and about 25% of our licensees carry independent coverage. We receive electronic downloads from our group insurance carrier to let us know who has purchased the group insurance, but we do not get that same information from the independent carriers. We want to make sure all our licensees are maintaining the required insurance, and this provision would establish an audit procedure so we can require licensees with independent insurance coverage to provide us with proof of insurance.

The procedure would allow us to place a license on inactive status if a licensee does not provide us with proof of insurance within 30 days. This would ensure licensees do not continue to practice without the required insurance. We have the exact same process in place for verifying continuing education, and we have found it to work very well.

The next three changes have to do with licensee education requirements. On page 2, line 34, the Commission proposed adding a sentence to establish that a broker license can be a license upgrade, rather than a new license. An Idaho Sales Associate obtaining a broker license would keep the same license renewal date and have the same renewal period for continuing education requirements. The next change is a new section on page 5, line 29, that clarifies education credits used to reactivate an inactive license cannot be used a second time to also renew the license. The third change is on page 6, line 3, allowing the Commission Chair to excuse licensees early and still receive continuing education credit for attending a commission meeting.

The last education change deletes a section of our license law on page 6, line 47 that is in conflict with Title 67 regarding professional licenses for military personnel.

The last proposed change is to add a deadline for a licensee to make the required disclosure that he is buying or selling property for his own benefit. Presently, there is no deadline stated in the law, and we have had several instances where the disclosure was not made until the parties were at the closing table. The new language on page 7, line 17, would require the disclosure to be made at the time an offer is presented.

**Senator Goedde** said on page 6 the Commission Chairman could excuse a licensee after ten minutes of a four hour meeting and they still get credit

for continuing education as written. In continuing education in insurance they require 50 minutes for every 60 minutes. **Ms. Jackson-Heim** answered a licensee can get up to four hours of continuing education credit for attending a regular Commission meeting. The present law states that they must remain for the entire meeting in order to receive four hours of credit. If the meeting were to last eight hours, they would have to come back after lunch and stay for the whole meeting and only get four hours of credit. In most Commission meetings there is a lengthy period of time where the Commissioner's adjourn to executive session to discuss disciplinary matters, requests for special consideration for licensure, and felony exemption. The licensee would have to stay around for an hour or two until the Commission adjourns their executive session. The licensee gets up to four hours, if the meeting lasts two hours they excuse them up until the executive session time and give them the two hours of continuing education credit without having to stay and come back after lunch.

**MOTION:** **Senator Cameron** moved that **S1323** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Senator Cameron** will be the sponsor of the bill.

**S1248** **Ms. Jackson-Heim** advised this bill would make two changes to our licensing requirements. We are proposing a new section be added to *Idaho Code 54-2012*, starting on page 1, line 29 of the bill. Under the existing law, we have a process where our Commissioners can review applications for people who have ever had a felony conviction. This section would add the identical review process for applicants who have ever had a professional license permanently revoked for fraud, misrepresentation or dishonest or dishonorable dealings. Under today's license law, we are required to license everyone who ever had a license revoked, if it happened more than five years ago. Unfortunately, there have been some concerns raised about individuals coming into Idaho and getting an Idaho Real Estate License, when they had been revoked in another jurisdiction. The Commission has also had some applicants whose license was revoked more than once in Idaho. Our Commissioners would like the opportunity to review these applications prior to licensure.

The second proposed change is on page 2, line 27, and clarifies that a general military court martial is equivalent to a felony conviction for licensing purposes.

**MOTION:** **Senator Lodge** moved that **S1248** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Lodge** will be the sponsor of the bill.

**S1250** **Ms. Jackson-Heim** stated this legislation contains a number of technical corrections to the license law, primarily to eliminate obsolete references. The Commission has added one sentence that states course providers will provide the Commission with course completion lists in the manner that they have instructed rather than the normal alphabetical listing. There are no substantive changes in this piece of legislation.

**MOTION:** **Senator Goedde** moved that **S1250** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Senator Cameron** will be the sponsor of the bill.

**S1251** **Ms. Jackson-Heim** said that the Commission's **Chief Investigator, Craig Boyack** will present this bill. **Mr. Boyack** said that Senate Bill 1251, contains a number of revisions to the Idaho Subdivided Lands Disposition Act. The Real Estate Commission administers the 1972 Subdivided Lands Disposition Act. The Act requires sellers of timeshare products and out-of-state subdivision lots to register their products with the Real Estate Commission before those products can be marketed to Idaho residents. The vast majority of the filings they get are timeshare offerings for out-of-state resort areas. The registrations are often quite voluminous, sometimes filling one or more file boxes.

The act has not been significantly updated since its enactment in 1972. Senate Bill 1251 overhauls the Act, clarifying and cleaning-up flaws and inconsistencies in the existing language. The bill also updates the Act by bringing about several key changes: Provides purchasers a five-day right of rescission or a "cooling off" period to counter some aggressive sales tactics; Requires registrants to notify the Commission if ever they are convicted or found liable for fraud or dishonest dealing involving land sales; Specifies the bond requirement and provides for the deposit of escrow funds in lieu of bond; Increases the maximum aggregate fee for registration, but provides an overall reduction of the fees (25%) when registrants use the web-based document management system; Revises the Commission's duties pertaining to review of a registration application; Grants the Commission administrative authority to enforce the provisions of the Act; Grants specific authority for the Commission to contract for the use of the web-based file management system to accept registration documents; and specifies that an offer or sale that violates the Subdivided Land Act is also an unfair and deceptive practice that violates the Idaho Consumer Protection Act.

**Senator LeFavour** asked how many subdivided lands registrants do you have on file currently? **Mr. Boyack** replied that currently the Commission has approximately two dozen registrations and that number is fairly consistent at all times.

**Senator Goedde** asked how fractional ownership in properties was enforced by the Act. **Mr. Boyack** stated that if the number of units was under thirteen they would not be subject to the Act. **Senator Goedde** said in the legislation you have increased the bond amount from \$10,000 to \$100,000, has there been push back from the real estate community because of this increase? **Mr. Boyack** stated there has not been any opposition to the increase from the real estate community. They are just defining the bond amount.

**MOTION:** **Senator LeFavour** moved that **S1251** be sent to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**. **Senator LeFavour** will be the sponsor of the bill.

**59-0103-0901**

**Don Drum, Executive Director**, said last week this docket was before the Committee and you asked for further clarification on the contribution of .04% from the salary of public safety officers for a \$100,000 lump sum benefit for a disability. There is a similar \$100,000 lump sum death benefit. It is in code that defines that the death benefit is available only to the surviving spouse and dependent children. It is code 59-1361A. The code that was in effect prior to 59-1361A allowed for a reduced benefit for parents. Michael Cane carried that bill in 2005. If there was a reason that they excluded the parents in 59-1361A, **Mr. Drum** does not know and is seeking the information from Mr. Cane.

**Senator Cameron** moved to approve Docket No. 59-0103-0901. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**Senator Cameron** thanked Mr. Drum for following up on the Committee's questions concerning the death benefit beneficiaries. **Senator Cameron** stated the death benefit beneficiaries need to be fixed in this rule.

**ADJOURNED:** There being no further business, the meeting adjourned at 2:18 p.m.

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** February 11, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:** Senator Malepeai

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

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

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

#### MINUTES:

##### RS19585

##### **Relating to Minimum Wage**

**Stan Boyd, Boyd and Associates** said he was representing **Yellowstone Bear World** and **Velvet Ranch** located outside of Rexburg, Idaho. Yellowstone Bear World is a recreational and amusement park, open approximately 6 months of the year. The main feature of the park is driving through a pen containing black bears and grizzly bears. The parks gross income of 70% occurs within a ten week period from June 9 through August 20. The park employes 11 full-time employees and hires 25 to 35 part-time employees for the six-month period. The part-time employees are generally high school students with little or no experience. In 2007 when tourism was at its peak 30,000 cars and 6,000 buses came through the park that summer. In 2009 gross revenues at the park were down 40% from 2007. In the past management has paid the minimum wage, but with the extreme downturn in business the last three years coupled with 38% jump in the minimum wage over the last two years, the management finds it can no longer pay the required minimum wage and remain open. The management of the park would like to follow the exemption provided in federal law that does not require a recreational or amusement park to follow federal minimum wage requirements. The **Idaho Department of Labor** has determined that the amusement park is not entitled to the exemption that is listed in federal law.

This legislation brings Idaho into conformity with federal law. On page 1, line 16 states "Idaho will conform to and track with the minimum federal

minimum wage law exemptions.” On page 2, line 13, adopts the federal wording that will allow the federal exemption on the state level regarding these parks.

**MOTION:** **Senator Goedde** moved that **RS19585** be introduced to print. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

**S1247** **Relating to the State Personnel System and Vacation**  
**Wayne Hammon, Administrator, Division of Human Resources**, stated this legislation changes the statutory cap in the hours an employee of the State of Idaho can donate to another employee. The cap has been doubled from 40 hours to 80 hours per fiscal year. In fiscal year 2009 1,109 employees donated over 23,800 hours to fellow employees. This fiscal year 708 employees have donated leave to their co-workers.

**Senator Stegner** inquired if **Mr. Hammon** was suggesting that there is no fiscal impact to the State. **Mr. Hammon** explained that usually the employee that is donating the hours has acquired that leave over a longer period of service than those who need the leave. The donor has a longer tenure than the donee, and in most cases employees with longer tenure have higher salaries. Since the leave was acquired at the donors rate of employment, but paid for by the State at the donee's rate, the transaction of donating the hours saves the State money in most cases.

**MOTION:** **Senator Cameron** moved that **S1247** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator LeFavour**. The motion carried by **Voice Vote**. **Senator Cameron** will be the sponsor of the bill.

**S1252** **Relating to the Division of Human Resources**  
**Wayne Hammon** advised that there is an error in this bill on page 2, line 31, which changes the number of employees listed on the certificate sent to the agencies for hire from ten to fifty. On line 33 identical to the tenth ranking the number on line 31 and line 33 should match so, if there is 50 on line 31 it should read 50 on line 33. The Division caught this error after the bill was printed. **Mr. Hammon** determined it would be best to bring the bill before the Committee because **Mr. Hammon** is not convinced, as the bills sponsor, that 50 is the correct number.

**Mr. Hammon** stated that on average the State advertises approximately 250 positions a month. Out of these 250 positions across the State, on average these positions receive 16 applicants per opening. The ten most qualified applicants are sent to the decision maker for an interview. Currently, the State is only advertising 84 positions per month. Out of these 84 positions the Division is averaging 65 applications per opening. The ten most qualified applicants sent to the decision maker from the 65 is dramatically reduced. The line between the number ten applicant and the number eleven applicant's qualifications for the position is very thin. **Mr. Hammon** is receiving resumes from highly qualified individuals applying for the positions. The number of requests the Division has had to review the list and amend it has gone up. There are advantages to the agencies in expanding the number of applicants they are allowed to

interview which are the following: 1) To clean-up the process so Human Resources has less appeals and more inclusion on the list; and 2) Provide the decision makers a broader scope so they can have the opportunity to find the best applicant for their positions. **Mr. Hammon** said that 50 applicants being sent to the agencies might be too high, he would suggest 20 or 25 is more appropriate.

**Chairman Andreason** stated 50 applicants are too many and there might be problems with allowing that many applicants on the list. A slight increase from the normal ten applicants would be his choice.

**Senator Cameron** stated that it is time to increase the number from ten to between 20 to 25 applicants for consideration by the agencies.

**MOTION:**

**Senator Cameron** moved that **S1252** be referred to the 14<sup>th</sup> Order for amendment and the number be adjusted to 25. Seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

**Linda Beckman, Human Resource Officer, Department of Lands**, stated she is in support of S1252. **Ms. Beckman** advised that she is responsible for recruiting for four states, which includes 23 stations, four airfield ramps and field headquarters. **Ms. Beckman** was hiring approximately 100 positions per month. The recent job postings for the Department has attracted a larger pool of applicants who are highly qualified. Within the past two months the Department had a position in the Coeur D'Alene office, for a training and safety specialist which is a lower level position, every applicant in their top ten candidates for the position were way over-qualified. Increasing the list of available candidates will allow their Department more discretion to explore additional applicants with skills that are more closely in-line with their agency's needs. Being able to explore lower ranking applicants will allow **Ms. Beckman** to select a candidate whose background will be a better fit for the position.

**38-0301-0901**

**Rules Governing Group Insurance**

**Vice Chairman Coiner** stated that they have had a meeting with the Department of Administration and will continue to work on consensus concerning the part-time employee benefits of this rule.

**MOTION:**

**Senator Stegner** moved to approve Docket No. 38-0301-0901. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator LeFavour** voted nay.

**Senator LeFavour** stated that since the resolution of the issues were not resolved in her presence she would like to know how the consensus was reached. **Vice Chairman Coiner** stated it has not been resolved, it is still in negotiation and he would speak to the Senator after the Committee meeting concludes. **Senator LeFavour** said she still has a problem with the rule because it solidifies the loss of health benefits for the part-time employees.

**12-0110-0901**

**Rules Pursuant to the Idaho Residential Mortgage Practices Act**  
**Shelley Andrus, Investor, Short Sales Associates**, advised that the

portions of rules that are being used to regulate loan modification and short sale activity has been interpreted that loan modification is short sale activity and the Department did not follow through the due process of the law making. **Ms. Andrus** referenced a legal review of questions relating to the Idaho Residential Mortgage Practices Act dated January 21, 2010 written by Ray Martin to Director Gee on page 3: "the position taken by the Department requiring that businesses and negotiated third party short sales be licensed as mortgage brokers." Individuals may engage in such activity on the businesses such as mortgage loan originators under part 2 and 3 be under the SAFE Act of the Idaho Residential Mortgage Practices Act (IRMPA). This position is taken by the Department based on language found in the statutes included in the IRMPA and not from the proposed rule, so it should be treated separately from the analysis of the rule. Page 5 of the same letter states clearly the Idaho Legislature intended to regulate under the IRMPA the activity conducted for profit by short salers in front of these negotiators and their agents as described above as mortgage brokers and mortgage loan originators. Why does the rule not touch the subject of short sales at all? **Ms. Andrus** asked for a rewriting of the rule for the purpose of negotiated rule making and hearing from the industry and writing the rule that would interpret the Legislature's intent and develop a document to implement that intent.

**Al Kirby** stated the SAFE Act tries to regulate mortgage loan originators, individuals who write real mortgages for the public. The current stance by the Department of Finance is that short sale activity requires a licensure. The details of the licensure are not presented and there is disagreement within the department on how to get state approval to conduct short sales "legally" in our State.

**Robert Horton** said he had been investing in real estate for the past 35 years and the Department of Finance rules add unnecessary expense and difficulty to the process. Recent local statistics disclose that over 70% of current home sales are accomplished through a "short sale" process where the lender settles for less than the full amount owed. Only about 30% of such offers that are submitted are accepted by a lender.

**Mr. Horton** suggested that a Rule 7 be added to the Department of Finance rule language: "Any individual acting on behalf of the individual, an immediate family member, an entity of which he is a member or employee, who is setting the terms under which that individual, his immediate family member, an entity of which he is a member or employee may buy a property, or buy or fund a residential mortgage loan is not subject to this chapter."

**Barton Heath** said that in 2000 he lost a home and filed bankruptcy due to financial strain. His situation could have been avoided if there was an individual that could have bought his home from him. The real estate agent **Mr. Heath** hired did not have the knowledge to perform a short sale. The rules proposed by the Department of Finance will eliminate individuals who honestly and ethically purchase homes from Idahoans that need these homes to be sold. **Mr. Heath** asked that the Committee not pass this set of rules until a better solution can be found to deal with short sale business.



**Terry Hansen, licensed real estate agent in Idaho Falls area, United Real Estate**, opposed the passage of the rules proposed by the Department of Finance. The Department of Finance rule concerns him as a real estate agent advertising for help to distressed homeowners, if they qualify for a loan modification, but if they do not then he would have to switch them to a short sale. Under rule 40 when he has to switch his clients from a loan modification to a short sale it could be interpreted as a baton switch tactic. Rule 60.06 reads “provide or offer services without a license or approval.” **Mr. Hansen** said why is the Department addressing services outside their specific supervision. The Department’s interpretation of a loan activity modification would encompass a “tax or legal advice scope or the approval required by the appropriate licensing authority to engage in the offering of such services.” As a real estate agent if he is asked to sell a house and he has this existing agency relationship, does he have to go to the Department of Finance to get approval to sell the house? **Mr. Hansen** requested the Committee not pass this rule until important changes are included.

**Lynn Carnahan** stated he is opposed to the rule. As a mortgage broker and mortgage originator in the State of Idaho the lumping of loan originators and short sales as the same transactions is misleading. Loan originators provide a service to someone seeking a loan. An individual who seeks to invest in a short sale makes an offer to purchase a property, if the offer is accepted at the discounted price from the lender they close out and retire the loan. The rule implies that loan modification and short sales are synonymous but they are really two different procedures. **Mr. Carnahan** implored the Committee not to pass the rule and asked that the industry help correct the language, procedures and intent of this rule.

**Senator Goedde** asked **Mr. Carnahan** if he was a member of the Idaho Mortgage Lenders Association. **Mr. Carnahan** answered that he was not a member. **Senator Goedde** said that each member of this Committee has a letter from them endorsing the rule. **Mr. Carnahan** stated that the Idaho Mortgage Lenders Association does not understand the short sale procedures.

**John Eaton, Government Affairs Director, Idaho Association of Realtors**, stated the Association has reviewed this rule and their interpretation of this rule has nothing to do with the short sale business regulations. What the rule does is modify the rule to be in compliance with the law that was changed last year. The short sales issues consist of two items: 1) Some of the actions that they see in the industry are actions that would require a real estate license. Such as an individual going out and trying to find a buyer for a property that they do not own and advertising the property for sale. That can be viewed as practicing real estate; and 2) If a licensed agent is involved in a business transaction short sale then the entire real estate law applies to you.

**Lance Churchill, Attorney, Real Estate Trainer and Investor**, advised that the loan modification language was added to this Act and once it was added the Department decided to approve it for short sale activities. The

rule now states that everyone licensed under the Act is required to be licensed under the Act for short sale activity. In the hearing for H169 last year, Director Gee stated that mortgage rescue operations will be covered under the legislation, if they help with refinancing or financing mortgages. The Department now has interpreted the rule and the law will apply to everyone by default in short sales negotiations. Under the legislation once you talk to the lender you become an agent of the seller, even when you are the buyer, now you must be regulated and this does not make sense. Someone needs to talk to the lender to negotiate the price then they can go back to the seller and have it approved or disapproved. The answer the Department gave in the hearing yesterday, "that the seller can negotiate the short sale with their lender " is nonsensical because it does not address the realities in short sale negotiations.

Shorts sales have never been included in the definition as loan modifications in the U.S. HUD's definition of loan modification is, "A loan modification is a permanent change in one or more terms of a borrowers loan which may allow the loan to be reinstated and results in payments that the borrower can afford." HUD's definition of short sales, "Allows the borrower in default to sell their home and use the sales proceeds to satisfy the mortgage debt proceeds or less." Loan modification and short sales are two distinct transactions that have been mixed together in this rule. This legislation should be rewritten to pass law and regulations that make sense.

**Dani Hansen** stated the rules have undermined the Act and the intent of the Act was to license mortgage loan originators.

**Director Gavin Gee, Department of Finance**, said he would address the statement of Dani Hansen concerning the rules undermining the SAFE Act. HUD oversees the passage of the SAFE Acts and requires states to pass a law and rules consistent with the SAFE Act. The Department has heard from HUD on the State's act and will pass this rule onto HUD for them to determine whether it is consistent with the SAFE Act. Under the federal law, HUD is the ultimate arbiter of whether or not the law and rules the State passes are consistent with the SAFE Act. The Department recommends the Committee allow the rules to pass and HUD will determine whether they are consistent with the SAFE Act under federal law. In your paperwork you have a letter from the Idaho Bankers Association indicating that short sales are occurring in Idaho and they have concerns about some of the trends in third party short sales. The Association is concerned about fraud and some of the practices is the short sale transaction and they recommend that this area should be regulated. HUD has in its proposed rules a definition stating "it is HUD's view that individuals engaged in mortgage modification should be licensed under the SAFE Act."

**MOTION:** **Senator Stegner** moved to approve Docket No. 12-0110-0901. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**ADJOURNED:** There being no further business, the meeting adjourned at 3:09 p.m.

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** February 16, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

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

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

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

**MINUTES:**

**GUBERNATORIAL APPOINTMENT TO BE HEARD:** **Chairman Andreason** stated. that the Committee will be placing a conference call to **Mr. John T. Cowden** to interview him for his gubernatorial appointment. **John T. Cowden** gubernatorial reappointment to the **Idaho Personnel Commission** to serve a term commencing July 1, 2009 and expiring July 1, 2015.

**Chairman Andreason** asked **Mr. Cowden** if he had missed many meetings of the Personnel Commission, since he had been appointed to the Commission? **Mr. Cowden** said he has not missed one.

**Senator Lodge** asked **Mr. Cowden** to tell the Committee about himself. **Mr. Cowden** said he is a University of Idaho graduate. Most of his career was with Boise Cascade Corporation. The first 15 years with the company were in the financial segment of the company, since he is a CPA. He was a senior manager in various positions in the company. In 1984 he was terminated, because the economy was in trouble; but was terminated improperly and rehired by the General Council of the Company John Clute, Senior VP for Human Resources. **Mr. Cowden** was placed in charge of Corporate Human Resources in Boise. In that position as he restructured the department he made sure that when employees were terminated it was done appropriately, implemented regular personnel reviews, and proper training of supervisors. Because of his background, he is well qualified to serve on the **Idaho Personnel Commission** and looks forward to continuing on the Commission.

**H430**

**Relating to Insurance Administrators**

**Bill Deal, Director, Department of Insurance** stated **H430** deals with the licensing of insurance administrators. **H430** replaces the old statute on licensing Third Party Administrators (TPA) and substituting the Uniform National Association Insurance Commissioner statute on the third party administrators. TPAs are individuals or entities that are employed by insurers or self-funded health plans to underwrite, collect premiums or adjust and settle claims. This bill's aim is to streamline the licensing for the non-residence TPAs. They are asking the TPAs to be licensed in the state where they live and a streamlined method of getting them licensed in our State. The Administrators will have to file an annual audited financial statement that is performed by an independent CPA for the Department's records. All Administrators, doing business in Idaho, must be registered with the Department of Insurance.

**MOTION:**

**Senator Stegner** moved that **H430** be sent to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**. **Senator Stegner** will be the sponsor of the bill.

**S1324**

**Relating to State Government & State Affairs**

**Senator Goedde** stated that Idaho Code is not consistent in two sections concerning subcontractors. Section 67-2310, *Idaho Code*, and Section 54-1902(4), *Idaho Code*, these deal with bids on public works contractors. The language of Section 54-1902(4) has been inserted in Section 67-2310. The amendments suggested stem from a public works bid in Coeur D'Alene. The low bidder had listed the subcontractors, but had not listed license numbers and that is in compliance with 54-1902. Section 67-2310 was mute to the point. One of the subcontractors did not have a public works license, but does not need a public works license to be part of the bid until the contract is let. He must have a license before the contract is assigned. This bill addresses making Section 67-2310 consistent with Section 54-1902(4) and consistent with the decision of the judge in the low bidder court case.

**MOTION:**

**Senator Lodge** moved that **S1324** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**. **Senator Goedde** will be the sponsor of the bill.

**RS19669**

**Stating Findings of the Legislature and Rejecting A Certain Rule**

**Senator Stegner** stated **RS19668** is a rule rejection by this Committee that is not on the agenda and both of the rule rejections need to be printed. **RS19668** deals with plumbing rules that were withdrawn by Department of Building Safety and **RS19669** reject the rules of building safety by the Department of Building Safety. The Committee needs to make a unanimous consent request to have these rules printed in a privileged committee.

**MOTION:**

**Senator Stegner** asked for unanimous consent that the Committee agree to ask a privileged committee to print RS19668 and RS19669 for the purpose of rejecting the Department of Building Safety rules. **Chairman Andreason** asked if there were any objections to the unanimous consent.

There were no objections. The rules will be sent to a privileged committee to print.

**S1327**

**Relating to Annuity Contracts**

**Senator Corder** advised there are two kinds of annuities and one of the classes of annuities is sold by insurance agents. What can occur is as follows: An 84 year old man from Mountain Home has a lot of cash and wants to invest it appropriately and someone that he trusts wants to sell him an annuity and does so with a 15 year surrender penalty. This bill addresses what product is suitable to sell to an individual. There is a national suitability agreement which lists a group of questions that should be asked of the prospective annuity buyer before the product is sold to the individual. This legislation before you today adopts a national standard to conform to the suitability criteria that are used throughout the nation.

**Senator Stegner** inquired about line 27, on page 2, paragraph 3, 4 and 5 which speaks to the right of the purchaser to receive from the seller certain information and disclosures. Where did these descriptions come from, were they a national model? It also refers to a guide and the details that the guide should include. **Senator Corder** replied that the descriptions and the guide details did come from a national model.

**Senator Stegner** asked **John MacKey, United Heritage Life Insurance Company**, if he would elaborate on the national model language in this bill. **Mr. MacKey** replied that the language came from a model of the National Association of Insurance Signatures.

**MOTION:**

**Senator Cameron** moved that **S1327** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Senator Corder** will be the sponsor of the bill.

**ADJOURNED:**

There being no further business, the meeting adjourned at 2:11 p.m.

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** February 18, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:** Senator Malepeai

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

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

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

**MINUTES:**

**GUBERNATORIAL APPOINTMENT: TO BE VOTED ON** **Chairman Andreason** announced that the Committee was ready to take action on the appointment of **John T. Cowden** to the Idaho Personnel Commission. **Mr. Cowden** was interviewed by a conference call at the February 16, 2010 Committee meeting and had been appointed to serve a term commencing July 1, 2009 and expiring July 1, 2015.

**MOTION:** **Senator Lodge** moved to send the gubernatorial appointment of **John T. Cowden** to the Idaho Personnel Commission to the floor with the recommendation that it be confirmed by the Senate. **Vice Chairman Coiner** seconded the motion. The motion passed by **Voice Vote**. **Senator Lodge** will be the sponsor of the candidate.

**S1325** **Relating to the International Fire Code**  
**Senator Bair** advised that the legislation would provide a statewide exemption from the water supply and access requirements established by the International Fire Code (IFC) concerning detached single-family dwellings. The exemption would apply to single-family homes built in unincorporated regions outside of agreed upon areas of city impact on parcels of five acres or more, unless a county subdivision or land use ordinance requires otherwise. Each county would be authorized to broaden the exemption by reducing the minimum parcel area that could qualify for the exemption.

**Senator Goedde** asked how this would impact a forest area dwelling. Dwelling's in a forest that catch on fire would set the forest on fire there might not be a large enough access road to allow fire equipment to get up

to the fire. **Senator Bair** replied the individuals that build way back in the forest may only have a four-wheeler access road to the home. These individuals live in this setting on purpose, because they do not want these kind of services. Why should they be required to have a 20 foot wide road into the property.

**Jerry Mason, Association of Idaho Cities**, stated that the International Fire Code, as it applies to single-family residences, only addresses two issues; water fire-flow and access standards. The administration of the requirements in the IFC regarding single-family dwellings in remote locations has been administered fairly unevenly. There were three different fire districts in a particular area of the State that interpreted and administered the IFC three different ways in as it related to new construction. Under similar circumstances these three fire districts had imposed extremely different requirements upon on different home builders. For communities the IFC is an important part of the public safety codes. In this legislation we have endeavored to find a balance between the remote locations where there is low density and response times would be lengthy and preserving the fire code for those areas where there is urbanization or prospect urbanization. Also, we have endeavored to provide some local authority, if certain jurisdictions chose to exercise the code. This legislation is a compromise among varying agencies and strikes a reasonable balance among the interests that they brought to our attention. **Mr. Mason** said for the reasons listed above he supports **S1325**.

**Senator Cameron** asked **Mr. Mason** what is your profession. **Mr. Mason** stated that he was an attorney that represents the **Association of Idaho Cities**. Did the interim committee, who formed this legislation, have any concerns about public safety for homeowners that would opted out of fire service. If one of these homeowners had a fire in their dwelling wouldn't they still call for emergency services. **Mr. Mason** advised that this questions was discussed at length and all the variables were discussed at length. **Senator Cameron** said that one of the concerns that he has heard about this bill is that some individuals who have chosen to opt out of the service will want their tax money returned since they don't receive emergency service. **Mr. Mason** said many laws draw lines at various points and determine that certain things are regulated. He has not heard of any historical references that would allow a taxpayer who fell on one side of the line of a regulation to not be responsible for paying their share of the consequences of that regulation. **Senator Cameron** asked do you anticipate that passage of this act would create additional litigation from those individuals who have opted out of the emergency service. **Mr. Mason** replied that he did not believe so.

**Vice Chairman Coiner** stated was there any discussion about the transfer of the property? The first buyer of the property opts out of the fire services and a future owner wants the service. **Mr. Mason** advised that maybe the term opt out is not the appropriate term for this action. The regulation attaches at a certain point. The IFC has never been applied in those jurisdictions that don't have a local fire agency. This is already a very common occurrence. Most farms don't apply and most dwellings prior to the recent versions of the IFC did not apply.



**Mark Larsen, Fire Marshall for the State of Idaho, Division of the Department of Insurance**, stated his role as the Fire Marshall is to adopt the IFC. He discussed at length some modifications to the IFC to bring clarification to the definition of driveways.

**Senator Cameron** said that as the State Fire Marshall do you believe that the passage of the bill would endanger or create a situation where firefighters would be harmed in the performance of their duties. **Mr. Larson** replied that he could not anticipate that this legislation would put any firefighters in jeopardy. **Senator Cameron** stated by passage of this law the Committee would restrict access, and create undue engagement of those individuals as the firefighters attempt to get to the remote locations.

**Gary Rohwer, Fire Commissioner, City of Parma, Board of Directors of the Idaho Fire Commissioners Association**, advised that Parma Rural Fire District looked at this bill and they are opposed to the legislation as it is currently written. They believe there are some other ways that the goals of this bill can be accomplished. The rulemaking process could be used to deal with the issue of driveway and road width. The size of all the fire equipment has increased in size and weight so access is of upmost importance to get their equipment to the fires.

**Karl Malott, Fire Chief, Nampa Fire Department**, stated it is important to their Department to maintain the IFC. IFC is a companion document to the International Building Code and the IFC is the only code that speaks to access. **Mr. Malott** is in favor of this legislation, if it means that IFC will be adopted.

**James Cook, Fire Chief, Parma Fire District**, stated he opposed the passage of the bill. As a fire chief of a rural fire department, he has to protect those properties that are five, 10 or 50 miles away from their main station. In Payette County he has made a commitment to make sure that the emergency crews have protection and access to homes in that area.. The District wants to make sure that some form of access is maintained in this bill.

**Larren Novak, Home Builder, Idaho Building Contractors Association (IBCA)**, the IBCA supports the bill in concept. In the last two years he has built homes in four fire districts and has had to adhere to four different interpretations of the IFC.

**John Eaton, Idaho Association of Realtor**, the Association supports this legislation. This bill has brought out more contact from the officials in the rural area than any legislation in a long time. The land that is five acres or more outside of an incorporated city and not within that cities area of impact shall be exempt from water supply and access requirements which are in the IFC, unless the county use or subdivision ordinance requires such requirements.

**Senator Cameron** asked **Mr. Eaton** if he would clarify why he had heard more on this issue from your members than any other legislation. Is it because of the lack of uniformity or is it because it is effecting sales of homes that have roads that do not meet the access requirements. **Mr.**

**Eaton** replied that the individuals that live in these rural communities are not the typical individuals that call their organization. The experiences the rural land owners have gone through in the development process or putting a house up on their farm speak to the lack of uniformity and the price tags of how the fire districts are interpreting the IFC.

**Senator Stegner** asked **Mr. Mason** does a county have the legal authorization to adopt ordinances that would reinstate the IFC and other standards they may want to impose on county development. **Mr. Mason** replied that this is correct. It is important to recognize how little impact the IFC has on access issues in the developing landscape of the State of Idaho. County subdivision ordinances and zoning ordinances uniformly require a higher standard than the IFC. This bill is simply an effort to deal with this one issue. The language that **Senator Stegner** pointed out in the bill is language that guides 95% of the access requirements that are established for new single-family homes in the State. Existing county ordinances already require the standards.

**Senator Smyser** asked **Fire Commissioner Rohwer** considering the testimony that has been given does he feel like the issues he has with the bill could be worked out in negotiation? **Fire Commissioner Rohwer** said there has been some testimony that could lead to a proper solution for this State. Our fire district has one city of impact, City of Parma. They also service a large part of Payette County and it has been a long process between the fire district and Payette County's development to provide adequate access for larger homes. The important issue for the fire district is that the access be wide enough and surface of the access prepared so a fire truck will not fall through the base.

**Larry Lundin, Citizen from Midvale, Idaho**, stated that he built a home in Midvale four years ago. He built his driveway according to the county standards and then the fire chief told him it was too steep for his equipment to get to the home. The homeowners perspective of the IFC is that it can be a vehicle by which the local fire department can impose access standards that are expensive for a retiree's pocketbook. The fire chief is also requiring new homes that are 20 miles or more out of town to put in 5,000 gallon water tanks, which are \$10,000 a piece. The chance of a fire truck getting out to his house, which is about 6 miles from town, before the house burns down is very unlikely. **Mr. Lundin** supports the passage of this bill to allow some common sense in applying the IFC.

**Kerry Ellen Elliott, Idaho Association of Counties**, advised that the counties are in support of the legislation. The ordinance authority we now have will allow counties to pass an ordinance if they want to impose IFC standards for water flow and access. There are four counties that do not impose codes right now and this will effect the standards that are used in those counties.

**Ron Anderson, Fire Chief, Meridian Fire Department**, advised that the Idaho Fire Chief Association is in support of this legislation. The legislation that was brought before Committee last year was assigned to interim committee over the summer. The interim committee and the fire personnel that attended those meetings helped shape the bill you have

before you today. Access roads in the IFC are defined as a road as being 20 feet wide. The interim committee meetings found another definition in the codes for driveways to be 12 feet wide. The driveway definition was adopted into this bill as a compromise access definition.

The fire service still has issues with water supply on a remote home site because they still need water to fight a fire. If an individual's home catches on fire, even if they have a goat trail to their home, they will call the fire department to fight the fire and save their home. **Senator Goedde** stated in one of the interim committee meetings that if individuals are allowed to build a home without an access road or water supply the fire department might have tell them we can't get to your home because the trucks and hoses can't get close enough to put out the fire.

**MOTION:** **Senator Lodge** moved that **S1325** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**. **Senator Bair** will be the sponsor of the bill.

**S1347**

#### **Relating to Minimum Wage**

**Senator Hill** stated that one of his constituents, **Mike Curtis**, owns Yellowstone Bear World and he hires two to three dozen high school students during the summer. **Mr. Curtis** has kept up with the minimum wage laws up until this last bump when the wage went from \$6.55 to \$7.25. Yellowstone Bear World is not able to keep up with the new minimum wage standards because their profits have dropped 40%. There is an exemption in the Fair Labor Standards Act dealing with employees employed by amusement or recreational establishments operating not more than six months out of the year then the business is not subject to minimum wage laws. Senator Hill checked with the Department of Labor for the State of Idaho and they advised that this exemption was not in the State code. In this legislation before you they have incorporated 44-1502 and put in the acceptance language of 44-1504, copied word for word from the Fair Labor Standards Act.

**Chairman Andreason** asked **Senator Hill** what the Yellowstone Bear World paid their employees per hour last year? **Senator Hill** stated Yellowstone Bear World paid the employees \$6.55 per hour, which was the minimum wage before the last increase. **Chairman Andreason** said is that what Yellowstone Bear World will be paying per hour next summer, if this bill passed? **Senator Hill** advised that Yellowstone Bear World will not be paying less than the \$6.55 per hour.

**Senator Goedde** advised that his concern with the legislation is that there are some very profitable recreational and amusement establishments that are open 7 months or less a year and that they would also be entitled to this exemption. **Senator Hill** stated yes that is correct. If the federal government is exempting these employees, then we should adopt this legislation in Idaho so that our employers don't have to live under two different minimum wage laws.

**MOTION:** **Senator Cameron** moved that **S1347** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**. **Senator Hill** will be the sponsor of the bill.

**Senator LeFavour** voted **nay**.

**Senator LeFavour** stated that the State of Idaho has such low standards in wages and she hates to see the minimum wage eroded any further so she will not be able to support the motion.

**MOTION:**

**Senator Smyser** moved to approve the minutes of February 4, 2010. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

**Chairman Andreason** presented Rebecca Powell, Committee Paige, with a watch and letters of appreciation for her fine service to the Committee over the past 6 weeks. The Committee wishes her good luck in all her schooling and endeavors.

**ADJOURNED:**

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

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** February 25, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

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

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

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:34 p.m.

**MINUTES:**

**S1334 Relating to Insurance Contracts**

**Senator Hill** stated that this legislation requires those few insurance companies who impose unreasonable limitations on the coverage of prosthetics to provide minimum standards. The standard minimum coverage should be equal to the amount Medicare covers, which is outlined in federal law. This bill covers artificial arms and legs and there is no requirement that the prosthetic be the top of the line equipment. It would not include implantable devices, computerize systems, catheters, and osteo-bags. It would cover necessary repairs of the prosthetic and require replacement of the device if the ordering physician determines a replacement or replacement parts are necessary. It would cover replacement of the prosthetic because there is a change in the physiological condition of the individual, is broken and can't be fixed or would cost more than 60% of a new prosthetic to fix it. **Senator Hill** said the question was asked at the print hearing, if there was really a need for this type of legislation in the State of Idaho? This legislation has worked in many other states using the exact language. This legislation passed the House in Utah with almost the same language.

**Senator Malepeai** said on line 12 of the bill it states "that any health benefit plan must provide coverage." For an insurance benefit plan does the word "must" mean that prosthetics are required to be a part of their plan. **Senator Hill** answered that the "must" language in the bill does mean "must". If an insurance company is going to provide a health care plan to the public there are certain things that you must provide and

prosthetics would be included.

**Senator Goedde** asked about the fiscal note. Wouldn't this bill have an impact to the high risk pool that prosthetics are insured in the pool? According to the information on the left side for Idaho's high risk pool; it says that funds to operate the Idaho High Risk Pool come from premiums collected from those who are involved in the pool and assessments on health insurance companies operating in the State of Idaho. The bill does not use any general funds. **Senator Goedde** said he would suggest that, since Idaho pays Blue Cross money for the benefits of the State employees, that the money Blue Cross is sending to the high risk pool is, in fact, the State's money. When we had the print hearing you spoke to ERISA plans, which are plans that the State has no control over. **Senator Goedde** advised that **Senator Hill** must have some information on the plans in Idaho that do not offer adequate coverage for prosthetics. Do you know whether those plans are governed by the State or are they ERISA plans? **Senator Hill** replied that all plans are governed by the State. We do not govern employers, we govern all plans. If the employer chooses to self-insure under ERISA, this would not cover, they come under the ERISA requirements. If, however, that company, even though it may be under ERISA, chooses to insure through a private insurance company they would be subject to the same provisions. That clarification came from the Department of Insurance.

#### Testimony in Support of S1334

**Bonnie Jensen, Idaho Amputee Coalition**, is in support of S1334. **Ms. Jensen** has had both legs amputated and several of her fingers. The prosthetics have allowed her to walk again. She had good insurance that paid for the majority of her rehabilitation until a few years ago. During the open enrollment time of her insurance she found that the company had placed a \$5,000 a year cap for prosthetics. She needed two new legs which would cost between \$17,000 and \$20,000 a piece. The reason she needed new legs is that prosthetics wear out and as the body changes prosthetics have to reflect that change. Many amputees have run into the same problem with caps and limits on their prosthetics through their insurance carriers. When an individual does not have adequate insurance and they have no other options it shifts the costs over to the state run program of Medicaid. In the last five years, there has been a significant increase in the Idaho Medicaid dollars paid out. In fiscal year 2004, \$100,456,000, and 2008, \$200,062,000.

The State of Colorado was the first state that passed a similar bill to our proposed legislation. The state studied the Medicaid program and found that by an insurance mandate for prosthetic care they were able to save the state an annual \$400,060.00. This bill will insure that taxpayers do not get stuck with healthcare costs that should be provided by private health insurance companies.

**Senator Stegner** asked when you stated the Colorado study, they were saving \$400,000 a year as a result of mandated coverage by insurance companies. **Ms. Jensen** answered that this was correct. **Senator Stegner** asked on average, how often do the prosthetics have to be

replaced? **Ms. Jensen** said every three to five years.

**Dr. Jeff Majors, Chiropractor**, stated he is against the cap by insurance companies for prosthetic devices. The tragedies that require prosthetics could be alleviated and bring a better quality of life and normalcy back to the patient with properly designed prosthetic devices.

**Rose Maloney, Idaho Amputee Coalition**, stated that once she had surgery to remove the leg, she was told she did not have insurance coverage for the prosthetic leg. Their insurance had a cap of \$5,000 for prosthetics and most of the benefit coverage she had used up in boot, wheelchair, walkers and crutches before the leg was removed. The insurance company paid to amputate her leg and she thought they would also pay for the prosthetic leg.

There are benefits for the insurance companies to provide prosthetic care. They include decreased incidents of depression, less dependence on care givers, reduction in secondary conditions caused by a sedentary life style and reduced diabetic complications leading to additional limb loss. The amputee can continue to be a contributing member of society instead of a dependent.

**Senator Cameron** asked **Ms. Maloney** if she could give him more information about the insurance plan that she was covered under. We know it is an employer based plan, could you give me the name of the company? **Ms. Maloney** said it is Corsource Insurance Company. **Senator Cameron** said he had not heard of this company. **Ms. Maloney** stated that the company is based out of Washington. **Senator Cameron** asked do you know whether your husband's employer is insured under a self-funded plan or is this a fully insured plan? **Ms. Maloney** replied that she thought it was a fully insured plan. **Senator Cameron** asked for her husband's employer name. **Ms. Maloney** stated that it was Huntwood and they are a multi-state employer. **Senator Cameron** stated that typically if an employer is a multi-state employer and are large enough they will have gone to a self-funded plan. The self-funded plan by federal law cannot be regulated by state law. A self-funded plan can set their own rules. One of the dilemmas for this Committee is everyone is trying to hold costs down for insurance premiums but we are faced with playing with an unlevel playing field. A segment of the insurance industry has a higher cost than another segment of the industry. If too many mandates are passed, then the state would force employers to choose the cheaper self-funded plans, which then exempt all the mandates that we as a legislative body tried to remedy. By holding all the insurance companies equal, to the extent the legislature can, we try to provide the best coverage for everybody.

**Tony Eason, policeman**, advised that if you do not have a good fit of your prosthetic you will not be able to function. Insurance caps for the prosthetics need to be removed so the amputee can get the prosthetics to help them live an active and more normal life. Amputee bodies change and the prosthetics wear and then must be replaced so a \$5,000 cap over a lifetime is not realistic for this type of medical need.

**Tommy Hutchinson, Idaho Amputee Coalition**, said he has insurance through his employer and took the most expensive plan that his company offered. The employer went out of business and laid him off causing him to be placed on Cobra Insurance. The company he worked for, Pacific Ethanol, decided they would go back into business and changed their health insurance to Anthem Blue Cross of California. The disability insurance through them forced him to get onto the Idaho State run disability plan. **Mr. Hutchinson** found out that Anthem Blue Cross has a \$5,000 cap for prosthetics. In September he will be forced out of the Cobra Insurance and the State of Idaho will have to buy his legs and will pay his insurance. Amputees want to be able to function with their prosthetics and have a normal quality of life where they can work and take care of themselves.

#### Testimony in Opposition of S1334

**Steve Thomas, Idaho Association of Health Plans**, said he will present the reasons why they are concerned about this bill. 1) Scope of the problem and what are we trying to solve; 2) Gives legislative delegation to the federal government to set the standards, why should Blue Shield and Blue Cross be punished for not doing anything wrong. Their policies have generous limits and coverages for prosthetics while other carriers put a cap of \$5,000 on their insured. The bill before you would change the business for all of us; 3) The wisdom of mandates. When premiums are increased by 1% you lose about 300,000 insured. For each 1% increase in premium costs small business sponsorship of health insurance drops by 2.6%. If you mandate coverage, my clients will have to find a way to pay for and that means pass on those costs to their members. Mandating coverage would it not make sense to the agents and insurers of Idaho, when you offer these limited benefit plans, they must explain the coverage limits of what they will be willing to sell at what price. Give the insured a chance to say they want a benefit and that they have been advised of the cost and need for that benefit to allow them to reject the item by signing a little box. In conclusion, my Association does want healthcare to be affordable and available to as many individuals as possible. S1334 undercuts this goal which is an unattended consequence. Limited benefit plans are not required to provide any prosthetic coverage. If the individual or company is getting a limited benefits policy then you can have very low limits. Raise the bar for the limited benefit plans so the people know what they are getting. If they want to get a good price they have signed off on certain coverages and they are not there so the limits are low so they won't be surprised when something bad happens.

**Julie Taylor, Lobbyist, Blue Cross**, advised because health insurance is expensive individuals want the option of high deductibles and lower benefit packages so they at least have some level of coverage. The product mix that Blue Cross can offer have plans from the fully insured to self-funded. Our rule was self-funded plans, multi-state plans, or large employers based in the State of Idaho that usually have over 300 and up. The self-funded employers determine their own policy benefits. They design their package of benefits. If the company determines that this particular benefit, such as prosthetics, have a \$5,000 per year cap that is the companies decision. Blue Cross's role is to administer the benefits.



**Chairman Andreason** stated that as Chairman of the Committee he has tried to find some compromise with this bill. **Chairman Andreason** will reschedule S1334 for Tuesday, March 2, 2010 and work with the bill's sponsors before Tuesday to try and arrive at a compromise. The Committee will take no further testimony on the legislation.

**Senator LeFavour** said if this Committee can make things better for just a handful of people, then we have made things better. The idea that we can't impact ERISA plans is an obstacle, but she hopes there is some way to impact those plans.

**Senator Goedde** stated the fact that this prosthetic issue has been brought up and questions must be asked of the health plans. The hearing on this legislation has done some good already.

**MOTION:** **Senator Smyser** moved to approve the minutes of February 11, 2009. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

**MOTION:** **Senator LeFavour** moved to approve the minutes of February 9 and January 28, 2010. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

**MOTION:** **Senator Malepeai** moved to approve the minutes of January 26, and February 16, 2010. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

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

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** March 2, 2010

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

**PLACE:** Room WW54

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

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

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

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

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:34 p.m.

**MINUTES:**

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

**Mr. Orellana** said financial markets are turning and becoming more favorable. The pesos have remained strong against the U.S. dollar and this will help imports from the U.S. to Mexico. Exports from Idaho to Mexico have remained the same even during the Mexican recession. The Mexico Trade Office deals with a very diverse section of companies from Idaho and imports such items as mining expertise, dehydrated milk, agriculture, lumber and machinery. Mexico is looking for renewable energy because their oil reserves are diminishing rapidly. There are opportunities for investment in wind turbines for the Isthmus and they are interested in Foreign Direct Investment (FDI) in a wind farm in eastern Idaho.

**Mr. Yen** started his presentation with a Chinese phrase "crisis vs. opportunities." Idaho exported \$655 million to Taiwan in 2009, which was 88% increase from 2008. New and targeted opportunities for Idaho exports are battery and monitoring systems for vehicles, nuclear waste handling and storage, new materials and technology for green energy.

Pending investment pipeline projects that they are researching are wind tower manufacturing partnership, LED lighting manufacturing, and solar panels manufacturing.

**Dr. Guoli** stated Idaho exports to China were \$571,946,473 in 2009. China is Idaho's third largest export destination. Semiconductor, computer and capital equipment products accounted for more than \$500 million of exports to China.

Emerging opportunities for Idaho companies are renewable energy such as the wind turbines and solar power, environmental protection technologies, building and mining materials, agricultural machinery, capital equipment, and health and wellness products.

In 2009 a Chinese company made a \$120 million dollar direct investment into Hoku Scientific in Pocatello. **Senator Malepeai** said the last couple of years, with the economy going south, the Chinese investment in the Hoku plant has been a great help with the operation of the plant and the economy as well.

**Governor's Business Summit Report** was given by **Don Dietrich, Director, Department of Commerce**. He said Project 60 is the Governor's jobs plan and has been in effect for two years. Given the economic state that the State is in, it is important to make sure that we are bringing whatever opportunities across the State line to bolster those companies that already exist in the State. Project 60 is a three tier plan and the following explains the importance of the three tiers: 1) to stimulate growth, what can be done inside the State to help the existing companies to grow; 2) domestic recruitment anything outside of the State's borders, but inside the U.S. borders; 3) credit markets are extremely tight and 40% of the directors time is dealing with Idaho companies that are scrabbling to meet basic operating capital requirements. The credit markets ceased up the Department has had to change their focus to a completely different arena, which is the international market where a good share of our market is still vibrant.

Germany has just put a lot of money into Nunans in Parma, Sorento Lactalis they are in the middle of a \$59 million expansion.

**Mr. Dietrich** advised the recent Governor's Business Summit brought together 41 panelists, mostly CEOs, representing eight industry sectors. The sectors represented were agriculture, natural resources, tourism, construction, transportation, manufacturing, commercial services, retail, and healthcare/social services. Focusing on today's economic challenges the panelists located eight items that would energize the business sector.

Recommendations:

- 1) Idaho should eliminate the personal property tax.
- 2) Idaho should provide a home buyer tax credit - similar to what was used by Utah - to stimulate absorption of very high housing inventories.
- 3) Idaho should provide a significant tax credit for all infrastructure construction investments, including those related to education.
- 4) Idaho should increase the truck weight limit on more Idaho roads to 129,000 pounds,
- 5) Idaho should leverage new technology at ports of entry to reduce processing time and fuel costs.
- 6) Idaho should reconvene the Joint Review Process for mining to reduce

- conflicts and delays in federal/state permitting.
- 7) Idaho should probatively recruit insurance companies to take advantage of Idaho's pro-insurance tax structure.
  - 8) Idaho should create more professional-technical education programs focused on heavy equipment operation and repair.

**MOTION:**           **Senator Smyser** moved to approve the minutes of February 18, 2010. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**.

**ADJOURN:**       **Chairman Andreason** adjourned the meeting at 2:30 p.m.

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** March 4, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

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

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

**CONVENED:** **Chairman Andreason** called the meeting to order at 1:29 p.m.

**MINUTES:**

**H525** **Relating to Film and Television Production Business Rebate Fund**  
**Representative Eric Anderson** stated this legislation is adding language on line 12 "grants, federal moneys, donations, funds from any other sources."The additional language is for clarity, in the event that an individual or corporation wanted to donate into the fund this language allows for this action.

**MOTION:** **Senator Cameron** moved that **H525** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**. **Senator Cameron** will be the sponsor of the bill.

**H458** **Relating to Public Employee Retirement System**  
**Representative Grant Burgoyne** said the bill creates a new section of law to clarify that PERSI members on disability retirement can attempt to return to work, but if they are unsuccessful in that attempt that they can, under specified circumstances, resume the disability retirement. The policy rationale for the bill is that no insurance, retirement or other public benefit should discourage individuals from trying to work. Programs that encourage individuals to return to work will save money and foster certain important values such as a strong work ethic, self-reliance and personal responsibility. The provision of the return to work will require a written notice to PERSI from the individual on disability retirement stating they want to try to return to work; the disability retirement payments will end at that point. If the individual is unsuccessful, in the return to work, they can reapply for the disability retirement within 150 days. Another written

request to PERSI for return to the disability retirement would be required, and if PERSI determines that they are disabled because of the original disability. If they returned to work and they suffered an on the job injury and could not work, that would not requalify them to resume the PERSI disability retirement. The new injury would be a workers compensation matter. In order to return to the disability retirement, the new disability retirement application has to be based on the original disability that first qualified them for the PERSI disability.

**Senator Cameron** asked if the member is required to send a written request to PERSI prior to applying for employment? **Representative Burgoyne** replied yes. They must send a written request before applying for work. **Senator Cameron** said if a PERSI member, that is currently disabled, decides that he wants to sell insurance under current law what would be the reaction of PERSI. **Representative Burgoyne** replied that individuals on PERSI disability retirement are subject to reassessment of their eligibility at any time to determine that they are still disabled. If an individual returns to work, it would be evidence that they are no longer disabled and under those circumstances PERSI would have the option of terminating the disability retirement and if no notice had been forthcoming that the individual was returning to work. **Senator Cameron** said what is the cost to PERSI by providing them with the ability to be able to come back to eligibility for the disability retirement if they are unable to perform the job. **Representative Burgoyne** stated that the intent of the bill is to remove a disincentive to individuals who might otherwise return to work. This bill should save the system money, although it is very difficult to quantify at this time.

**MOTION:** **Senator LeFavour** moved that **H458** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator LeFavour** will be the sponsor of the bill.

**RS19758** **Relating to the Fire Protection Board**  
**Senator Smyser** stated this bill came before the Committee last year and passed unanimously and then it went to the floor and passed unanimously. It then got caught up with the other fire bills and died. There are two simple changes: 1) Section 1 deletes the residence requirement in the fire protection district and; 2) relates to the oath of office and when it is required of new officers.

**MOTION:** **Senator Cameron** moved for unanimous consent that the Committee agree to ask a privileged committee to print **RS19758**. **Chairman Andreason** asked if there were any objections to the unanimous consent. There were no objections. **RS19758** will be sent to a privileged committee to be printed.

**H509** **Relating to Employment Security Law**  
**Bob Fick, Communications and Legislative Liaison, Department of Labor**, advised this bill authorizes the Department of Labor to accept private contributions in support of the Idaho Youth Corp in absence of any federal funds. The Idaho Youth Corp is a program that has been operating for a couple of years on a small basis. A handful of youths have

been offered the opportunity to do work for various agencies for a minimum wage for eight weeks in the summer. The Department received \$3,000,000 in stimulus money and last year was able to hire 840 youths for 130 sites around the state. The youth learned work skills on the job, how to show up on time, teamwork, etc. **Representative Marv Hagedorn** has been involved in this program prior to the injection of the federal money.

**Representative Hagedorn** stated that in 2007 he found out that Idaho did not have an organized group that would enable our youth to work in Idaho for projects such as forest service, BLM, trail maintenance, and wild species collection to name a few. They have done all kinds of work throughout the Treasure Valley. When they originally put the program together the objective was to get private dollars and not depend on public dollars to fund the program. The only dollars that are available for use are dollars for disadvantaged children. This bill enables the private contribution account to be set-up and which will allow the private donors to contribute and put matching grants together for cities, counties and non-profit organizations.

**Senator Malepeai** said in your efforts to seek out youth to fill the program will they always be from disadvantaged backgrounds? **Representative Hagedorn** replied their objective is to be able to use the federal qualifications that are now attached to the current monies that they have used in the past. With the private dollars, they will be able to employ youth from situations that do not necessarily meet the federal criteria. Right now they are limited on who they can hire. By bringing in the public dollars there will be an opportunity for more youth from other backgrounds and a broader range of youth in the program.

**Senator Goedde** asked who is the employer for the youth corp workers? **Representative Hagedorn** said right now they are employees of the Department of Labor. **Senator Goedde** advised that in Section 6 on page 2 "states that they are not employees of the State of Idaho." **Dwight Johnson, Administrator of the Employment Training Division, Department of Labor**, stated the youth corp employees are enrolled in the Workforce Investment Act. Specifically, they have programed the enrollees to participate in the minimum wage for this activity through the Workforce Investment Act. **Senator Goedde** said are you collecting withholding and paying workman's compensation on the youth corp employees wages? How is what you are doing consistent with this workforce not being employees of the state? **Dwight Johnson** said that the withholdings are taken care of through the processes they already have established through the Workforce Investment Act. **Senator Goedde** stated that someone employs them and has responsibility for them even if they are paid out of the Workforce Investment Fund. **Dwight Johnson** answered they are the employees of the Department of Labor. **Senator Goedde** replied then if they are employees of the Department of Labor, they would be employed by the State of Idaho. **Senator Lodge** stated that she thought the Committee should give the Department the opportunity to specify who employees the youth corp and place it in the bill.

**MOTION:** **Senator Lodge** moved to hold **H509** in Committee until the language is clarified as to the employer of the Youth Corp. Seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

**H510** **Relating to Employment Security Law**  
**Bob Fick, Communications and Legislative Liaison, Department of Labor**, presented **H510** stating that the legislation makes a number of changes in the Unemployment Security Laws. Several places in this bill starting on page 1 through the final page responds to a Supreme Court decision that the initial determination of benefits is the determination of which any effort to recover in case of overpayments fraud time would run. The first section makes any determination or redetermination in the course of a claimants benefits history a new decision from which the time to recover fraud or overpayment may run. The statute of limitations is five years from the time that the determination is made to recover any overpayments of fraud. On the final page it allows the Director authority to negotiate the amount of repayment of overpayments and the amount of interest and penalty for the fraud. Also, the bill establishes the length of the ban time that is imposed in case of fraud or overpayment on eligibility for future unemployment. Currently the Department writes off \$100,000 per year that they have attempted to collect for five years. The Compliance Bureau believes that the Department can possibly collect at least part of the \$100,000 if the Director has this opportunity to negotiate.

**Senator Lodge** stated that it can be very costly to implement IT changes to carry out a piece of language in a bill. Do you know how much the IT changes will cost your Department to implement the fraud and overpayment recovery? **Mr. Fick** replied that there are no IT changes to carry out the recovery of funds in this bill.

**MOTION:** **Senator LeFavour** moved that **H510** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**. **Senator LeFavour** will be the sponsor of the bill.

**H478** **Relating to Engineers and Surveyors**  
**David Curtis, Executive Director, Board of Engineers and Land Surveyors** presented **H478** advising that this legislation would accomplish five objectives: 1) Stagger the expiration date of business entity certificates of authorization, which will flatten out the work load for Board staff; 2) amend language relating to examinations in such a manner as to allow us to take advantage of potential improvements to the exams by use of computer-based testing; 3) provide for the transfer of responsible charge from one professional to another in the event of the first professional no longer being available to complete the project; 4) change obsolete nomenclature; and 5) eliminate the requirement for references for applicants for the initial certification examination.

**Mr. Curtis** pointed out the major sections of the changes in the bill. The changes on pages 1 and 2 and the top part of page 3 change "curriculum" to "program" which is the proper terminology in the context.

Page 3, lines 48 and 49 continuing onto page 4, lines 1 through 4 eliminate the need for applicants for assignment to the Fundamentals of



Engineering or Surveying examinations to have three references. Passage of the examinations does not confer any practice privileges and no applicant has ever been denied assignment to the exams for lack of these references. The Deans of the Colleges of Engineering have requested that this requirement be eliminated and we see no reason not to accommodate that request.

The remainder of the changes on page 4 and those at the top of page 5 will allow the Board to administer national examinations that will likely be converted from their current paper-and-pencil format to computer-based exams. The duration, content, scheduling and other aspects of the computer-based examinations will likely be different than the specific criteria currently in statute.

Page 7, lines 3 and 5 clarify that not only hearings, but all administrative proceedings are governed by the Administrative Procedures Act.

Page 8, lines 39-47 provides a means by which a professional engineer or surveyor can “take over” a job initiated by another professional who is no longer available to complete the project and seal, sign and date the final work product.

**Senator Goedde** asked **Mr. Curtis** to clarify the procedure on Page 8 concerning another professional “take over” of a project. **Mr. Curtis** explained that the law currently requires that all final work products, whether they are submitted to a client, public or a governmental agency must be sealed, signed and dated by the professional who was in responsible charge. The responsible charge definition requires that the professional has been in responsible charge for the duration of the project. There may be circumstances such as a project that may not be completed for many years or the professional gets ill or dies. **Senator Goedde** stated that under current procedure if an engineer died before he was able to seal, sign or date a project he was working on would his successor have to start from square one and rebuild the entire project? **Mr. Curtis** advised that the technical interpretation of the law would be yes, but normally the new successor would pick-up the project from where it left off and complete it and seal it.

**MOTION:** **Vice Chairman Coiner** moved that **H478** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**. **Vice Chairman Coiner** will be the sponsor of the bill.

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

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** March 9, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

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

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

**CONVENE:** **Chairman Andreason** called the meeting to order at 1:31 p.m.

**MINUTES:**

**H477**

#### **Relating to Insurance**

**Lyn Darrington, representing Mortgage Insurance Companies of America**, presented **H477** stating Mortgage Insurance Companies of America asked the Department of Insurance last fall if the Department would be amenable to giving mortgage insurance companies flexibility with regard to the 25-1 capital ratio. The bill gives the Department discretion to allow a mortgage insurer to exceed the 25-1 risk capital ratio under certain conditions: 1) they would submit the request in writing to the Director of the Department of Insurance; 2) they must be in compliance with all of the domestic rules and the financial requirements in their state of domicile; 3) the director could hire outside experts, paid for by the insurer, if they needed additional information; and 4) the Director would respond in writing.

**Senator Goedde** said was the 25-1 ratio simply a number that was picked out of the air at some time and there is no actuarial data to support this ratio. **Ms. Darrington** stated in the early 1960's the National Association of Insurance Commissioners put out some model legislation and an expert at that time in New York did a study for the proper risk capital ratio that most insurers should carry. The appropriate ratio was deemed to be some where between 12-1 to 40-1. Idaho and 15 other states chose 25-1 to be somewhere in the middle.

**Senator LeFavour** asked what do other states have for this ratio? **Ms. Darrington** replied all of the other states chose to not put the ratio into statute. The other 34 states have other systems or methods by which

they regulate.

**MOTION:** **Senator Goedde** moved that **H477** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**. **Senator Goedde** will be the sponsor of the bill.

**H527**

**Relating to the Industrial Commission**

**Scott McDougall, Manager Claims and Benefits, Industrial Commission**, presented **H527** stating under Section 1, *Idaho Code*, 72-528 the stated purpose of the statute was to collect information on attorney fees that was previously inadequate or incomplete, to compute the total cost of the workmen's compensation system. The statute states that the information to be collected only applies to litigated claims. In fiscal year 2009, there were over 36,000 workmen's compensation claims filed and only 1,081 complaints filed, which is the definition of litigated. Consequently there were about 35,000 comp claims that may have involved attorney representation by claimants. The Commission does not know how many of these cases involved attorneys and fees. The Commission does know that the activity occurs, but is not reported to the Industrial Commission. In the case of defense counsel, from time to time, the Commission audits insurance companies. They ask them to provide the number of claim files, which are not in litigation. Many of these files have extensive outside legal correspondence and opinions. The Commission knows that insurance companies have considerable legal expense, which is not being covered or reported as reportable in the statute. Many cases go on to be lump sum settlements so they collect the attorney fee information at that time. The Commission has to regulate attorney fees for lump sum settlements. There is a methodology, they know the information they want and they know how to use the information. In the lump sum process client's counsel is required to send their fees and costs for review for approval along with the settlement. The effect of the statute as it is currently written is to require submittal of fees and costs prior to the approval of the settlement by the Industrial Commission. Their request is that the Industrial Commission be required to request this partial information, but the Industrial Commission could have the discretion to request it at the time of review.

**Senator Goedde** said the Statement of Purpose indicates under the fiscal note a savings of \$200 annually to the Commission. Could this also save sureties considerable money that might be reflected in lower workmen's compensation costs? **Mr. McDougall** answered that the \$200 reflected in the bill is the Commission's postage fees for mailing the forms out and it does not take into account the time spent inputting data information. There is a considerable amount of savings on the other side as well. **Senator Goedde** asked if **Mr. McDougall** had any guess as to what those savings might be. **Mr. McDougall** replied that he did not.

**MOTION:** **Senator LeFavour** moved that **H527** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Senator LeFavour** will be the sponsor of the bill.

H526

### Relating to Security Interests

**George Bacon, Director, Idaho Department of Lands**, presented **H526** stating that prior to 2001, *Idaho Code* 28-9-310, provided state lands with an exemption from having to file a Uniform Commercial Code (UCC) financing statements in order to perfect the state's security interest in timber it sells under contract. This chapter of code was overhauled in 2001. We believe an unintended consequence of that effort was the elimination of the filing exemption for state timber. The State Board of Land Commissioners asked the Department to seek reinstatement of the exemption through legislative action.

The Department of Lands sells over 220 million board feet of timber annually, using contracts that extend anywhere from one to five years. Forest land is our most important asset type because timber accounts for about 80% of our revenue. Although, we do require performance bonds from our customers, the recent tough economic times have revealed that bonding alone may not be adequate to protect the State's security interest.

Having to track and manage UCC filings for each timber sale and purchaser has a cost. The Department offers about 80 new timber sales each year. In addition, we have 150 to 200 active contracts at any one time. The potential for mistakes in filing will put revenue to the trusts at risk. We estimate that without an exemption, the tracking, filing, and auditing activities will cost us about \$8,000 to \$10,000 each year. This money could go to our schools or other endowment beneficiaries.

**Chairman Andreason** said if the Department made the board feet sale decisions how many board feet would they sell per year. **Mr. Bacon** advised that the Department got approval from the landlords last year to increase the harvest from 220 million board feet to 247 million board feet. This increase was selected after a two year study to determine what the timber resource needs to look at for harvest such as the healthy, well spaced, fast sprawling and trees able to be adaptable to climate change. They are reducing their rotation ages so they will be harvesting smaller trees, per industry demand. The smaller trees are easier to handle in processing board feet. Through this effort they can increase their growth 34% over the next 50 years.

**Senator Goedde** stated that **Mr. Bacon** indicated that they have a cutting target and have they reached this target in recent years. **Mr. Bacon** said they have always met or exceeded their cutting target.

**MOTION:**

**Vice Chairman Coiner** moved that **H526** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**. **Vice Chairman Coiner** will be the sponsor of the bill.

H474

### Relating to Plumbing Systems

**Steve Keys, Deputy Director, Division Building Safety**, presented **H474** stating this bill makes a one-line addition to existing statutory language on Line 23. The change expands the definition of a plumbing system to specifically include water heaters and associated venting of water heaters. This clarification is needed because the HVAC statute

specifically references the venting of water heaters, but does not recognize that plumbers have traditionally installed the venting for water heaters that those plumbers installed. Both the plumbing board and the HVAC board support this legislation.

**MOTION:** **Senator Lodge** moved that **H474** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator LeFavour**. The motion carried by **Voice Vote**. **Senator Lodge** will be the sponsor of the bill.

**Senator Stegner** requested that **H474** be placed on the Consent Calendar.

**H476** **Relating to the Plumbing Board Fund**  
**Mr. Keys** advised that **H476** amends provisions of the plumbing statute to reflect current practice for the deposit of funds as directed by *Idaho Code*, 59-1014, and the State Treasurer's office.

**MOTION:** **Senator Goedde** moved that **H476** be placed on the Consent Calendar. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**. **Senator Lodge** will be the sponsor of the bill.

**H553** **Relating to the Electrical Board Fund**  
**Mr. Keys** stated that **H553** is identical to **H476**, except it applies to the Electrical Board Fund.

**MOTION:** **Senator Smyser** moved that **H553** be placed on the Consent Calendar. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Lodge** will be the sponsor of the bill.

**ADJOURNED:** There being no further business, the meeting adjourned at 1:50 p.m.

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** March 11, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

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

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

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

**MINUTES:**

**H431** **Relating to Insurance Records**  
**Bill Deal, Director, Department of Insurance**, presented **H431** and stated this legislation clarifies that certain financial records relating to title insurers and self-funded health plans are public record and the process of adopting title examination reports. On page 3 it states that "the director shall prepare an examination report following each examination of a title insurer and will provide the report to the title insurer being examined affording the title company to have 28 days to review, comment and request a hearing. " If there is no hearing request, then the examination report shall be made available to the public and public records. The second part of the section of the code states that any working papers that the Department uses will be exempt from public records status. On page 4, self-funded plans, which the Department audits, states that their annual and quarterly reports are also to be a public record.

**MOTION:** **Senator Cameron** moved that **H431** be placed on the Consent Calendar. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**H424** **Relating to the Insurance Contract**  
**Bill Deal, Director, Department of Insurance**, presented **H424** advising this legislation repeals Section 41-1820, *Idaho Code*, its constitutionality, because this section declares insurance policies for the benefit of married women to be their separate property, while making no similar provision for married men. The section violates the 14<sup>th</sup> Amendment of the U.S. Constitution and is unconstitutional. This was found in a case of Banner

Life vs Mark Wallace Dixon irrevocable trust. The Idaho Supreme Court declared this section to be unconstitutional.

**MOTION:** **Vice Chairman Coiner** moved that **H424** be placed on the Consent Calendar. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**H529** **Relating to Insurance Contracts with Providers of Dental Services**  
**Skip Smyser, representing Idaho State Dental Association**, presented **H529** stating that this legislation will clarify that a person contracting with a dentist cannot set the rate for a procedure that is not covered by that contract. In other areas of the country, as part of a marketing effort, insurers have gone to employers and said that they will set-up and take care of the items that they want covered, but in addition, they will control the cost on all the items that they do not cover. This comes into play in various kinds of cosmetic dentistry, whitening, veneers, etc. that are not normally covered in policies, but as a marketing gimmick, the insurer would try to set the cost and control those costs.

**MOTION:** **Vice Chairman Coiner** moved that **H529** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. **Senator Smyser** stated pursuant to Rules of the Senate 39 (H), of the Idaho State Legislature, she has a conflict but still wishes to vote on **H529**. The motion carried by **Voice Vote**. **Vice Chairman Coiner** will be the sponsor of the bill.

**HCR50** **Stating Findings of the Legislature and Rejecting Certain Rules of the Industrial Commission Relating to Boiler and Pressure Vessel Safety Rules**  
**Representative Simpson**, presented **HCR50** advising that this bill proposes to reject certain rules of the Industrial Commission regarding boiler and pressure vessel safety. In the House Commerce and Human Resources Committee the Industrial Commission proposed repealing the chapters listed on the bottom of this resolution. The Industrial Commission in the State of Idaho would have no regulatory authority related to the safety of boilers and pressure vessel. The Industrial Commission does not inspect boiler and pressure vessels. The State of Idaho does require an inspection permit for boiler and pressure vessels, but the responsibility for the inspection and issuance of a permit resides with the property owner. The Industrial Commission admitted the \$15,000 annual budget they maintain to send an inspector to check for boiler and pressure safety permits is not enough to do an adequate job. The Commission stated that the State of Idaho has no authority to do anything about boilers that are not certified. In **Representative Simpson's** review of the rules he was given information from the American Insurance Association and the National Board of Boiler and Pressure Vessel Inspectors that claim repealing these rules would cause a safety threat. The Commission disputed these claims and said repealing these rules should not effect safety significantly. When the Commission set-up the rules their hope was that all parties would come together and would put something in statute to provide an effective means of enforcement.

**Senator Stegner** said the Committee reviewed these rules earlier in the

session and what was the decision on these rules. **Vice Chairman Coiner** stated that the Committee approved these rules. **Senator Stegner** asked why would the Committee reverse our decision with this resolution.

**Representative Simpson** replied that there is no enforcement of the inspections of the boilers and vessels in the current program. The \$15,000 annual budget that the Commission received to pay for a part-time inspector is not enough to do an adequate job. If the chapters at the bottom of the HCR are not repealed, the State will have no regulatory authority over the 3,000 boilers plus the pressure vessels that exist in the State of Idaho. The House Committee would like to see a statute to add a level of enforcement that currently exists before eliminating these chapters.

**MOTION:**

**Vice Chairman Coiner** moved to hold **HCR50** in Committee subject to call of the Chair. **Vice Chairman Coiner** said he would investigate the Committee's passage of the rules versus **HCR50** to reverse the decision.

**Senator Goedde** asked did you get any indication from the Industrial Commission what the cost would be to set-up a program that would provide adequate inspections on boilers and vessels. **Representative Simpson** replied they did not explore cost, but met with the various interests on this legislation and the Commission said they could not get any resolution.

**Senator Stegner** asked **Dennis Stevenson, Administrative Rule Coordinator**, about this rule that has been approved by our Committee, if our Committee does not act on **HCR50** what would be the status of the rule? **Mr. Stevenson** replied **HCR50** would not go forward. The rule would be approved. **Senator Stegner** asked is this a common occurrence for the House to bring a rule that the Senate has approved and request that the Senate reject its decision? **Mr. Stevenson** stated that this is not a common occurrence, however, it is not uncommon for one body to bring a concurrent resolution to try to convince another body to reverse their actions.

The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

**H558**

**Relating to the Public Employee Retirement System (PERSI) Norman Semanko, Executive Director, Idaho Water Users Association, representing irrigation districts in the state**, presented **H558** stating there is an existing definition in the code regarding PERSI that affects employees. Such as seasonal or casual employees whose employment is dictated by the weather and the growing season. The definition in the code states that employees who work less than eight months because of the weather and the growing season also applies to cities and counties and those who are employed in parks and golf courses. The irrigation districts have the same kind of issue with employees that work less than eight months affected by the weather and growing season. The irrigation districts are asking to have the same exemption that the cities and counties have for those that work less than



eight months in a seasonal job that is affected by the weather and the growing season.

**Chairman Andreason** stated that in his study of the bill the only thing it is trying to do is to have the irrigation employees be considered the same as other part-time employees. **Mr. Semanko** replied that is correct.

**MOTION:** **Senator Cameron** moved that **H558** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Stegner**.

**Senator Cameron** clarified for the Committee that the employees would not participate in PERSI unless they worked longer than eight months. The motion carried by **Voice Vote**. **Senator Cameron** will be the sponsor of the bill.

**MOTION:** **Senator Smyser** moved to approve the minutes of March 2, 2010. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

**MOTION:** **Senator Malepeai** moved to approve the minutes of February 25, 2010. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

**MOTION:** **Senator LeFavour** moved to approve the minutes of March 9, 2010. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

**MOTION:** **Senator Smyser** moved to approve the minutes of March 4, 2010. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

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

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** March 16, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:** Senator Malepeai

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

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

**CONVENE:** **Chairman Andreason** called the meeting to order at 1:34 p.m.

**MINUTES:**

**H509** **Relating to the Employment Security Law**  
**Bob Fick, Communications and Legislative Liaison, Department of Labor**, advised that this bill formalizes the Idaho Youth summer program. In a previous hearing on this bill, clarification was requested as to which department employed these youth workers. The participants of the Idaho Youth Corp are temporary employees and are employed by the Department of Labor for administrative and pay purposes, but are employed by the site work provider for supervision and work. The clarification of their employment status does require that the bill be amended and the amendment is attached to the bill. The amendment strikes three words in the paragraph concerning employment. Subsection 6, strikes out the words "and are not" so that the section reads participants in Youth Employment Job Training Program, under this section, shall not be employees of the State entitled to personal benefits under the State Personnel System.

**MOTION:** **Senator LeFavour** moved that **H509** be referred to the 14<sup>th</sup> Order for amendment. Seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Senator LeFavour** will be the sponsor of this bill.

**H459** **Relating to Barbers**  
**Roger Hale, General Counsel, Bureau of Occupational Licenses**, stated that the Barber Board licenses barbers and barber stylists. Barber stylists are the professionals who may use certain chemicals in their practice. **H459** accomplishes four things: 1) clarifies the qualifications for

a barber instructors license, as it relates to experience; 2) establishes the qualifications for the first time for a barber stylist instructor; 3) raises the student instructor ratio from 1 instructor to 15 students to 1 instructor to 20 students; 4) will remove the Board members from the PERSI participation by changing their compensation to an honorarium under state law.

**Senator Cameron** said on page 2, line 15 of the bill where it defines who is licensed to practice as a barber stylist instructor the phrase “is of good moral character” is included in your qualifications. **Senator Cameron** stated that it has been some time since he has seen this phrase used. He has seen the terminology in old statutes, but has not seen it used in the newer statutes. Could you define what “good moral character” is and who would make the judgement whether an individual applying for this license possesses this type of character. **Mr. Hale** advised that the present qualification for the barber instructor uses this terminology and it was placed in this bill to mirror the qualifications for the two types of instructors. It would be up to the Board to determine whether or not an individual applying for this position has good moral character.

**MOTION:** **Vice Chairman Coiner** moved that **H459** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**. **Vice Chairman Coiner** will be the sponsor of the bill.

**H460** **Relating to Architects**  
**Mr. Hale** said currently an individual does not need an architectural license to design a single or multi-family residence not exceeding three units or two stories in height. This bill will expand the exemption to allow the residence to be up to three stories in height.

**MOTION:** **Senator LeFavour** moved that **H460** be placed on the Consent Calendar. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

**H428** **Relating to the State Board of Drinking Water and Wastewater Professionals, Chairman Andreason** asked **Tana Cory, Bureau Chief, Bureau of Occupational Licenses**, to comment on the concerns that the Committee had on **H459** with the definition of “good moral character”. **Ms. Cory** said that this old statutory language will be scrutinized in the Bureau’s legislation and as they clean up more of their documents she plans to remove the language.

**Ms. Cory** presented **H428** stating that this bill contains one small change on line 17, where it references 59-509 from g to m. On line 17, 59-509, is the schedule for honorary compensation for members of boards, commissions and councils. Changing from g to m does not change the amount of payment they would get for their service on the board, it would still remain \$35 per day. It moves that compensation from the section of the code to an honorarium . This change means that the board would not be required to participate in PERSI and the board would like to make this change in order to avoid any possible tax implications.

- MOTION:** **Vice Chairman Coiner** moved that **H428** be placed on the Consent Calendar. The motion was seconded by **Senator Lodge**. The motion carried by **Voice Vote**.
- H429** **Relating to the Liquefied Petroleum Gas Safety Board**  
**Ms. Cory** advised this is a change on line 42, from h to n and it does not change the amount of payment that a member of the board would receive, which would be \$50 per day. It will change compensation to honorarium.
- MOTION:** **Senator Smyser** moved that **H429** be placed on the Consent Calendar. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.
- H461** **Relating to the Bureau of Occupational Licenses**  
**Mr. Hale** stated that the Bureau provides administrative fiscal investigative legal support services to professional licensure boards in the State. This bill is intended to allow for efficiencies and savings on the board, investigation and enforcement. The bill clarifies current section of the law that mandates the Bureau cooperate with certain other State agencies. This clarification does a number of things: 1) it provides the Bureau Chief with some discretion; 2) establishes a cooperation with other governmental agencies in sharing information; and 3) it expands the various agencies that the Bureau can cooperate with to include federal, state and other local agencies involved in regulation law enforcement. This bill will allow the Bureau to share information and cooperate with other governmental agencies that may be investigating matters that involve a licensed professional.
- MOTION:** **Vice Chairman Coiner** moved that **H461** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Vice Chairman Coiner** will be the sponsor of the bill. The original motion and second were withdrawn.
- SUBSTITUTE MOTION:** **Senator Cameron** moved that **H461** be placed on the Consent Calendar. The motion was seconded by **Vice Chairman Coiner**. The substitute motion carried by **Voice Vote**.
- H602** **Relating to Immunity from Liability**  
**Representative Killen** stated this legislation grants limited immunity for members of Idaho Search and Rescue Units. There are 31 Units that exist in the State and in Section 13-2229, *Idaho Code*, it sanctions and includes within the scope of this bill those Units that are subject to the call of the county sheriffs. The Units respond to the call of the sheriff for assistance and they are required to be well-trained in both emergency search, first aid, transport, and rescue operations. They are all volunteers and there has been some question as to whether the existing statutes in the code are sufficiently broad to encompass their activities. In part, they do receive some reimbursement for their expenses that they incur. Rather than hamper their recruitment and retention activities this legislation was written to clarify that they are subject to these immunity provisions. Only the active duty expenses, when the Unit is engaged in a search and rescue operation, will be allowed for reimbursement.

**MOTION:** **Senator LeFavour** moved that **H602** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator LeFavour** will be the sponsor of the bill.

**H604** **Relating to the State Personnel System**  
**Representative Paisley-Stuart** advised that last year the State Human Resource Director left state employment. When she did so, she was granted \$72,781 to be placed in her PERSI account. She had already reached the Rule of 90, which means that she would have had full retirement benefits at the time of her departure. Additionally, two other employees were afforded the same privilege costing the State approximately \$50,000. The total cost for just these three employees was about \$125,000, which is an outrage to Idaho Taxpayers and to other State Employees who received no consideration as they left State Employment. **Representative Paisley-Stuart** said she has received a large number of e-mails, letters, phone calls, radio and TV interviews concerning this unprecedented retirement pay-off to these three State Employees. The State of Idaho has a very strong severance policy, we do not pay severance pay when we lay-off staff. No where in our severance pay policy does it speak to purchase of services in this PERSI pay-off. **H604** would prohibit this practice and it has the approval of the Department of Financial Management and the Governor.

In 2004, \$12,500 was paid to an employee who was leaving employment from the Department of Lands. In 2007, \$9,684.12 was paid by the Historical Society to an employee who was leaving. In 2009, approximately \$125,000 was paid to three employees who were leaving State Service. This information was provided by the State Controller's Office.

**Representative Higgins** stated \$125,000 that was paid out to three employees came out of the General Fund in 2009 and this money could have gone to pay teachers, park workers, and other services that are critical to Citizens of Idaho. It is time that we eliminated the practice of "Golden Parachutes" for exclusive State Employees.

**MOTION:** **Senator Cameron** moved that **H604** be sent to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman Coiner**.

**SUBSTITUTE MOTION:** **Senator Goedde** moved that **H604** be placed on the Consent Calendar. The motion was seconded by **Senator Smyser**. The substitute motion carried by **Voice Vote**.

**ADJOURNED:** There being no further business, the meeting adjourned at 2:14 p.m.

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** March 18, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

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

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

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

**MINUTES:**

**H548**

#### **Relating to Bribery and Corruption**

**Representative Ringo** said this bill would allow the Idaho Public Employees Association, which represents Idaho public employees, to give an award, including one with economic significance, as part of an incentive program to honor excellence in the work place. In order to proceed with this program, the Association must ensure that there are no problems with the section of code dealing with bribery and corruption practices. The Association worked with the Attorney General to add a definition of benefits so that the award would be consistent with the law. The added wording appears in line 13 through 21, which defines "benefit".

**Donna Yule, representing Idaho Public Employees Association,** stated that she would encourage passage of this bill to allow the Association to offer this incentive program. The Association is in favor of boosting the morale of the State workers, which is low at the present, with this award program which would recognize exceptional Idaho public employees.

**MOTION:** **Senator LeFavour** moved that **H548** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Malepeai**. The motion carried by **Voice Vote**. **Senator LeFavour** will be the sponsor of the bill.

**H581**

#### **Relating to the Mobile Home Park Landlord-Tenant Act**

**Representative King** advised this legislation seeks to limit any rule change pertaining to the Landlord-Tenant Act restricting the type or size

of a tenant's mobile home that is permitted in the mobile home park. If the tenant's mobile home was in compliance with the park rules prior to the adoption of amendment of rule, the legislation would allow the tenant to be grandfathered in. This bill was updated by a case in Emmett concerning an elderly woman who had lived in a manufactured home community in her single-wide home for many years and was asked to upgrade her home or leave. The new rules only allowed double-wide manufactured homes in the community. This woman, who was on a fixed income, had no means of purchasing a larger home nor moving the home to another location. She was evicted from her mobile home and may have lost any equity that she had in her home. The cost of moving a manufactured home ranges from between \$5,000 and \$15,000 depending on the age of the home.

**Senator Lodge** asked if this elderly lady leaves that manufactured home park or sells the manufactured home what would be the status of the home at that point? **Representative King** said only the present owner under the new rules would be grandfathered in, but if there was a change of ownership they would have to upgrade to the double-wide home.

**Jack Lyman, representing Idaho Housing Alliance**, said that the Idaho Housing Alliance represents the manufactures and dealers of factory zoned housing, as well as, the owners and operators of mobile home communities and manufactured housing communities. The Association supports **H581** as an appropriate measure to assure that an existing tenant is not vulnerable to eviction because of the size or type of their manufactured home. In the event of a rule change in the manufactured home community, they would be grandfathered in under new ownership or change of rule.

**MOTION:**

**Senator Smyser** moved that **H581** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator LeFavour**. The motion carried by **Voice Vote**. **Senator Smyser** will be the sponsor of the bill.

**H644**

**Relating to the Public Employee Retirement System (PERSI)**

**Senator Cameron** said the purpose of this legislation is to exempt substitute teachers from being eligible for PERSI. This legislation was drafted at the request of schools boards running into situations where they have had good substitute teachers but they would reach the five month point where they would have to include them in PERSI. The substitute teachers, in many cases, did not want to participate in PERSI because they were retired or they did not want to participate in the plan and have the funds deducted from their checks. Having to place these teachers on PERSI after the five months costs the school districts money. In some districts the substitute would have to be let go because the school board could not afford to pay the PERSI money out. On page 4, lines 11 through 17 of the bill defines a substitute teacher as not under contract with the school district or charter school. The teacher is hired on a day-to-day basis as a substitute teacher. Considering the financial constraints that all of the school districts will be facing this next year it seemed prudent to draft this legislation which will help save districts some

additional monies.

**Senator LeFavour** asked if this exemption for substitute teachers could be optional or negotiated in the districts and for those teachers who might want to participate in PERSI? **Senator Cameron** replied the legislation could not be drafted in a manner that would make PERSI optional it is by line definition of whether an individual qualifies or you do not qualify. Substitute teachers have no contract to negotiate, since they are hired on a day-to-day basis. If a substitute becomes a contract teacher, then they become eligible for the PERSI benefits.

**Karen Echeverria, representing Idaho School Board Association,** said this bill exempts substitute teachers and school districts from having to pay PERSI benefits. Often these substitute teachers will never vest into the program, so they will never see the benefit of having paid into PERSI while they were a substitute teacher.

**Harold Ott, Executive Director, representing Rural Schools Association,** stated as a superintendent for 15 years in two districts in northern Idaho he had only one individual during that time that had a concern about having the PERSI benefits. If a teacher is being hired to substitute in a long term situation where they have to do the lesson plans, grading of papers and report cards they would probably have a long term contract. If the assignment is for short term, most of the teachers do not want to have to make the contribution out of their pay to PERSI.

**Phil Homer, representing Idaho Association of School Administrators,** said the Association supports H644.

**MOTION:**

**Vice Chairman Coiner** moved that **H644** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Senator LeFavour** requested that she be recorded as voting **nay**. **Senator Cameron** will be the sponsor of the bill.

**HCR61**

**Stating Findings of the Legislature and Rejecting a Certain Rule of the Department of Insurance Relating to Continuing Education**  
**Representative Collins** stated that this resolution would reject a subsection of a pending rule from the Department of Insurance that dealt with continuing education and the rule not being consistent with legislative intent. The rule dealt with electronic education for continuing education credits for insurance agents. The Department of Insurance is trying to develop a system that will make it easier for the insurance agents to acquire the credits. The Department has issue with the accountability of the individual taking the continuing education on-line. The requirements for this method of credits needs further research before it is offered to the agents as a means of acquiring those credits. This rule was heard and discussed by the House Business Committee and rejected at that time. The Department of Insurance has agreed to the rejection of this rule.

**Senator Cameron** said that when the Department of Insurance was



before this Committee he had concerns and questions about the rule.

**MOTION:** **Senator Cameron** moved that **HCR61** be sent to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**. **Senator Cameron** will be the sponsor of the bill.

**H502** **Relating to the Modular Building Advisory Board**  
**Steve Keys, Deputy Administrator**, advised this bill changes the compensation for members of the Modular Building Advisory Board from the \$25 per day salary, they currently receive, to a \$50 honorarium. The \$50 per day is the same compensation that other board members at the Division receive, but the change to an honorarium allows board members to continue to participate in private retirement programs by eliminating any participation in PERSI.

**MOTION:** **Vice Chairman Coiner** moved that **H502** be placed on the Consent Calendar. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

**H503** **Relating to the Division of Building Safety and Examination Fees**  
**Steve Keys** said this legislation allows the Division to establish a fee for examinations delivered by the agency instead of through a third-party testing organization. The administrator currently has the authority to deliver exams, but lacks explicit authority to charge for the exams. Currently, third-party providers charge \$75 to \$100 per exam, with this legislation establishing a fee of \$75 until fees are established in rule. The Department of Building Safety is working to exert greater control over the administration of examinations due to complaints we have received regarding the services provided by current third-party firms.

**Senator Goedde** asked **Mr. Keys** to clarify his statement that the Division is going to statute so it could promulgate rule and then the Division would expect the statute to be revised again. **Mr. Keys** said currently the Division Administrator lacks specific statute authority to allow him to charge a fee to administer an examination. **Senator Goedde** stated it would have been a lot simpler to give the administrator the authority to establish fee for examination in rule. After the passage of this bill the Division would have to keep this fee in statute to give the administrator the ability to charge the fee. Every time the Division would want to raise what it charges for fees the statute will have to be changed. **Mr. Keys** said the intent in this bill was to establish a fee until other fees can be established in the rule. Put this fee in place to allow the Division to move ahead with the internal examination process instead of waiting for a year for the fee to be placed in rule. **Senator Goedde** stated he has never seen where a rule can change statute and it appears to him that is what this legislation intends to do. **Mr. Keys** said that this legislation has been through the Attorney General's Office and this procedure was how their office advised the Division to proceed in the establishments of these fees. **Senator Cameron** stated that the way this legislation is drafted it does put the statute subservient to the rule. **Senator Stegner** said he did not see the problem with this bill it states "and until fees are established in rule." The Division is requesting the authority immediately to charge fees

and then when they establish a rule they are authorized by this statute to set the fee in the rule.

**MOTION:** **Chairman Andreason** moved to hold **H503** until next Tuesday, March 23, 2010.

**H504** **Relating to the Uniform School Building Safety Act**  
**Steve Keys** said this legislation simplifies the process for dealing with serious school safety issues as they are recognized in Idaho. The Administrator of the Division of Building Safety would be able, when required, to hire an engineering consultant directly instead of working through the Department of Administration. Removing the Department of Administration from the process will simplify and expedite the process for dealing with serious school safety problems.

**MOTION:** **Senator Smyser** moved that **H504** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator LeFavour**. The motion carried by **Voice Vote**. **Senator Smyser** will be the sponsor of the bill.

**H462** **Relating to Unauthorized Insurers and Surplus Lines**  
**Woody Richards, representing Surplus Lines Association**, said the surplus line companies are the exception to the rule in the insurance industry, because they are insurers of the last resort. They insure items that other insurance companies do not want to insure because the risks are so unusual or they have an extremely high risk associated with the insured subject. Surplus line insurance would insure a quarterback's throwing arm, dancer's legs, ski lifts, liquor establishments, just to name a few of the insured. The customers of the surplus line companies come to them because most insurance companies do not want to write these type of policies. Because of surplus line companies unusual risks, they are not admitted to the normal Department of Insurance process. The two guarantee associations do not provide protection in the event that a surplus lines company becomes insolvent or bankrupt. When a normal insurance company becomes bankrupt, the guarantee association steps in and services the claims. By contrast, in the unusual situation where a surplus line insurance company becomes bankrupt, the policy holder must pay his or her own bills if the bankrupt surplus line carrier does not have sufficient assets. Section 41-1220, *Idaho Code*, is intended to provide notice 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. Currently the required notice to all purchasers that surplus line insurance policies have no coverage provided by either guarantee association. This requirement has not been changed by this legislation that is before you today. The sponsor of **H462** seeks a change to add an additional option to allow the notice to be printed in 12-point bold black print. Right now the law requires that the notes are smaller than 10-point print. Due to advances in electronic signature and distribution of insurance policies, the red color requirement is viewed as an impediment. The policy has to be printed on paper, then hand-stamped with red ink, then scanned to pick up the red stamp image and finally sent to the customer. By permitting the notice to alternatively be printed in black ink with at least twelve point bold print,

there will be an opportunity to reduce expense and time.

**Senator Goedde** stated pursuant to rules of the Senate 39 (H), of the Idaho State Legislature, he is a surplus line broker and has a conflict but still wishes to vote on **H462**. **Senator Goedde** is very cognizant of the concerns of delivering digital policies. Typically, our office does not print policies on a color printer when we are delivering to a customer digitally.

**MOTION:** **Senator Goedde** moved that **H462** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Goedde** will be the sponsor of the bill.

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

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary

## MINUTES

### SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

**DATE:** March 23, 2010  
**TIME:** 1:30 p.m.  
**PLACE:** Room WW54  
**MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Cameron, Goedde, Smyser, and LeFavour  
**MEMBERS ABSENT/ EXCUSED:** Senators Lodge and Malepeai  
**GUESTS:** See attached sign-in sheet.  
**CONVENED:** **Chairman Andreason** called the meeting to order at 1:36 p.m.  
**MINUTES:**

**H503** **Relating to the Division of Building Safety and Examination Fees**  
**Steve Keys, Deputy Administrator, Division of Building Safety,** advised that **H503** was heard at the March 18, 2010 Committee meeting and **Senator Goedde** had questions about the drafting of the legislation. **Mr. Keys** believes that **Senator Goedde's** questions have been answered by the Attorney General's Office concerning the legislation's intent. As you will recall, **H503** gives the Administrative Division of Building Safety the authority to charge for an examination which it currently lacks.

**Senator Goedde** said the Attorney General's Office has provided him with information that clarifies that what is being proposed in this legislation is properly worded.

**MOTION:** **Senator Goedde** moved that **H503** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Goedde** will be the sponsor of the bill.

**H646** **Relating to the Employment Security Law**  
**Chairman Andreason** asked **Mr. Fick** if he would bring the Committee up-to-date on the unemployment situation. **Bob Fick, Communication & Legislative Liaison, Department of Labor,** stated the unemployment rate is 9.55% and the percentage is just 1/10 away from the 9.6% of the highest unemployment in the State in February of 1983. The unemployment is lag indicator so the rate might continue to go up, even though it appears that job situation has stabilized. The Department believes that the State is not losing jobs anymore, but not generating many. The benefit payments have declined as compared to last year, however many individuals who are dropping off the regular benefits are

going onto extended benefits. The Department wrote 54,000 checks two weeks ago; in a similar period a year ago they wrote 58,000. There are around 4,000 workers who have exhausted all benefits. The jobs versus job seekers has improved some what, last year there were 4.5 job seekers for every job and now there are 4 seekers for every job. There are still 72,000 workers unemployed in the State.

**Mr. Fick** advised that **H646** was introduced at the suggestion of **Senator Cameron**. This bill responds to some concerns that employers have had about their liability for benefits. Under the first provision of the bill on Page 1, this provision takes temporary disability benefits paid under the workers compensation program and uses that to offset directly any unemployment benefits. The effect of that would be to preclude the collection of unemployment while disability benefits are still being paid. On the theory that temporary disability benefits are essentially wage replacement for a disability this should not entitle a claimant to also collect unemployment. The minimum workers compensation is \$289 and the average unemployment benefit is \$245 the offset would essentially eliminate unemployment benefits during the period of temporary disability payments. Temporary disability payments in about 3/4 of the cases run less than 14 weeks. So the effect would be to delay payment of unemployment benefits until workers compensation benefits are paid out. A claimant on unemployment has 52 weeks to claim his benefits and this will push that claim back and allow the individual more time to look for a job and acquire a job before he collects unemployment.

The other provision is on page 4, reads in the case of a claimant that has entered into approved training, if he is offered another job he is not required to take it and is allowed to complete the training. What this provision would do in the case of a claimant in approved training being offered a job, if he turns down the job his previous employer would no longer be charged for his benefits from the State. At that point, those benefits would be socialized and paid out of the fund without any employer being charged.

**MOTION:** **Senator Cameron** moved that **H646** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Senator Cameron** will be the sponsor of the bill.

**MOTION:** **Senator Smyser** moved to approve the minutes of March 16, 2010. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**ADJOURN:** There being no further business, the meeting adjourned at 1:52 p.m.

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Senator John Andreason  
Chairman

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Carol Deis  
Secretary