

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
J. R. Williams Bldg., 3rd Flr., Room A
Thursday, January 13, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|---------|-------------------------|---------------|
| | Department of Insurance | Director Deal |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Lodge
Sen Smyser
Sen Stennett
Sen Schmidt

COMMITTEE SECRETARY

Carol Deis
Room: WW46
Phone: (208) 332-1333
email: cdeis@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 13, 2011

TIME: 1:30 P.M.

PLACE: WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Lodge, Smyser, Stennett, and Schmidt

**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.

CONVENE: **Senator Andreason** called the meeting to order at 1:33 p.m.

PRESENTATION: **Department of Insurance**
Bill Deal, Director, Department of Insurance, gave a brief presentation of the procedures and projects that the Department of Insurance has implemented or is in the process of developing for better tracking and enforcement for the Department.

Shad Priest, Deputy Director, Department of Insurance, stated that they have hired two personnel, funded by the Federal Health and Human Services Division to implement the federally mandated health care bill for the State of Idaho. The methods to administer this policy must be in place by the year 2015.

ADJOURN: There being no further business, the meeting adjourned at 2:45 p.m.

Senator Andreason
Chairman

Carol Deis
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
 1:30 P.M.
 Room WW54
 Tuesday, January 18, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|---------------------|---|---|
| RS20092 | Relating to Employment Security Law | Senator Corder |
| RS19934 | Relating to the Division of Human Resources | Admintr. Hammond |
| RS19946C1 | Relating to the Industrial Special Indemnity Fund | Manager Kile, ISIF |
| RS19990 | Relating to the Department of Commerce | Mrkt Bibiana Nertney |
| RS20000 | Relating to the PERSI | Director Drum |
| Docket No. | Rules Review | |
| | Division of Building Safety | Dep. Director Keys |
| 07-0103-1001 | Rules of Electrical Licensing and Registration — General | |
| 07-0104-1001 | Rules Governing Electrical Specialty Licensing | |
| 07-0107-1001 | Rules Governing Continuing Education Requirements | |
| 07-0205-1001 | Rules Governing Plumbing Safety Licensing | |
| 07-0301-1001 | Rules of Building Safety | |
| 07-0311-1001 | Rules Governing Manufactured/Mobile Home Industry Licensing | |
| 07-0402-1001 | Safety Rules for Elevators, Escalators, and Moving Walks | |
| 07-0701-1001 | Rules Governing Installation of HVAC, Division of Building Safety | |
| | Pending Fee Rules | |
| 07-0301-1002 | Rules of Building Safety | |
| | Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors | Dave Curtis, P.E. Executive Director |
| 10-0101-1001 | Rules of Procedure | |
| 10-0102-1001 | Rules of Professional Responsibility | |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman John Andreason
 Vice Chair Shirley McKague
 Sen Joe Stegner
 Sen John Goedde
 Sen Dean Cameron
 Sen Patti Anne Lodge

COMMITTEE SECRETARY

Carol Deis
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Sen Melinda Smyser
Sen Michelle Stennett
Sen Dan Schmidt

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, January 18, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Lodge, Smyser, Stennett, and Schmidt

**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.

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

RS20092 **Relating to Employment Security Law**
Senator Corder stated the purpose of **RS20092** is to put legislation in place for employers, who are in the Idaho Guard or Reserves, and who may be called to active duty, and who are forced to terminate employees; shall not have their taxable wage rate negatively impacted by actions of those terminations.

MOTION: **Senator Stegner** moved that **RS20092** be introduced to print. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

RS19934 **Relating to the Division of Human Resources**
Donna Weast, Program Manager, Division of Human Resources, stated that **RS19934** amends Idaho Code, Section 67-5309S by removing the term "acting appointment" and adding Idaho Code, Section Y to allow acting appointment service time to count toward fulfilling entrance probation. Clarifying the difference between entrance probation and marginal probationary periods that apply towards this section. All newly appointed employees serve an entrance probationary period of (1040) hours or (2,080) hours for a peace officer and once they satisfactorily complete the probationary period then they would attain permanent status. This temporary time would count for fulfilling that entrance probationary requirement. Promotional probations is when an employee who has attained this status is moved into a classification with a higher pay grade and they would serve the same probationary period as an entrance employee.

MOTION: **Senator Cameron** moved that **RS19934** be introduced to print. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

RS19946C1 **Relating to the Industrial Special Indemnity Fund**
James Kile, Manager, Industrial Special Indemnity Fund, stated this proposed legislation has two steps: 1) To do away with the Manager of Industrial Special Indemnity Fund; and 2) to shift some of the cost responsibilities of the fund to the employer that created the last accident that caused the disability. The Industrial Special Indemnity Fund is the one which pays the toll for the disabled workers of the State of Idaho and all of the employers of the State of Idaho pay into the fund. This proposed legislation will dissolve the fund over a period of time and will shift the responsibility to the last employer. Savings out of the Industrial Special Indemnity Fund is estimated to be about \$1 million that would be saved from paying indemnity for all employers and eventually after the litigation ran down the agency will be dissolved and a payment fund will take over. Shifting the responsibility to the

last employer to pay that permanent disability would seek to illuminate where they need to pay more attention to safety to avoid an injury accident. This legislation was introduced last year in House State Affairs and did not pass. This year the bill is being brought forward again in a different format. **Senator Cameron** asked **Mr. Kile** why this legislation is not being brought before the House Affairs Committee again this year? **Mr. Kile** answered in his experience Workmans' Compensation matters generally come before a Committee that dealt with Workman's Compensation litigation. He assumed it would start in a House Committee, but it was assigned to the Senate.

Wayne Hammond, Administrator of the Commission on Financial Management, addressed the Committee stating we screen all the bills before they come before the legislative committees. His staff check and the Department of Administration did request that this bill start in the House. It is their request that the Senate Commerce and Human Resources Committee return the bill for reassignment.

MOTION: **Senator Cameron** moved that **RS19946C1** be returned to the sponsor. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

RS19990 **Relating to the Department of Commerce**
Bibiana Nertney, Administrator for the Marketing Division, Department of Commerce, stated that **RS19990** is a housekeeping bill that came about when they did zero based budgeting. When the Department of Commerce and Labor was split by legislative mandate in 2008 the research and data function was assigned to the Department of Labor. The key research people and tools went to the Department of Labor where they continue to do an excellent job of being a clearing house for data collection and dissemination to the public. This legislation eliminates a duplication of efforts between state agencies and creates efficiencies in the dissemination of accurate research.

MOTION: **Senator Cameron** moved that **RS19990** be introduced to print. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**.

RS20000 **Relating to the PERSI**
Don Drum, Director, PERSI, stated that the purpose of this legislation is to amend PERSI statute and bring it in line with certain federal law. There are two laws specifically that need to be complied with which are HART (Heros Earnings Assistance Relief Tax Act) and USERRA (Uniformed Services Employment & Reemployment Rights Act). All the changes to this legislation are in Idaho Code, Section 59-1302 the main changes are bin sections 1 and 2. 1) Definition of military service and Idaho Code, Section 59-1302-23 to make clear that if a member dies while in active service he is entitled to military service. 2) Definition of employee in Idaho Code, Section 59-1302-14a a person receiving a differential wage while in active service as an employee for PERSI purposes. 3) Definition of salary in Idaho Code, 39-1302-31 clarifies differential wages are net salary for PERSI purposes so employee and employer contributions are to be required on differential wages paid to a member while called to active military service. USERRA changes are in section 3. 1) Definition of disabled, Idaho Code, Section 59-1302-12 provides that a member disabled while in active service is eligible for disability if he meets the definition of disabled. 2) Definition of military service Idaho Code, Section 59-1302-23 clarifies that if a member does retire on disability retirement, as a result of active service, he receives military service until the day he begins disability retirement. This legislation has an emergency and an effective date to coordinate with statutory requirements.

MOTION: **Senator Lodge** moved that **RS20000** be introduced to print. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

Vice Chairman McKague recognized **Steve Keys, Deputy Administrator, Division of Building Safety**, to present Pending Rules Dockets 07-0103-1001, 07-0104-1001, 07-0107-1001, 07-0205-1001, 07-0301-1001, 07-0311-1001, 07-0402-1001, 07-0701-1001 and pending fee rule 07-0301-1002.

Docket No.
07-0103-1001

Department of Building Safety
Rules of Electrical Licensing and Registration — General

This modifies the rules to bring references with apprentice registration requirements into conformance with previously-adopted statutory changes that eliminated the annual registration and implemented a registration good for five years. It also allows an apprentice who has completed his four years required schooling and has accumulated at least 6000 hours of on-the-job experience to take his journeyman exam before he completes his remaining required work experience. If the applicant passes the exam, he must provide evidence of having completed the required OJT before he will be able to apply for his journeyman license. This change was advocated by the industry as well as the education providers. The changes also clarify that the existing exemption from having to demonstrate specific work experience in different work categories is limited to those apprentices who have been registered in an apprenticeship program approved by the U.S. Department of Labor's Office of Apprenticeship.

07-0104-1001

Rules Governing Electrical Specialty Licensing

The new provisions establish an electrical specialty license category for Outside Wiremen. This category was established in response to requests from participants in the development of the wind farms. The new category recognizes that specially trained personnel other than journeymen and master electrician are equipped in terms of training and experience to construct electrical facilities and lines operating at voltages in excess of six hundred volts.

07-0107-1001

Rules Governing Continuing Education Requirements

This docket modifies the existing continuing education requirements for electricians by stipulating that sixteen hours of the previously required twenty-four hours must be code update related, and the remaining eight hours must be in other industry-related areas.

07-0205-1001

Rules Governing Plumbing Safety Licensing

This docket clarifies the requirements for the practical portion of the Plumbing Journeyman exam. The rule stipulates that the practical examination may be administered in a lab setting as well as on a job site. This change was requested by the industry, and has been particularly popular given the current lack of construction projects. Since this docket was approved as a temporary rule and took effect in September, the expanded availability of tests has been widely utilized.

07-0301-1001

Rules of Building Safety

This docket was initiated subsequent to an agreement reached last session in the course of the Legislative hearings relative to adoption of the 2009 International Energy Conservation Code (IECC) and the 2009 International Residential Code (IRC). The effective date was critical to assure that the changes made in this docket would coincide with the effective date of the 2009 energy and building codes. The change in rule recognizes differences between log homes and normal wood frame homes, and establishes alternative requirements that allow for continued construction of log homes within energy requirements. Other minor changes allowing local jurisdictions to exempt fences under six feet in height from building permit requirements as well as prefabricated swimming pools not more than four feet deep are also incorporated.

- 07-0311-1001 Rules Governing Manufactured/Mobile Home Industry Licensing**
This docket reestablishes initial and continuing education requirements for installer of manufactured homes. The requirements for eight hours of initial training and four hours of continuing education to facilitate license renewal replace prior requirements that were removed last year. The earlier requirements were much more comprehensive in nature, and were deleted because the delivery system for the training disappeared with the downturn in the economy. The industry association which provided the training is simply unable to finance the education effort going forward. By working with the industry, the board has been able to identify an online training program that will satisfy HUD's requirements for installers of manufactured housing plus provide a basis for assuring license holders have received necessary education updates.
- 07-0402-1001 Safety Rules for Elevators, Escalators, and Moving Walks**
This docket clarifies that optional equipment, components, or systems installed on an elevator must be functional. This would include equipment and components not specifically required by the adopted version of the code in effect when the elevator was placed in service.
- 07-0701-1001 Rules Governing Installation of HVAC, Division of Building Safety**
The HVAC Board promulgated this rule to adopt the 2009 versions of the mechanical codes that form the regulatory basis for mechanical inspection programs in Idaho. These updated versions of the code dovetail with the versions of the building and energy codes previously adopted by the Building Codes Board, and reviewed by the Legislature. The existing amendments to the mechanical codes remain in place with the approval of this docket.
- MOTION:** **Senator Stegner** moved to approve Docket No. 07-0103-1001, 07-0104-1001, 07-0107-1001, 07-0205-1001, 07-0301-1001, 07-0311-1001, 07-0402-1001, and 07-0701-100. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.
- 07-0301-1002 Pending Fee Rules**
This docket changes the fee basis for building permits and plan reviews as well as the hourly fee for technical service. Building permit fees for those projects in excess of five million dollars (\$5,000,000) are significantly reduced by reducing the rate on that portion above \$5M from \$3.65 to \$2.75 per thousand dollars in value. Any value in excess of \$10M is assessed at \$2.00 per thousand.
During the past year, the Division of Building Safety has purchased and implemented new software to facilitate the plan review process. This software facilitates the electronic submission and exchange of plans and project documentation. This Project DOX software eases the review process, cuts down significantly on the postage and handling fees incumbent with printed plans, and greatly enhances the exchange of information among Department of Building Safety plan reviewers, the project owner, the design team, and inspectors in the field. In recognition of these new-found efficiencies, this docket changes the basis for plan review fees from a flat 65% of the calculated building permit fee to an hourly fee of \$10 with a minimum fee of 40% of the calculated building permit fee. It is our belief that in most cases, the minimum fee will cover the cost of providing the plan review; the exception may be those rare cases involving multiple changes after the initial submission of plans. The technical service fee changes from \$36 per hour to \$10 per hour, and forms the basis for the hourly fee for the plan review process. The \$100 fee accurately reflects the cost of employing qualified individuals to perform the reviews, costs for continuing education and other education for those people, the costs of purchasing and maintaining the specialized software, the management and administrative support for the plan review effort, and the overheads associated with the program.

MOTION: **Senator Stegner** moved to approve Docket No. 07–0301–1002. The motion was seconded by **Senator Stennett**. The motion carried by a **Voice Vote**.

10–0101–1001 Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors
The purpose of the pending rules is to allow initial licensing as a professional engineer through use of the Structural Engineer examination without having to first be licensed as a professional engineer in another discipline as currently required, and without requiring an additional two years of experience as is currently required. The change is needed to conform with the majority of other jurisdictions and to recognize that the practice of structural engineering has become distinct from other disciplines such as civil engineering from which it developed. It also allows the details of investigations to be released to law enforcement agencies and licensing entities in other jurisdictions.

10–0102–1001 Rules of Professional Responsibility
The purpose of the pending rule change is to require that licensees be prompt in statements and written responses to the Board. The rule also allows the Board to conduct investigations and inquiries in a timely manner as required by law.

MOTION: **Senator Smyser** moved to approve Docket No. 10–0101–1001 and 10–0102–1001. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

ADJOURN: **There being no further business, the meeting adjourned at 2:30 p.m.**

Senator Andreason
Chairman

Carol Deis
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
 1:30 P.M.
 Room WW54
 Thursday, January 20, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|--|--|---------------------------------------|
| Docket No. | Rules Review | |
| | Department of Labor | Bob Fick, Communication Manager |
| 09-0104-1001 Page 39 | Unemployment Insurance Benefit Fraud and Overpayment Rules | |
| 09-0106-1001 Page 43 | Rules of the Appeals Bureau | |
| 09-0130-1001 Page 49 | Unemployment Insurance Benefits Administration Rules | |
| 09-0135-1001 Page 54 | Unemployment Insurance Tax Administration Rules | |
| | Bureau of Occupational Licenses | Roger Hale, General Counsel |
| 24-0101-902 Page 214 | Rules of the Idaho Board of Architectural Examiners | |
| 24-0201-1001 Page 219 | Rules of the Board of Barber Examiners | |
| 24-0201-1002 Page 223 | Rules of the Board of Barber Examiners | |
| 24-0801-1001 Page 226 | Rules of the State Board of Morticians | |
| | Pending Fee Rules | |
| 24-2201-1001 Page 24 | Rules of the Idaho State Liquefied Petroleum Gas Safety Board | |
| 24-2501-1001 Page 28 | Rules of the Idaho Driving Businesses Licensure Board | |

Office of the Governor — Division of Human Resources

**15-0401-1001
Page 72**

Rules of the Division of Human Resources &
Personnel Commission

Michael Savoie, HR
Program Mgr.

**15-0401-1002
Page 78**

Rules of the Division of Human Resources &
Personnel Commission

Donna Weast, HR
Program Mgr.

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Lodge
Sen Smyser
Sen Stennett
Sen Schmidt

COMMITTEE SECRETARY

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 20, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Smyser, Stennett, and Schmidt

ABSENT/ EXCUSED: Senators Cameron and Goedde

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

CONVENE: **Chairman Andreason** called the meeting to order at 1:32 p.m. The **Chairman** turned the meeting over to **Vice Chairman McKague** for rules review.

Docket No. **Department of Labor**

09-0104-1001 **Unemployment Insurance Benefit Fraud and Overpayment Rules**
Bob Fick, Communication Manager, Department of Labor, stated this rule change brings the rule into compliance and provisions with H510, which was passed last year. This bill allowed for the electronic distributions of decisions, determinations and delinquency notices rather than through the mail system. The rule includes the set-up of e-mail transmission of decisions, determinations, and delinquency notices and how they will be handled.

MOTION: **Senator Smyser** moved to approve Docket No. 09-0104-1001. The motion was seconded by **Senator Stennett**. The motion carried by **Voice Vote**.

09-0106-1001 **Rules of the Appeals Bureau**
Mr. Fick stated that this rule also provides the policy and procedures for the electronic filing of appeal decisions. These changes will bring the rule into compliance with H510..

MOTION: **Senator Smyser** moved to approve Docket No. 09-0106-1001. The motion was seconded by **Senator Stennett**. The motion carried by **Voice Vote**.

09-0130-1001 **Unemployment Insurance Benefits Administration Rules**
Mr. Fick advised that this rule replaces the word checks to benefit payments to reflect the fact that the Department of Labor moved last spring from check payments to payments applied to debit cards. The Department no longer issues checks unless a claimant has a very good reason why they would not be able to receive a debit card or direct deposit payment. On page 53, the last paragraph, brings the rule in compliance with H646 which calls for the deduction of disability payments from the unemployment insurance benefit entitlement mean weeks of which the disability payment was made. This treats disability payments the same as pension payments which are dollar for dollar deduction from the benefit payment. Based on the State Insurance Fund, 75% of disability claims are disposed of within two weeks; so the impact on claimants of these deductions for disability would involve very few checks.

MOTION: **Senator Stennett** moved to approve Docket No. 09-0130-1001. The motion was seconded by **Senator Schmidt**. The motion carried by **Voice Vote**.

- 09-0135-1001 Unemployment Insurance Tax Administration Rules**
Mr. Fick said this rule change brings the rule into compliance with H510 which is the electronic dissemination of decisions and determination. It also changes the period in which the Department of Labor will be able to pursue fraudulent benefit claims or overpayments from three to five years. The rules also changes the amount of years that employers will have to retain their records from three to five years.
- MOTION:** **Senator Stegner** moved to approve Docket No. 09-0135-1001. The motion was seconded by **Senator Stennett**. The motion carried by **Voice Vote**.
- Bureau of Occupational Licenses**
- 24-0101-902 Rules of the Idaho Board of Architectural Examiners**
Roger Hale advised that this rule changed as a result of the passage of H92. This change allows architectural applicants to begin taking the examination once they become enrolled in the internship program. An architect must have a degree plus they must complete the internship program and finally pass all parts of the national examination. The examination has a number of parts and it takes a period of time to pass all of the sections. The board wanted to give applicants the opportunity to start the exam process, once they had completed their education. The rule clarifies the two ways of attaining an architectural license. You may qualify by getting the degree or an individual may provide proof to the board that they have met the equivalent of the degree through eight years of experience; but they would still have to enroll in the internship program.
- MOTION:** **Senator Stegner** moved to approve Docket No. 24-0101-902. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.
- Senator Stegner** stated that the committee must stand-at-ease because of lack of a quorum.
- 24-0201-1001 Rules of the Board of Barber Examiners**
Mr. Hale stated this rule will eliminate the need to take and pass the law and rule examine. Endorsement applicants and new applicants will simply need to swear under oath that they have reviewed, understand and will abide by the rules. When a board chooses to use a law and rule examine they are obligated to keep these up-to-date. Often the law and rule examine needs to be reviewed and corrected to make sure that it is reliable and cyclometrically sound which costs money.
- MOTION:** Senator Smyser moved to approve Docket No. 24-0201-1001. The motion was seconded by Senator Stegner. The motion carried by Voice Vote.
- 24-0201-1002 Rules of the Board of Barber Examiners**
Mr. Hale said that they are applying a change from H459 that was passed last year which allowed schools to increase the student instructor ratio from one instructor per fifteen students to one instructor per twenty students.
- MOTION:** **Senator Stegner** moved to approve Docket No. 24-0201-1002. The motion was seconded by **Senator Schmidt**. The motion carried by **Voice Vote**.
- 24-0801-1001 Rules of the State Board of Morticians**
Mr. Hale advised to become a licensed mortician you must have a degree and also serve an apprenticeship, resident trainee program. The mortician in training acquires a permit as a resident in training and then serves either under a mortician or a funeral director. The mortician is the highest level of licensure and they are able to embalm and conduct funerals and make funeral arrangements. The rule requires the sponsoring mortician or funeral director to file a quarterly report to the board. This allows them to track the trainees and make sure that they are receiving the training that the law requires and when the training should terminate.

MOTION: **Senator Stegner** moved to approve Docket No. 24-0801-1001. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**.

Pending Fee Rules

24-2201-1001 Rules of the Idaho State Liquefied Petroleum Gas Safety Board
Mr. Hale stated in order to be a licensed LPG dealer an individual must obtain a certain amount of supervised experience under a dealer. The board now requires the dealer in training to have a license which includes information about the dealer who is providing the supervision. In an effort to cover the costs associated with this tracking and license they will charge a \$50 fee.

MOTION: **Senator Smyser** moved to approve Docket No. 24-2201-1001. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

Chairman Andreason stated that the committee must stand-at-ease because of lack of a quorum.

24-2501-1001 Rules of the Idaho Driving Businesses Licensure Board
Mr. Hale advised that this is a pending fee rule but it does not set new fees. In 2009 the Legislature created the Idaho Drivers License Driving Business Licensure Board. In 2010 there was clarification in the law concerning qualifications of driver instructors. These are the original fees that were adopted by the board in their temporary rules. The board establishes and lists who the providers will be for continuing education. The rule lists nationally or regionally accredited colleges or universities and national or state driver education and traffic safety associations. **Senator Stegner** asked **Mr. Hale** if he had visited with **Senator Goedde** on the continuing education of section of this rule. **Mr. Hale** said he just got the e-mail from **Senator Goedde** this morning and thought that **Senator Goedde** would be in committee today. **Senator Stegner** advised that in light of **Senator Goedde's**, absence today, he asked that the rule be held until **Senator Goedde** is present to address the concerns he has with a portion of this rule.

MOTION: **Senator Stegner** moved to hold Docket No. 24-2501-1001. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**.

Office of the Governor — Division of Human Resources

15-0401-1001 Rules of the Division of Human Resources & Personnel Commission
Mr. Savoie said that last year in an effort to allow a greater number of individuals seeking work to be considered for state government jobs, legislation was passed to amend Idaho Code, Title 67, Chapter 5309F which increased the number of applicants who may be considered for a classified state jobs from 10 applicants to 25 applicants. This docket will update human resources rules so that any reference to 10 applicants is changed to 25 applicants, thereby making it consistent with the legislation.

MOTION: **Senator Stegner** moved to approve Docket No. 15-0401-1001. The motion was seconded by **Senator Stennett**. The motion carried by **Voice Vote**.

15-0401-1002 Rules of the Division of Human Resources & Personnel Commission
Ms. Weast advised that the rule changes are mostly housekeeping in nature and that they remove redundant phrases, definitions, references to deleted rules, outdated definitions and practices and clarifies language that conflicts with current rules.

MOTION: **Senator Smyser** moved to approve Docket No. 15-0401-1002. The motion was seconded by **Vice Chairman McKague**. The motion carried by **Voice Vote**.

ADJOURN: There being no further business, the meeting adjourned at 3:43 p.m.

Senator Andreason
Chairman

Carol Deis
Secretary

AMENDED AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, January 25, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|--|--|---------------------------------|
| MINUTES | January 13, 2011 | Senator Smyser |
| APPROVAL: | January 18, 2011 | Senator Schmidt |
| Docket No. | Rules Review | |
| | Industrial Commission | |
| 17-0203-1001 Page 89 | Administrative Rules of the Industrial Commission Under the Workers' Compensation Law — Security for Compensation | Jane McClaran |
| 17-0205-1001 Page 92 | Administrative Rules of the Industrial Commission Under the Workers' Compensation Law — Industrial Commission | Scott McDougal, Manager |
| 17-0208-1001 Page 97 | Miscellaneous Provisions | Patti Vaughn |
| 17-0208-1002 Page 100 | Miscellaneous Provisions | |
| 17-0209-1001 Page 108 | Medical Fees | |
| 17-0210-1001 Page 120 | Administrative Rules of the Industrial Commission Under the Workers' Compensation Law—Security for Compensation—Insurance Carriers | Jane McClaran |
| | Pending Fee Rules | |
| 17-0211-1001 Page 10 | Administrative Rules of the Industrial Commission Under the Workers' Compensation Law—Security for Compensation—Self-Insured Employers | Jane McClaran |
| | Rules Review | |
| | Public Employee Retirement System | Don Drum, Executive Director |
| 59-0102-1001 Page 232 | Eligibility Rules of the Public Employee Retirement System of Idaho | |
| 59-0103-1001 Page 237 | Contribution Rules for the Public Employee Retirement System of Idaho | |

59-0104-1001 Disability Rules of the Public Employee Retirement
Page 242 System of Idaho

59-0105-1001 Separation from Service Rules for the Public
Page 246 Employee Retirement System of Idaho (PERSI)

59-0106-1001 Retirement Rules of the Public Employee
Page 249 Retirement System of Idaho (PERSI)

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Lodge
Sen Smyser
Sen Stennett
Sen Schmidt

COMMITTEE SECRETARY

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, January 25, 2011

TIME: 1:30 P.M.

PLACE: Room 437

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senator(s) Stegner, Goedde, Cameron, Lodge, Smyser, Stennett, and Schmidt

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 session and will then be located on file with the minutes in the Legislative Services Library.

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

MOTION: **Senator Smyser** moved to approve the minutes of January 13, 2011. The motion was seconded by **Vice Chairman McKague**. The motion carried by **Voice Vote**.

MOTION: **Senator Schmidt** moved to approve the minutes of January 18, 2011. The motion was seconded by **Senator Stennett**. The motion carried by **Voice Vote**.

DOCKET NO. Rules Review
Industrial Commission

17-0203-1001 **Ms. Jane McClaran, Financial Officer**, explained that this chapter is being repealed and replaced by two new chapters (17.02.10 and 17.02.11), created to separately address the requirements for insurance carriers and those pertaining to self-insured employers. **Senator Stegner** asked **Ms. McClaran** to walk the Committee through 17-0210-1001 highlighting the changes from the original rule and also 17-0211-1001 the pending fee rule.

17-0210-1001 **Ms. McClaran** said this is one of the two new chapters created to replace 17.02.03. It adopts rules governing insurance carriers; clarifies definitions and terms; and implements more comprehensive application requirements. Changes include filing a surety bond with the State Treasurer (rather than with the Commission), a provision to request the partial release of securities; updates appointing the Director of the Department of Insurance as its agent (previously attorney-in-fact) to receive service of legal process; provides the Commission's current address; clarifies what constitutes receipt of nonrenewal notices; streamlines reporting requirements including extending the timeline for filing and adding a certification requirement to the report of outstanding awards; clarifies that the First Report of Injury is the required notice to the Commission; and removes rules governing recitals in insurance contracts found in statute.

MOTION: **Senator Stegner** moved to approve Docket No. 17-0203-1001 and 17-0210-1001. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**.

17-0211-1001 **Ms. McClaran** advised that this is the second of the two new chapters created to replace 17.02.03 that adopts rules governing self-insured employers; clarifies terms; provides a more detailed application process; and outlines continuing reporting and security deposit requirements necessary to maintain self insured status. This rule increases the basic security deposit from \$50,000 to \$150,000 and includes a \$250 application fee for employers requesting self-insurance authority.

Senator Goedde said these self-insured programs are not eligible for pooling, where there would be opportunity for multiple employers joining forces and submitting a plan. **Ms. McClaran** answered that the Idaho Statute does not speak to that issue, so that is correct.

Additional changes include a definition of payroll; specifying qualifications for new self-insured employers previously missing from the rule; a provision to request the partial release of securities; provides the Commission's current address; expands reporting requirements including the timeline for filing and adds a certification requirement for the report of outstanding awards; requires submission of financial statements annually; and clarifies that the First Report of Injury is the required notice to the Commission.

MOTION: **Senator Goedde** moved to approve Docket No. 17-0211-1001. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

17-0205-1001 **Scott McDougal, Manager Banks Investments**, stated this proposed rule is to coincide with the statute changes Section 72-528, Idaho Code, made last legislative session, which made the filing of Forms 1022 and 1023 required only upon request of the Industrial Commission. The temporary rule was subsequently adopted. The intent is to reduce the redundancy of reporting to the Industrial Commission information on attorney's costs and fees on workers' compensation claims. The claimant's attorney's costs and fees are already required on all proposed lump sum settlements and on the accompanying Attorney Fee Memorandum. Forms 1022 and 1023 sent out by the Commission require the same information.

MOTION: **Senator Smyser** moved to approve Docket No. 17-0205-1001. The motion was seconded by **Senator Stennett**. The motion carried by **Voice Vote**.

17-0208-1001, 17-0208-1002 17-0209-1001 **Patti Vaughn, Medical Fee Schedule Analyst**, said the Industrial Commission has submitted Pending Rules repealing Chapter 8, Miscellaneous Provisions, other than the medical fees, which will now be under Chapter 9. They include the physician fee schedule and a new facility fee schedule allowing fair reimbursement to hospitals and ambulatory surgery centers providing medical treatment to industrially-injured workers. Medical cost containment is crucial to shielding Idaho employers from future significant increases in premium rates resulting from increased medical costs given that the medical portion of worker's compensation benefits paid has increased from 45% to 63% since 1988. The current physician fee schedule is based on Medicare's physician reimbursement method and was implemented in 2006 in accordance with Section 72-803, Idaho Code. On page 113 there is a table of conversion factors with adjustments made in response to a settlement between the US Department of Justice and a group of specialists under investigation for violations of federal anti-trust laws. The adjustments are to correct for a decrease made to the medicine categories in the early development of the fee schedule in order to accommodate the demands on the surgical side.

Regarding facilities, hospitals and ambulatory surgery centers (ASC's) are currently paid for work comp on a percent-of-charge system. Efforts to develop a hospital and ASC reimbursement policy have been underway since 1997 and have included the formation of task forces and a subcommittee of the Industrial Commission's Citizens' Advisory Committee. After the task force and subcommittee were unable to reach consensus, the Commission hired a consultant, Ingenix, for assistance in 2007. Reimbursement for the larger hospitals will be based upon the corresponding Medicare payment methods for inpatient and outpatient services. Both are fixed payments that allow predictability for providers and payers while encouraging efficiency on the part of the facility. A fixed-payment system allows the hospital a better profit if it can reduce its costs. Each billable case or procedure is assigned a relative weight by Medicare based on the amount of resources needed to treat that

condition. The assigned weight value is converted into a payment by multiplying the weight value by a fixed base rate dollar amount. The hospital and ASC section on pages 114-116 would not be effective until January 2, 2012. This should allow both providers and payers adequate time to assess the impact of the new fee schedule prior to the official implementation. If during that time the Commission is presented with persuasive data to show a significant negative impact, appropriate adjustments can swiftly be made to the base rate by Temporary Rule. **Steve Millard** of the Idaho Hospital Association pledged to work with the Industrial Commission and their staff to make sure this fee schedule works right for hospitals. Since this fee schedule will not go into effect until January 2012 our association believes that they can test their claims through this payment system before they are actually paid under the system. This test period will be able to have the opportunity to know whether it will reimburse them correctly.

Senator Stegner asked to have the minutes reflect that **Patti Vaughn** is representing to this committee that the issue brought up at the public hearings concerning reimbursement on the implants in the proposed rule had implantables considered on an individual basis for meeting a threshold for additional reimbursement. This resulted that the Industrial Commission made the change in the pending rule allowing aggregate to determine whether these will meet the threshold. This issue has been resolved and there is consensus on the resolution of that reimbursement. **Ms. Vaughn** stated that she has not received any feedback since they issued the pending rule and she personally looked at the data provided previously that was studied with the proposed rule and applied the changes with the pending rule.

MOTION: **Senator Stegner** moved to approve Docket No.'s 17-0208-1001, 17-0208-1002 and 17-0209-1001. The motion was seconded by **Senator Schmidt**. The motion carried by **Voice Vote**.

59-0102-1001 **Don Drum, Executive Director, Public Employee Retirement System of Idaho, (PERSI)**, stated this docket makes three changes; 1) Corrects a statutory cross-reference in Rule 005.08; 2) Amends Rule 113 to clarify the definition of normally works 20 hours or more per week, by changing the word "over" to "more than"; and 3) Clarifies Rule 122 with regard to leave of absence without pay to remove reference to inactive member. Since a person on leave of absence without pay, is not an inactive member as that term is defined by PERSI statutes. The proposed rules were posted in August and they have not received any comments on this docket.

59-0103-1001 **Mr. Drum** advised this rule addresses contribution rates. The pending rules were changed to delay the effective date of the rate increase from July 1, 2011 to July 1, 2012. The board initially passed the rate increase in December 2009 based on the actuarial study for the year end of June 30, 2009. After due consideration of the fund status, as of the June 30, 2010 actuarial valuation, and it's continuing improved status, the board considered the minimal effective of a delay of one year. As reflected in the pending rules the rate increases will be paid over three years beginning July 1, 2012. In early December 2010 the board received two letters: 1) One from the Governor and 2) A cosigned letter from the Speaker of the House and the Senate Pro Tem requesting a delay.

59-0104-1001 **Mr. Drum** stated in the 2010 Legislative Session the legislature passed H458, which provided that a disability retiree return to work under specified conditions. This docket updates PERSI's disability rules to add references to the law by including a definition and changes to the rules 205 and 300. This docket also makes technical changes to rules 100, 201 and 300 to make the rule consistent with the statute and deletes rule 102 which is duplicative of rule 300.

59-0105-1001 **Mr. Drum** said this docket will delete rule 104 which allows for a member to pay to reinstate prior service on a pre-tax basis through an irrevocable payroll deduction. Application of this rule would be prospective. Members currently paying through an irrevocable payroll deduction will be able to continue with these deductions. Pre-tax payment for reinstated prior service could still be done through a rollover from a qualified plan. This change is being made on the advise of the PERSI federal tax counsel to avoid any problems with PERSI status as a qualified plan.

59-0106-1001 **Mr. Drum** advised this docket adds an additional table C to reflect the factors applicable to rule 162. This table shows the contingent annuiative factors for persons retired before July 1, 1995. This is a technical change to ensure that the rules are complete. When the tables were last changed the old table C was replaced instead of adding a new table C with the new factors. Rule 163 has been deleted relating to FRF COLA because FRF COLA is controlled by statute and adds a new rule 557 to incorporate definitions for purposes of the Federal Pension Protection Act. This act allows participants to take the federal income tax exemption of up to \$300 for a retired public safety officer.

MOTION: **Senator Smyser** moved to approve Docket No. 59-0102-1001, 59-0103-1001, 59-0104-1001, 59-0105-1001, and 59-0106-1001. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

ADJOURN: There being no further business, the meeting adjourned at 2:42 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, January 27, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|--|---|--------------------|
| | PERSI Funding Status and Clarification of COLA Statute | Director Don Drum |
| | Department of Insurance | Director Bill Deal |
| Docket No. | Rules Review | |
| 18-0104-1001 Page 135 | Rules Pertaining to Bail Agents | |
| 18-0105-0901 Page 141 | Health Carrier External Review | |
| 18-0147-1001 Page 157 | Valuation of Life Insurance Policies Including the Introduction and Use of New Select Mortality Factors | |
| 18-0150-1001 Page 175 | Adoption of the International Fire Code | |
| 18-0153-1001 Page 184 | Continuing Education | |
| 18-0166-1001 Page 188 | Director's Authority for Companies Deemed to Be in Hazardous Financial Condition | |
| 18-0177-1001 Page 196 | Actuarial Opinion and Memorandum Rule | |
| 18-0179-1001 Page 209 | Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities | |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Smyser
Sen Stennett
Sen Schmidt

COMMITTEE SECRETARY

Carol Deis
Room: WW46
Phone: (208) 332-1333
email: cdeis@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 27, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Smyser, Stennett, and Schmidt

**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.

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

PERSI funding status and Clarification of COLA Statute

Director Don Drum, Public Employee Retirement System of Idaho, (PERSI), advised the why and how PERSI is different from many funds: 1) PERSI is one of the few funds in the United States that can value their assets daily for the total fund; 2) PERSI does not have medical coverage as a part of their retirement system; 3) Employee contributions; 4) Consistent employer contributions; 5) Conservative economic benefit assumptions; and 6) Simple transperative focus investment approach. Mr. Drum proceeded to go through his slide presentation highlighting PERSI investment philosophy; total fund returns since FY2008; PERSI's purpose; and demographics.

COLA (Cost of Living Adjustment), purpose and history: The board must consider a COLA annually and the factor that they use is the August to August CPI-U. By statue 59-1355 the board is required to adjust the benefits using a CPI-U. 1% COLA is mandatory provided the CPI-U > 1%. Discretionary above the 1% CPI-U is excess of 1% the board has to stretch it to give greater than 1% COLA, however, if the CPI-U is excess of 6% the board cannot exceed a total of 6% which includes the mandatory 1%. The CPI-U for this year was 1.148% which was in excess of 1%. By statute PERSI is required to provide those retirees with a 1% COLA. This 1% COLA will cost PERSI \$50 million per the people who participate through their lifetime. The board elected this year not to give any discretionary COLA but only the 1% that is mandated by the current statutes. **Senator Stegner** asked if there was language in the PERSI statute that prohibits the state from borrowing from the PERSI fund. **Joanna Guilfooy, Deputy Attorney General assigned to PERSI,** said that there is language in the statute 15-1301 through 05 and it basically states that this money is not state money, or general fund money. This money is held in trust for the retirees; the state legislature would not be able to get to this money.

Rules Review

Department of Insurance

DOCKET NO. 18-0104-1001 **Deputy Director Shad Priest, Department of Insurance,** advised Docket No. 18-0104-1001 is a brand new rule. This rule clarifies when a bail agent must notify the Department of Insurance of changes to the bail agents contact information; stipulates when a bail agent must notify the Department of a criminal charge or changes in their background information that was previously provided on the agents license application.

Adds a requirement that all bail agents must have a criminal background checks completed every two years when the agent renews his license with the Department. It adds plea of withheld judgment in respect to a criminal conviction, as grounds for an immediate suspension of the bail agents license. Bail agents give prompt notice to the Department if a bond has not been honored. Prevents negotiations for additional charges being entered into as a part of the application, issuance and effectuation of a bail bond and or continuing a bail bond contract.

MOTION: **Senator Stegner** moved to approve Docket No. 18-0104-1001. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

**DOCKET NO.
18-0105-0901** **Mr. Priest** stated this rulemaking is in response to a new law that created a right for people with health insurance claims to obtain external review of their claims if the carrier denies a claim. This requires a review if the insurance company denied a health insurance claim based on medical necessity, because they felt it was an experimental procedure. It gives Idahoans a right to seek a third party reviewer to review the claim. These reviewers are chosen by the Department of Insurance randomly and they review the claim and issue a decision upholding or overturning the carriers decision. This rule allows an alternate avenue to litigation in the court system.

MOTION: **Senator Schmidt** moved to approve Docket No. 18-0105-0901. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

**DOCKET NO.
18-0147-1001** **Mr. Priest** advised this is one of three life insurance actuarial rules that he is presenting to the Committee today. This rule is being amended to reflect changes that were made by the National Association of Insurance Commissioners (NAIC) to the model rule that this rule is based upon. This rule deals with company mortality experiences development efficiency reserves arbitrary limits that have been imposed on the recognition of company experience. It also includes a requirement disclosure by the appointed actuary of possible shortfalls in funding future required reserves.

MOTION: **Senator Cameron** moved to approve Docket No. 18-0147-1001. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**DOCKET NO.
18-0150-1001** **Mike Larsen, Idaho State Fire Marshall**, stated the changes to this rule are the result of the efforts of a task force that was organized after the last legislative session. That task force consisted of a senator, representative from the insurance industry, a member of the Idaho Association of Cities and Counties, a member of the Fire Chief Association, a member of the Fire District Commissioners Association and the State Fire Marshall. They drafted language to be included in the adoption of the 2009 Fire Code that was lacking concerning the definition of driveways and how and when they apply. This was consensus language that was developed over a number of meetings with considerable and enthusiastic discussion. The task force arrived at a consensus for the definitions of turnarounds, turnouts, bridge and load limits, and identification of load limits. On page 181 there was a change dealing with Chapter 46, in the new addition of the fire code. They took all of the provisions from various parts of the code that applied to existing buildings and put them in one chapter. **Mr. Larsen** made a deletion in Chapter One, which says any of these rules that apply to existing buildings shall do if the local authorities declare it to be an imminent danger. They added this language at the beginning of that Chapter that these do not apply to existing buildings; unless in the opinion of the fire code official they constitute a distinct hazard to life or property.

Senator Goedde stated that on Page 184 it addresses water supplies. Structures that are within ten miles of a responding station that there could be a requirement to install a water supply that fire departments could draw from in the event of a structure fire. Is there any description of the requirements in gallons or gallons/per

minute that the water supply might need to meet the code? **Mr. Larsen** replied that there are sections in the Fire Code that were not part of the above changes which give directions to fire agencies in how to determine water supply. It refers to areas that are close to municipal water systems and those which are distant from that system. It provides evaluation tools to determine how much water might be needed. Some fire departments choose to bring water with them, others choose to have the water available when they get to subdivisions or individual homes. It allows the local fire authorities considerable leeway in determining how much water is needed in areas that are a distance from a municipal water system. **Senator Goedde** stated that there have been cases in the past where it has been found that local fire officials have been quite capricious in making determinations of water supplies that would be reasonable in case of fire distant from a municipal system. The parameters set-forth in other parts of the Fire Code give you some assurance that this code is not just opening the door for abuse in application. **Mike Larsen** answered that in Section 507 the language narrows the opportunity for these grievances to develop.

The Legislature changed the statute a couple of years ago to place the Idaho State Fire Marshall as an intermediary and appeal process for these local grievances to be brought forward in decisions concerning the application of the local authorities in such issues as access and water supply.

MOTION: **Senator Goedde** moved to approve Docket No. 18-0150-1001. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

DOCKET NO. 18-0153-1001 **Mr. Priest** stated this pending rule makes two amendments to the Department's rule that sets forth continuing education requirements for insurance producers. Insurance producers are required to renew their agent license every two years. In doing so, they must show that they have attended at least 24 hours of continuing education courses, including three hours of ethics courses. The Continuing Education Committee has recommended the language be deleted on the stand alone ethic courses and are allowing the ethic credits to be earned as part of a course that also includes non-ethic subjects. Requirements for independent study programs are that they include examination credits that the producer must score 70% or better to earn a certificate of completion. Each unit of study will have a review examination before they move on to the next unit of study.

MOTION: **Senator Smyser** moved to approve Docket No. 18-0153-1001. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

DOCKET NO. 18-0166-1001 **Mr. Priest** said one of the duties of the Department of Insurance is to monitor the financial condition of insurers conducting business in Idaho. The department is required to take corrective action if a company's financial condition is such that it may not meet its obligations to its policyholders and creditors. This rule sets forth standards that are used to identify insurers that might be in hazardous financial condition and also sets forth actions the Director may take to address problems with a company that is having financial difficulties. These changes reflect changes made to the model regulation by the National Association of Insurance Commissioners (NAIC). There are some significant changes being made to this rule that replace the expense ratio and asset portfolio standard with a standard that looks at adequacy of cash flows. It adds a new standard that looks to the insurer's operating loss, excluding capital gains, in relation to an insurer's surplus with an existing standard that looks to the loss to include capital gains. It adds wording allowing the Director to take into consideration obligors, or members of the insurance company holding system that could affect an insurance company's solvency. The rule adds standards that look to whether the insurer meets fire requirements, minimum reserve standards, and transferring assets among its affiliates. It allows the Director authority to make adjustments to assets based on the NAIC accounting manual,

state laws and regulations. Finally, it gives the Director some additional authority to require that an insurer having financial problems take corrective actions. The remedy action would be that they must file a business plan with the Director or adjust rates on their insurance products to improve their financial standing.

MOTION: **Senator Stegner** moved to approve Docket No. 18-0166-1001. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

DOCKET NO. 18-0177-1001 **Mr. Priest** advised the changes in this rule remove some outdated language and actuarial opinions. It adds a date to the signature line of the actuary and provides directions in relating to analyzing different blocks of business. It adds criteria to determine the asset adequacy and directions for commenting on the sufficiency of assets to support the payment of benefits.

MOTION: **Senator Goedde** moved to approve Docket No. 18-0177-1001. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

DOCKET NO. 18-0179-1001 **Mr. Priest** said this change to the rule allows the Director to approve the use of 2001 mortality tables for policies issued between January 1, 2004 and January 1, 2007 in certain circumstances. In the past this rule was changed to use newer tables, but there were problems with some existing industry products that were brought to the attention of regulators that must remain under the old tables data. This gives the Director the discretion to allow the use of the older table data.

MOTION: **Senator Smyser** moved to approve Docket No. 18-0179-1001. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

ADJOURN: There being no further business, the meeting adjourned at 2:43 p.m.

Senator Andreason
Chairman

Carol Deis
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 01, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|--|--|--|
| Docket No. 24-2501-1001 Page 28 RS19933C1 | Rule Review Bureau of Occupational Licenses Rules of the Idaho Driving Businesses Licensure Board Relating to Idaho Real Estate License Law | Roger Hale, General Counsel Jeanne Jackson-Heim |
| GOVERNORIAL APPOINTMENT: To Be Heard | Appointment of Jeff Cilek to the PERSI Board to serve a term commencing July 1, 2010 and expiring July 1, 2015. | |
| GOVERNORIAL APPOINTMENT: To Be Heard | Appointment of Max C. Black to the State Insurance Fund Board to serve a term commencing April 3, 2010 and expiring April 3, 2014. | |
| GOVERNORIAL APPOINTMENT: To Be Heard | Appointment of John Goedde to the State Insurance Fund Board to serve a term commencing April 3, 2010 and expiring April 3, 2014. | |
| GOVERNORIAL APPOINTMENT: To Be Heard | Appointment of Rod Higgins to the State Insurance Fund Board to serve a term commencing April 3, 2010 and expiring April 3, 2014. Department of Insurance Fraud in Idaho | Director Bill Deal |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Lodge
Sen Smyser

COMMITTEE SECRETARY

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Sen Stennett
Sen Schmidt

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 01, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Smyser, Stennett, and Schmidt

**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.

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

Rule Review

Docket No. Bureau of Occupational Licenses

24-2501-1001 Rules of the Idaho Driving Businesses Licensure Board

Mr. Roger Hale, General Counsel, said last week this rule was placed on hold in order to allow Senator Goedde to respond to a constituent's questions concerning this rule. The Board pre-approves certain entities to instruct continuing education courses for driver education businesses. These are nationally or regionally accredited colleges or universities; state or national driver associations; transportation or law enforcement agencies; or any other institution approved by the Board. The constituent's issue with the rule was that it did not specifically list another association. This rule does not have specific language concerning educational entities other than a college or university. The Board is able to approve any program of continuing education which is germane to driver education.

Senator Goedde asked **Mr. Hale** if he could elaborate on a suggestion to exclude additional drivers training educators through requirements that would be beyond their reach. **Mr. Hale** said the Board had prepared a legislative idea that stipulated who could teach the course related to the drivers instructor training program. The Governor rejected this legislative idea so there will be no legislation forthcoming on that issue.

MOTION: **Senator Goedde** moved to approve Docket No. 24-2501-1001. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

RS19933C1 Relating to Idaho Real Estate License Law

Jeanne Jackson-Heim, Executive Director, Real Estate Commission, stated this proposed legislation attempts to clarify the real estate license law by adding two terms to the definitions section.

The definition of the phrase "acting in this state" presently appears in Section 54-2058 of the license law, but we would like to include it as a defined term in Section 54-2004. Right now, this definition is not easy to find in the statute, and as a result we have had a number of people misinterpret our license law. The second defined term we propose to add is a "broker price opinion", commonly known in the real estate industry as a "BPO". Ordinarily, the Real Estate Appraisers Act requires anyone rendering an opinion of property value to hold

an appraiser license. However, the Act also carves out an exemption for real estate brokers, who are allowed to render BPO's under certain conditions. The exemption language and the specific content requirements for a BPO are only found in the Appraisers Act, which is in a different title of the Idaho Code, and there is no corresponding language in the real estate license law. Again, this has resulted in a fair bit of confusion on the part of the real estate licensees.

Over the last year, the Real Estate Commission and the Real Estate Appraiser Board met to discuss this issue and how we can better educate the licensees on compliance with the Appraisers Act. The two boards worked together to draft this proposed change to the real estate license law, which would add the definition of a broker price opinion and a reference to the requirements of the Appraisers Act to Section 54-2004. For further clarification, the proposed change adds a new section to Section 54-2038 (page 5) which further clarifies for the real estate licensees that BPO's must be rendered in accordance with the Appraisers Act, and fees must be paid through the designated broker in the same manner as compensation for other brokerage services.

MOTION: **Senator Goedde** moved that **RS19933C1** be introduced to print. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** introduced **Jeff Cilek** who was appearing before the Committee for approval of his reappointment to the Public Employee Retirement System (PERSI) Board for a term commencing July 1, 2010 and expiring July 1, 2015.

Senator Smyser asked **Mr. Cilek** what has been his biggest contribution to this board so far? **Mr. Cilek** replied the board is a close-knit board and he contributes through his ability to help Chairman Olsen keep consensus within the Board.

Senator Stegner asked for a brief experience history that would qualify **Mr. Cilek** for being a member of the PERSI Board. **Mr. Cilek** stated that currently he is Vice President for Current Affairs of St. Lukes. When he graduated from college he worked for Senator McClure as personnel staff and then staff director of the interior subcommittee (one of the thirteen appropriation subcommittees that fund the federal government), lobbyist, and Peregrine Fund (non-profit conservation group for Birds of Prey). **Mr. Cilek** said his community service has consisted of being on the Governor's Task Force, Governor Kempthorne's Transition Team, Environmental Quality Task Force and Federal Lands Task Force. He currently serves on the Boise Chamber of Commerce, Make a Wish Foundation Board, Special Olympics Board and the PERSI Board.

GUBERNATORIAL APPOINTMENT **Max C. Black:** The Committee did not receive the appointment documents, so this appointment was not heard.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** introduced **Senator John Goedde** who was appearing before the Committee for approval of his reappointment to the State Insurance Fund Board for a term commencing April 3, 2010 and expiring April 3, 2014.

Chairman Andreason asked **Senator Goedde** to state his qualifications for this position. **Senator Goedde** said he is a workers' compensation insurance agent, has served on the Agents Advisory Board for the State Insurance Fund and has served on the State Insurance Fund Board for two appointments. He has been active in the workers' compensation arena and has followed the rules of the Industrial Commission as they have been written and amended. He believes if the area is focused upon, it will improve the business climate of the State of Idaho. **Senator Smyser** asked what he thinks is the biggest change he has seen since he has been on the Board? **Senator Goedde** said it is the move to the

RBRVS (Resource-Based Relative Value Scale) System for physician's fees that were approved legislatively two years ago and the Committee has just approved the rule this year to implement the same type of system for hospitals. Finally, Governor Batt's proposed workers' compensation for farm workers; included in that compromise was the elimination of the expense constant which, at that time, was a \$140 policy.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** introduced **Rod Higgins** who was appearing before the Committee for approval of his reappointment to the State Insurance Fund Board for a term commencing April 3, 2010 and expiring April 3, 2014.

Chairman Andreason asked **Mr. Higgins** to state his qualifications for this position. **Mr. Higgins** stated he is a past president of the Boise Independent Insurance Agents along with being on the Board of the Independent Insurance Agents. He has served on the Western States Lions Association of Idaho; Board of Gold Folk Irrigation District in Donnelly, Idaho; Regional Vice President for the National Association of Surety Bond Producers; and this will be his second three-year term, also the chairman, for the State Insurance Fund Board.

PRESENTATION: **Department of Insurance**
Fraud in Idaho

Director Bill Deal, Department of Insurance, said he is joined today by members of the Idaho Fraud Awareness Coalition for a short presentation on Fraud in Idaho. This coalition was formed in 2008 by Trisha Carney of the Department of Insurance who took the initiative to put the coalition together. The coalition is made up of members from the insurance industry, law enforcement, state government, and financial institutions. The purpose of the coalition is to educate the public about the cost of fraud to individuals and businesses. The consequences and impact of fraud and how to recognize and report fraud.

Dale Dixon, President and CEO of the Better Business Bureau, stated that about 20 reported scam related phone calls come into their office per day and they document the dollar amount of the scam. They track \$450,000 a month of scams coming into Idaho. Recently, the Canyon County Sheriff's Department has seen a significant increase in the number of grandparent scams taking place in the county.

Michael Mulconery, Special Investigation Unit for State Farm Insurance, said his job is to investigate claims where concerns of fraud have been identified. Fraud scenarios range from the simple embellishment of an otherwise legitimate claim to arson, staged accidents, faked burglaries and even fabricated death claims. The most successful prosecutions have involved individuals who came forward and provided information and evidence on fraud. Many of these witnesses have said they are tired of paying for increased premiums because of the dishonesty of others. The coalition is a resource for awareness, education and action in helping individuals understand the problem of fraud and perceive it as a malicious common enemy. Their mission is to change individuals apathy into righteous indignation.

Les Lake, Regional Forensic Accounting Manager, Eide Bailey, said that the cost of fraud in Idaho is 5% of all funds that come into the State. There are three types of common fraud: 1) Building schemes; 2) Corruption in management; and 3) Check and skimming schemes. **Mr. Lake's** prevention motto: 1) Choose to do right; 2) Do your best; and 3) Treat people the way they ought to be treated. Meaning: 1) If a project comes across your desk and you look at it and something about it just does not feel right, don't put it in the to do pile, look at it thoroughly and answer those questions. 2) Do your best, stop, address the issue, and go ask

the tough question of the person responsible for putting the paperwork together for the project. 3) Treat others the way they ought to be treated. Hold individuals accountable for the decisions that they make. If we would do these three things, each one of us could make a difference in the amount of dollars being lost in our country and our state due to fraud.

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

Senator Andreason
Chairman

Carol Deis
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 03, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|---|--|------------------------------|
| MINUTES | January 20, 2011 | |
| APPROVAL: | January 25, 2011 | |
| <u>S1017</u> | Relating to Employment Security Law | Senator Corder |
| GOVERNORIAL APPOINTMENT To Be Heard | Appointment of Max C. Black to the State Insurance Fund Board to serve a term commencing April 3, 2010 and expiring April 3, 2014 | Representative Black |
| GOVERNORIAL APPOINTMENT To Be Voted On | Appointment of Jeff Cilek to the PERSI Board to serve a term commencing July 1, 2010 and expiring July 1, 2015 | |
| GOVERNORIAL APPOINTMENT To Be Voted On | Appointment of John Goedde to the State Insurance Fund Board to serve a term commencing April 3, 2010 and expiring April 3, 2014 | |
| GOVERNORIAL APPOINTMENT To Be Voted On | Appointment of Rod Higgins to the State Insurance Fund Board to serve a term commencing April 3, 2010 and expiring April 3, 2014 | |
| <u>S1018</u> | Relating to the Division of Human Resources | Donna Weast, HR Program Mgr. |
| <u>S1019</u> | Relating to the Department of Commerce | Bibiana Nertney, Mrkt. |
| <u>S1020</u> | Relating to the PERSI | Director Don Drum |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Smyser
Sen Stennett
Sen Schmidt

COMMITTEE SECRETARY

Carol Deis
Room: WW46
Phone: (208) 332-1333
email: cdeis@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 03, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Smyser, Tippets, Stennett, and Schmidt

**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.

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

**MINUTES
APPROVAL:**

MOTION: **Senator Smyser** moved to approve the minutes of January 20, 2011. The motion was seconded by **Vice Chairman McKague**. The motion carried by **Voice Vote**.

MOTION: **Senator Stennett** moved to approve the minutes of January 25, 2011. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

S1017 **Senator Corder** stated a dentist in Elmore County is in the National Guard. On a recent deployment he put his dental staff on unemployment, while he was overseas. The dentist returned and reopened his business and rehired the employees. Shortly after the staff was back to work, the dentist received a bill for his unemployment insurance and the taxable wage rate had been impacted because the staff had been on unemployment. This bill addresses when a business owner, who is a National Guardsman is deployed, that their business taxable wage rate is not negatively impacted by putting their staff on unemployment.

MOTION: **Vice Chairman McKague** moved that **S1017** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Schmidt**. The motion carried by **Voice Vote**. **Senator Corder** will be the sponsor of the bill.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** introduced **Representative Max C. Black** who was appearing before the Committee for approval of his reappointment to the State Insurance Fund Board for a term commencing April 3, 2010 and expiring April 3, 2014.

Representative Black stated that he would stand for questions, he did not have any statements prepared. **Senator Smyser** thanked **Representative Black** for his service on the board over the past several years. **Senator Smyser** asked what have been your biggest contribution to this board. **Representative Black** said all the members bring a divergent view of the insurance business; that experience is an excellent foundation for the decisions that they all contribute when making decisions for the board.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** announced that the Committee was ready to take action on the reappointment of **Jeff Cilek** to the Public Employee Retirement System of Idaho Board. **Mr. Cilek** had appeared at the February 1, 2011 Committee meeting and had been appointed to serve a term commencing July 1, 2010 and expiring July 1, 2015.

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

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** announced that the Committee was ready to take action on the reappointment of **Senator John Goedde** to the State Insurance Fund Board. **Senator Goedde** had appeared at the February 1, 2011 Committee meeting and had been appointed to serve a term commencing April 3, 2010 and expiring April 3, 2014.

MOTION: **Senator Smyser** moved to send the gubernatorial appointment of **Senator Goedde** to the State Insurance Fund Board to the floor with the recommendation that it be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion passed by **Voice Vote**. **Senator Cameron** will be the sponsor of the candidate.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** announced that the Committee was ready to take action on the reappointment of **Rod Higgins** to the State Insurance Fund Board. **Mr. Higgins** had appeared at the February 1, 2011 Committee meeting and had been appointed to serve a term commencing April 3, 2010 and expiring April 3, 2014.

MOTION: **Senator Goedde** moved to send the gubernatorial appointment of **Rod Higgins** to the State Insurance Fund Board to the floor with the recommendation that it be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion passed by **Voice Vote**. **Senator Goedde** will be the sponsor of the candidate.

S1018 Relating to the Division of Human Resources

Donna Weast, Division of Human Resources presented **S1018** and stated this legislation amends Section 67-5309(x), Idaho Code by removing the term "acting appointment" and Section 67-5309(y) is added to allow acting appointment service time to count toward the promotional probationary period. The purpose of the legislation is to accurately reflect the use of temporary and acting appointment specific time towards fulfilling the requirements for the appropriate type of probationary period. All newly appointed or any subsequent appointment to state classified service excluding reinstatement and transfer, the duration of which is 1,040 hours of credited state service except for peace officers who must serve 2080 hours. Once the entrance probationary period is completed then they are certified and have permanent status. The temporary service time would apply towards completing the entrance probationary requirements. The promotional probationary period is when an employee with permanent status is promoted into a classification with a higher pay grade. These serve the same length of time as the entrance probationary period. Acting appointments also require that the employee have permanent status. Therefore, the acting service time applies towards a promotional probationary period not the entrance probationary period.

MOTION: **Senator Cameron** moved that **S1018** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Chairman Andreason** will be the sponsor of the bill.

S1019

Relating to the Department of Commerce

Bibiana Nertney, Department of Commerce advised that **S1019** is a housekeeping bill for the Department of Commerce. The statute currently requires the Department of Commerce to act as a clearinghouse for information data and other materials. During the zero base budgeting process this department was flagged as a responsibility that the Department does not have the ability to meet. The Department of Commerce and Labor were split into two separate agencies by legislative action in 2008, the research and data functions transferred to the Department of Labor; but the statute of authority remained with Commerce. This new legislation removes the statutory requirement that is reflected on lines 15 through 19 on page 2. This legislation will eliminate any duplication of efforts and create efficiency by providing accurate research.

MOTION:

Senator Cameron moved that **S1019** 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 McKague** will be the sponsor of the bill.

S1020

Relating to the PERSI

Director Don Drum, PERSI said the purpose of the legislation is to amend PERSI statute to bring it into line with certain federal laws, specifically Heroes Earnings Assistance and Relief Tax (HEART) which provides additional tax and pension benefits to individuals away from work due to active duty and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). USERRA requires that an employer provide employment rights to persons on United States Military Service Leave, equal to or better, to employees on leave for other reasons. All the changes are in Section 59-1302, Idaho Code, which is the definition section in the PERSI statutes.

MOTION:

Senator Schmidt moved that **S1020** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Senator Schmidt** will be the sponsor of the bill.

ADJOURN:

There being no further business, the meeting adjourned at 2:01 p.m.

Senator Andreason
Chairman

Carol Deis
Secretary

AMENDED #2 AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 10, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|---|--|---|
| MINUTES APPROVAL: | January 27, 2011 | Senator Schmidt |
| GUBERNATORIAL APPOINTMENT: To Be Voted On: | Appointment of Max C. Black to the State Insurance Fund Board to serve a term commencing April 3, 2010 and expiring April 3, 2014. | |
| GUBERNATORIAL APPOINTMENT: To Be Heard | Appointment of Don Dietrich as Director of the Department of Commerce for a term commencing January 3, 2011 and expiring January 5, 2015. | |
| <u>RS20326</u> | A Proclamation Commending Peace Corps Volunteers from the State of Idaho As Well As All Volunteers Across the Nation | Senator Bock |
| <u>RS20236</u> | Relating to Idaho Life and Health Guaranty Association Act Providing Protection for Idaho Residents from Insolvent Insurers | Mike Brassey, Idaho Life & Health Guaranty Assoc. |
| <u>RS20329</u> | Relating to Prohibition of Real Estate Transfer Fees | John Eaton |
| <u>RS20268</u> | Relating to Title Insurance | Kris Ellis, Idaho Land Title Association |
| <u>RS20369</u> | Relating to Towing and Storage of Motor Vehicles | Senator Goedde |
| <u>RS20370</u> | Relating to Vehicle Titles | Senator Goedde |
| <u>S1065</u> | Relating to Idaho Real Estate License Law; Only an Actively Licensed Broker May Prepare and Render a Broker Price Opinion | Jeannine Jackson-Heim , Executive Director |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Smyser
Sen Stennett

COMMITTEE SECRETARY

Carol Deis
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Sen Schmidt
Sen Tippetts

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 10, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Smyser, Tippets, Stennett, and Schmidt

**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.

MINUTES: **January 27, 2011**

MOTION: **Senator Schmidt** moved to approve the minutes of January 27, 2011. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** announced that the Committee was ready to take action on the reappointment of **Max C. Black** to the State Insurance Fund Board. **Max C. Black** had appeared at the February 3, 2011 Committee meeting and had been appointed to serve a term commencing April 3, 2010 and expiring April 3, 2014.

MOTION: **Senator Goedde** moved to send the gubernatorial appointment of **Max C. Black** to the State Insurance Fund Board to the floor with the recommendation that it be confirmed by the Senate. **Senator Stegner** seconded the motion. The motion passed by **Voice Vote**. **Senator Goedde** will be the sponsor of the candidate.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** introduced **Don Dietrich** who was appearing before the Committee for approval of his reappointment to the Department of Commerce for a term commencing January 3, 2011 and expiring January 5, 2015.

Mr. Dietrich stated that it had been an honor to serve as Director of Commerce since April 2008. Prior to this time he spent 10 months as the Acting Director and had served with the State of Idaho since March 2004 holding various positions in international trade and the Administrator of the Development Division. Before public service employment, **Mr. Dietrich** was the Director of International Business Development for Aspen Technology in Boston; 20 years with Cargill, Inc. and held positions in the grain and energy trading; served as the Gulf Coast Wheat and Soybean Export Manager.

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

Mr. Dietrich then gave a brief overview of the Commerce Department activities. The Department continues to promote the Governor's Project 60 Plan that addresses the needs of the businesses and communities in recruiting efforts domestically and internationally. The Department has closed seven new companies, which will add 1700 new jobs. Tourism marketing is working; we are up about 8.4%. The Department reported record exports this year to exceed \$5 billion and that represents about 10% of the state's GNP.

A Proclamation Commending Peace Corps Volunteers from the State of Idaho As Well As All Volunteers Across the Nation

Senator Bock stated that his son is in the Peace Corp, serving in Ghana, teaching science to secondary students. As a result of his son's posting **Senator Bock** has a new appreciation of the men and women who serve in the Corp. March 1, 2011 is the 50th anniversary of the Peace Corp, which President Kennedy signed into executive order in 1961. **Connie Collins, representing the Idaho Return Peace Corp Volunteer Association** stated that when President Kennedy instituted the Peace Corp the goal was to promote world peace and friendship. In order to achieve those goals three objectives would need to be accomplished. 1) Countries must ask America to come in and train their men and women in the fields of agriculture, education, medicine and business;. 2) Expose other cultures to American culture; and 3) To expose the American people to other cultures. Idahoans were among the first Peace Corp volunteer groups that left in 1961; over 1300 Idahoans have served in the Peace Corp. **Ms. Collins** explained that she was one of the more mature volunteers that the Peace Corp sent out in 2003, she was 63 years old and went as an environmental consultant. She came back a stronger person with the confidence of knowing that she can do much more than she ever thought she could.

Senator Stegner stated that he was unaware that the Peace Corp accepted older volunteers. **Ms. Collins** advised that the group she went overseas with, of that group, half of the group of 80 was over 50 and the oldest volunteer among them was 82. Older volunteers possess more experience and a calmer demeanor. Two other volunteers spoke of their experiences as Peace Corp Volunteers. **Dale Stevenson** said that he served in Molly, West Africa and felt that Peace Corp volunteers were the best foreign policy that our nation possesses. Return Peace Corp volunteers typically come back to the United States and pick up positions in leadership. **Meg Stevenson** stated that after her Peace Corp assignment she returned to the states more committed to pursuing the volunteer spirit that the agency instilled. 1) She attended graduate school and recruited for the Peace Corp; 2) First job after school was with a Service Learning Program with a university to get students involved with community service; and 3) Currently works with low income, first generation individuals getting them into post secondary programs. **Ms. Stevenson** said returning Peace Corp volunteers tend to be extremely active in their service projects and connections with the communities. Peace Corp volunteers motto is to "bring it home" and she feels that after 50 years that motto is still alive and well.

MOTION:

Senator Stennett moved that **RS20326** be introduced to print and with the recommendation that it be placed on the Consent Calendar. The motion was seconded by **Vice Chairman McKague**. The motion carried by **Voice Vote**.

RS20326

Relating to Idaho Life and Health Guaranty Association Act Providing Protection for Idaho Residents from Insolvent Insurers

Mike Brassey, Idaho Life and Health Guaranty Association advised that **RS20326** will repeal the existing section of the Idaho Insurance Code that creates the Guaranty Association and replaces it with a new section based on a more recent model law. The current chapter of the insurance code that deals with Guaranty Associations is based on a model law created by the National Association of Insurance Commissioners in 1977. The model has been modernized a number of times and this proposal is to replace that law with the latest version. The essence of the chapter is to create an association that deals with insurers that have become insolvent. The law requires all companies who sell life and health insurance to join the association. If a member of the association goes into liquidation, and there are insufficient funds to cover all claims on the

insurer the association accesses the other members to pay those claims. This is a claims payment system for members of the association of all life and health insurers who do business in the state.

MOTION: **Senator Stegner** moved that **RS20236** be introduced to print. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

RS20329

Relating to Prohibition of Real Estate Transfer Fees

John Eaton, Idaho Association of Realtors stated that **RS20329** deals with private transfer fees. This private transfer fee scheme has been developed across the country and is being addressed by a number of states. The Federal Government is also taking action through the Federal Housing and Finance Administration to try to limit this fee scheme and their guidance should be out later this summer. Private transfer fees are a covenant that is recorded on a piece of property at the time of build. Once this action is recorded the only person who can reverse the fee is the beneficiary of the covenant. When the property is sold to other parties for 99 years there is a 1% transfer fee that is charged to the home buyer and sent back to the covenant company. This does not benefit the person who is buying the property, does not benefit where the property is located, it only benefits the companies that have placed the transfer fee on the property. The legislation before you will outlaw these transactions occurring on property in Idaho. It is based on some model legislation from the National Association of Realtors, The American Title Association and others who have come together as a group to deal with this issue.

The Idaho Housing and Finance Association has some items recorded through Workforce Housing Projects and through their down payment system program that they wanted to make sure the legislation would not effect. **Mr. Eaton** said they are adding one sentence to the bill to correct the language to exempt the Workforce Housing Project from the legislation. On page 2, after line 29, they propose adding subsection "(g) any provision of a document requiring payment of any fee or charge under the housing or financing programs of the Idaho Housing and Finance Association". **Senator Stegner** asked will this legislation void any existing fees that are filed. **Mr. Eaton** explained that this legislation is just for fees that would be filed after this legislation is in place. This legislation includes an emergency clause. Some states are in litigation to try to remove these fees from properties where the fee is in place. In Idaho they have not had the influx of these transfer fees that other states have seen. This legislation should get the vast majority of the homes in Idaho protected from this type of a scheme.

MOTION: **Senator Smyser** moved that **RS20329** be introduced to print with the addition of subsection g. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**. **Senator Goedde** asked Mr. Chairman can we have the subsection g added without having to draft a new RS? **Chairman Andreason** stated that was a good question, let's try it.

RS20268

Relating to Title Insurance

Kris Ellis, Idaho Land Title Association explained that the Association has worked with the Department of Insurance over the last few months to determine how escrow fees and title fees should be regulated by the Department of Insurance. Currently in Idaho statute they are tied together and are required to be calculated and thereby regulated in the same manner. Escrow fees are done by a county by county basis, title fees are calculated in a different manner. This legislation will split the two taking the escrow fee language out of the title fee chapter and moving it into its own section which will allow the Department to promulgate rules that will create the structure.

MOTION: **Senator Tippets** moved that **RS20268** be introduced to print. The motion was seconded by **Vice Chiarman McKague**. The motion carried by **Voice Vote**.

RS20369

Relating to Towing and Storage of Motor Vehicles

Senator Goedde advised **RS20369** and **RS20370** deal with damaged vehicles. When a damaged vehicle is towed into a storage facility it sits in their lot and the towing lot charges by the day for the vehicle to be warehoused on their lot. The insurance company is being billed for the storage of these damaged vehicles. Insurance companies have other places that they can store these damaged vehicles that are less expensive. This legislation provides a way that the insurance company can pick up the totalled vehicle and take it to another facility. The facility will provide protection for the owner of the vehicle and a method for the owner to retrieve any personal property from the vehicle.

MOTION:

Senator Stegner moved that **RS20369** be introduced to print. The motion was seconded by **Senator Schmidt**. The motion carried by **Voice Vote**.

RS20370

Relating to Vehicle Titles

Senator Goedde said **RS20370** provides for an alternative title process of a damaged vehicle to be closed by the insurance company when a title is lost in the mail or is otherwise unavailable..

MOTION:

Senator Stegner moved that **RS20370** be introduced to print. The motion was seconded by **Senator Schmidt**. The motion carried by **Voice Vote**.

S1065

Relating to Idaho Real Estate License Law

Jeanne Jackson-Heim, Executive Director, advised that they need to clarify some of the language in this legislation. **Ms. Jackson-Heim** requested that the Committee put the bill on hold.

MOTION:

Senator Stegner moved that **S1065** be held at the call of the chair. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

ADJOURN:

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

Senator Andreason
Chairman

Carol Deis
Secretary

AMENDED #1 AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 15, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|---|--|--|
| <u>RS20434</u> | Relating to the Prohibition of Real Estate Transfer Fees | John Eaton, Idaho Association of Realtors |
| GUBERNATORIAL APPOINTMENT: To Be Heard | Appointment of Gavin Gee as Director of the Department of Finance for a term commencing January 3, 2011 and expiring January 5, 2015. | |
| GUBERNATORIAL APPOINTMENT: To Be Heard: | Appointment of Roger B. Madsen to the Idaho Department of Labor for a term commencing January 3, 2011 and expiring January 4, 2015. | |
| GUBERNATORIAL APPOINTMENT: To Be Voted On: | Appointment of Don Dietrich as Director of the Department of Commerce for a term commencing January 3, 2011 and expiring January 5, 2015. | |
| | Idaho International Office Annual Update Presentation | Damien Bard, Administrator, International Business |
| | | Armando Orellana, Manager, Guadalajara, MX |
| | | Eddie Yen, Manager, Taipei, Asia |
| | | Xu Fang, Manager, Shanghai, China |
| <u>H70</u> | Relating to Electrical Apprentices | Steve Keys |
| <u>H71</u> | Relating to the Idaho Elevator Safety Code Act | Steve Keys |
| <u>H72</u> | Relating to the HVAC Board | Steve Keys |
| <u>H74</u> | Relating to the HVAC Board Member Terms | Steve Keys |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Smyser
Sen Tippets

COMMITTEE SECRETARY

Carol Deis
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Sen Stennett
Sen Schmidt

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 15, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Smyser, Tippets, Stennett, and Schmidt

**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.

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

RS20434 **Relating to the Prohibition of Real Estate Transfer Fees**

John Eaton stated this is the same bill that was approved at the February 10, 2011 meeting with the amendment that was adopted by the Committee. Legislative Services did not get the amendment in time hence it was not printed correctly. **RS20434** is the correct language and they request that the bill be sent to State Affairs to be printed.

MOTION: **Senator Smyser** moved unanimous consent that **RS20434** be referred to the State Affairs Committee to consider printing **RS20434**. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** welcomed **Gavin Gee** who was appearing before the Committee for approval of his reappointment to the Department of Finance for a term commencing January 3, 2011 and expiring January 5, 2015. **Mr. Gee** advised that he has been with the Department of Finance in a variety of capacities for over 33 years, since graduating from the University of Idaho Law School. **Mr. Gee** has served as director of the Department for the last 16 years. The last two years of his career have been a very demanding time given the difficult economy and the challenges that have developed for the industry that they regulate. These challenges have been troubled financial institutions, significant financial frauds, some of the worse cases in Department history, and stringent new requirements imposed upon them by the federal government. These recent laws passed by the federal government that apply to the financial industry, as well as state regulators. The Department of Finance regulates 23 different state laws, regulating 15 different industries with the principal industries being banking, securities, mortgage, consumer lenders and private cemeteries. They license and regulate over 140,000 businesses and professional individuals that conduct business in Idaho. Their Department is unique in state government in that they must compete for financial institution business with multiple federal agencies. This competition stems from their unique dual banking and dual chartering system in this country whereby every financial institution can choose to be chartered and regulated by the state or a federal agency and can change that charter at anytime. The financial industry continues to face significant challenges.

Nationally, there have been 157 bank failures in 2010, 37 of those were in

western states, but Idaho had none. There have already been 18 bank failures this year; they are averaging 3 per week. Currently there are six banks in Idaho that are subject to formal regulatory enforcement actions. These banks, and a growing number of other challenged banks, require far more of the Department's time for on-site examinations and monitoring. The Department has accelerated their examination schedule significantly as a result of these demands. There is also a new federal requirement this year, because of the mortgage crisis, to significantly increase mortgage regulation and the oversight of the mortgage industry. As a result of this requirement, they have requested in their budget to add 70 people in the mortgage department to meet the new federal guidelines.

Some of the largest frauds in Idaho history have been security and mortgage frauds, ponzi schemes, and a number of other financial frauds. Adding to the difficulties that the Department is facing with implementing these new federal regulations is the federal agencies are all hiring right now and they are recruiting the Department's best people. Their pay is far greater than the state's and they are one of the largest threats to the Department's ability to adequately regulate financial institutions within the state.

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

**GUBERNATORIAL
APPOINTMENT:**

Chairman Andreason welcomed **Roger B. Madsen** who was appearing before the Committee for approval of his reappointment to the Idaho Department of Labor for a term commencing January 3, 2011 and expiring January 4, 2015.

Mr. Madsen stated that he has been working for the Department of Labor for the last 35 years, it is his dream job. In the past 16 years the Department has been involved with commerce, human rights, disability, wage and hour, rural partnerships and taxes. The Department's goal is to become indispensable to the workforce, business leaders, and unemployed workers.

Senator Stennet thanked **Mr. Madsen** for his leadership last year in helping the State of Idaho make things work when we were facing cuts. This was important to the people and you took on the agencies in Idaho to make it work.

Senator Cameron also added his thanks and explained that **Mr. Madsen** undertook a very difficult situation and helped it become a betterment for our citizens. The State of Idaho and its citizens are benefitted by **Mr. Madsen's** service to our State.

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

**GUBERNATORIAL
APPOINTMENT:**

Chairman Andreason announced that the Committee was ready to take action on the reappointment of **Don Dietrich** as Director of the Department of Commerce for a term commencing January 3, 2011 and expiring January 5, 2015.

MOTION:

Senator Cameron moved to send the gubernatorial appointment of **Don Dietrich** to the Department of Commerce to the floor with the recommendation that it be confirmed by the Senate. **Senator Stegner** seconded the motion. The motion passed by **Voice Vote**. **Chairman Andreason** will be the sponsor of the candidate.

PRESENTATION: **Don Dietrich, Director, Department of Commerce** advised that this is a special day for their Department each year when they can share with Committee their annual report of the ongoing activities in the national trade offices. The Department of Commerce announced last Friday an all-time record of exports for the State of \$51.15 billion, an increase of 32.8% over the last year. The State of Idaho is actually leading the United States export recovery by about 12%. Idahoans are very productive and are truly a merchant state which produces more than they can consume. Those goods and services need markets and the team of international trade managers are exporting some of these goods and services into their marketplace.

Eddie Yen, Manager, Taipei, Asia gave an overview of his country's economic status and the portion of export from Idaho. Taiwan is the 11th largest market for US non-agriculture and the 6th largest market of agricultural products. Idaho exports from January to September of 2010 were \$499 million; the third largest export market for the state. New targeted opportunities for Idaho exports are materials and technology for green energy and organic and high-value-added agricultural products.

Xu Fang, Manager, China advised that China's economy continues to grow reaching a GDP of \$6 trillion. They have just passed Japan as the second largest economy behind the US. China is the third largest market for Idaho exports, with total exports of \$572 million. Key exports items from Idaho companies continue to be high technology, wood, building materials, food and agricultural equipment. Investments in Idaho companies are in the EB-5 program and the Idaho State Regional Center (ISRC) of \$15 million to date. Over 100 investors have signed to invest \$50 million in the ISRC. A student exchange program has just been signed between schools in Boise and Shanghai. Finally, the mission of their office is to grow Idaho exports and to attract more investors to Idaho.

Armando Orellana, Manager, Mexico said Mexico has been growing in the past year. Recession is over and the inflation rate is under control. Unemployment is decreasing and exports of goods have increased to 25% of Mexico's GDP. Mexico is now importing more non-oil products and is not as dependent on oil as it has been in the past. Exports from Idaho to Mexico have not grown since 2008 because of the tariffs that Mexico has imposed on foods coming from the US and added to that is the truck negotiations with NASDAQ. Targeted opportunities for Idaho exports are health care products, software applications, mining, agriculture and food processing equipment.

H70

Relating to Electrical Apprentices

Steve Keys, Deputy Administrator, advised this bill dealing with the renewal of electrical licenses and registrations incorporates language specifically mentioning registrations separately from licenses. It then specifies that the electrical board is empowered to establish education and work requirements that must be satisfied to renew a registration. The board currently has specific statutory authority to adopt rules establishing apprentice and specialty trainee registration requirements; this bill clarifies that the Board's authority extends to establishing requirements for renewing those registrations.

MOTION:

Senator Goedde moved that **H70** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Stegner**. The motion passed by **Voice Vote**. **Senator Goedde** will be the sponsor of the bill.

H71

Relating to the Idaho Elevator Safety Code Act

Steve Keys stated this proposal changes existing language in Idaho Code allowing the elevator owner and Department of Building Safety to enter into a compliance agreement where practicalities limit the ability of the owner to correct discrepancies. Current provisions limit the issuance of a temporary certificate to operate to one non-renewable sixty (60) day period. Many times, due to parts availability or other circumstances, repairs or modifications cannot be accomplished within that sixty (60) day limit. Many times, due to parts availability or other circumstances, repairs or modifications cannot be accomplished within that sixty (60) day limit. This change allows the agency to determine the expiration date of the temporary certificate depending on the circumstances. It also changes the existing language relating to a "permanent" certificate to operate to accurately reflect the five (5) year term for all certificates to operate elevators.

MOTION:

Senator Smyser moved that **H71** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion passed by **Voice Vote**. **Senator Smyser** will be the sponsor of the bill.

H72

Relating to the HVAC Board

Steve Keys said this legislation enacts one-time adjustments to the terms of board members to address the fact that currently five (5) of the seven (7) board members are appointed in the same year. This proposal also changes the basis of compensation for board members from a salary to an honorarium. There is no change in the amount of the compensation, but the honorarium status allows board members to continue to contribute to their own retirement accounts. The bill also establishes a requirement for the HVAC Board to elect a chairman and a vice-chairman every two (2) years.

MOTION:

Senator Tippetts moved that **H72** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion passed by **Voice Vote**. **Senator Tippetts** will be the sponsor of the bill.

H74

Relating to the HVAC Board Member Terms

Steve Keys stated like the proposal discussed earlier regarding the compensation of HVAC board members, this bill would change the basis of the compensation from a salary to an honorarium in order to allow members to contribute to their individual retirement accounts.

MOTION:

Senator Schmidt moved that **H74** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion passed by **Voice Vote**. **Senator Schmidt** will be the sponsor of the bill.

ADJOURN:

There being no further business, the meeting adjourned at 2:55 p.m.

Senator Andreason
Chairman

Carol Deis
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 17, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|---|--|---|
| PAGE: | Page Presentation & Thank You | |
| MINUTE APPROVAL: | February 1, 2011 | Senator Stennett |
| <u>RS20435</u> | Relating to Idaho Real Estate License Law Certain Licensees May Give An Opinion For Price of Real Estate | John Eaton, Idaho Association of Realtors |
| GUBERNATORIAL APPOINTMENT: To Be Voted On: | Appointment of Gaven Gee as Director of the Department of Finance for a term commencing January 3, 2011 and expiring January 5, 2015. | |
| GUBERNATORIAL APPOINTMENT: To Be Voted On: | Appointment of Roger B. Madsen to the Idaho Department of Labor for a term commencing January 3, 2011 and expiring January 4, 2015. | |
| GUBERNATORIAL APPOINTMENT: To Be Heard: | Appointment of R. D. Maynard to the Idaho Industrial Commission for a term commencing January 13, 2011 and expiring January 13, 2017. | |
| <u>S1087</u> | Relating to Title Insurance | Kris Ellis, Idaho Land Title Association |
| <u>S1090</u> | Relating to Idaho Life and Health Guaranty Association Act Providing Protection for Idaho Residents from Insolvent Insurers | Mike Brassey, Idaho Life & Health Guaranty Assoc. |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Smyser
Sen Tippetts

COMMITTEE SECRETARY

Carol Deis
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Phone: (208) 332-1333
email: cdeis@senate.idaho.gov
Sen Stennett
Sen Schmidt

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 17, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Smyser, Tippetts, Stennett, and Schmidt

**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.

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

PAGE: **Chairman Andreason** recognized **Brad Hammer** who has done a superb job supporting our Committee. Letters of recommendation and thank you were given to **Mr. Hammer** in appreciation for a job well done.

MINUTE APPROVAL: February 1, 2011.

MOTION: **Senator Stennett** moved to approve the minutes of February 1, 2011. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

RS20435 **Relating to Idaho Real Estate License Law**

John Eaton, Idaho Association of Realtors, stated that the Real Estate Commission had presented S1065 earlier in the session. There were some language issues with the bill and they asked for the bill to be held. The only difference between this piece of legislation before you today and S1065 is in the language on page 5, section 3, line 35 which states "only an actively licensed broker or associate broker may prepare or render a broker price opinion" and previously the language read "actively licensed broker".

MOTION: **Vice Chairman McKague** moved unanimous consent that **RS20435** be referred to the State Affairs Committee to consider printing **RS20435**. The motion was seconded by **Senator Stennett**. The motion carried by **Voice Vote**.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** announced that the Committee was ready to take action on the reappointment of **Gavin Gee** as Director of the Department of Finance for a term commencing January 3, 2011 and expiring January 5, 2015.

MOTION: **Senator Stegner** moved to send the gubernatorial appointment of **Gavin Gee** to the Department of Finance to the floor with the recommendation that it be confirmed by the Senate. **Senator Schmidt** seconded the motion. The motion passed by **Voice Vote**. **Senator Stegner** will be the sponsor of the candidate.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** announced that the Committee was ready to take action on the reappointment of **Roger B. Madsen** to the Idaho Department of Labor for a term commencing January 3, 2011 and expiring January 4, 2015.

MOTION:

Senator Tippetts moved to send the gubernatorial appointment of **Roger B. Madsen** to the Idaho Department of Labor to the floor with the recommendation that it be confirmed by the Senate. **Senator Stegner** seconded the motion. The motion passed by **Voice Vote**. **Senator Smyser** will be the sponsor of the candidate.

GUBERNATORIAL APPOINTMENT:

Chairman Andreason welcomed **R. D. Maynard** who was appearing before the Committee for approval of his reappointment to the Idaho Industrial Commission for a term commencing January 13, 2011 and expiring January 13, 2017.

Mr. Maynard advised that he worked in the construction industry for 29 years with most of those years being spent at the Idaho National Laboratory (INL). Has served for eight years as a Business Representative for the Operating Engineers and another five years as President of the Idaho Building and Construction Trades. **Mr. Maynard** currently serves on the INL Citizens Advisory Board. **Mr. Maynard** was appointed to the Industrial Commission in 1999. **Mr. Maynard** explained that the Industrial Commission's function is to administer Title 72 of the Idaho Code, which entails the following: 1) Decide contested workers' compensation cases; 2) Administer insurance requirements; 3) Approve settlement agreements; 4) Decide unemployment insurance appeals; 5) Mediate workers' compensation disputes; 6) Provide no cost return-to-work services; 7) Administer the Crime Victims Compensation Program; and 8) Administer the Peace Officer and Detention Officer Temporary Disability Fund.

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

S1087**Relating to Title Insurance**

Kris Ellis, Idaho Land Title Association stated the bill delineates escrow fees from the title premium insurance rate currently in statute. The fees are tied together. On page 2, line 25 and 26 the bill removes the requirement that escrow fees be filed by the insurer with the Department of Insurance in the same manner as title insurance premiums. Further down on page 2, line 31 and 32 the bill takes escrow fees out of the hearing process. On page 1, line 28 and 29 removes the escrow fees and title insurers and title insurance agents. The bill adds language on page 3, line 37 that escrow fees shall be filed in accordance with rules that are promulgated by the Department of Insurance. There are currently some rules on the books that will allow them to operate and there will be new rules brought forward next year.

Senator Stegner asked will this in any way effect the premium tax that is charged on title insurance? The escrow fees that will be removed from the filing, will it also remove them from being included in the calculation that is a percentage of the overall premium? By the removal of the fee, will it reduce the tax that is due on a policy? **Ms. Ellis** explained the premium tax is simply a fee on the title insurance premium itself; called a premium tax. **Senator Cameron** asked **Ms. Ellis** to explain the practical effects of what this bill will achieve; who will it benefit or hurt. **Ms. Ellis** explained how to calculate the escrow fees and the filing of them. Currently escrow fees are prohibited from being a loss leader. Then how does the Department of Insurance ensure that they are not lost in the calculation process. How do we get there so we come up with a fair rate for the consumer but not give an unfair advantage to some title companies. The objective was to come up with a fair calculation process for the title fees. **Senator Cameron** said then the consumers would be the winner in this fee restructure because of this specific calculation and title companies would not have the option to vary the fee structure. **Ms. Ellis** stated this was a correct

assumption. The entire industry and the Department of Insurance will win with these proposed fee corrections.

MOTION:

Senator Cameron moved that **S1087** 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.

S1090

Relating to Idaho Life and Health Guaranty Association Act Providing Protection for Idaho Residents from Insolvent Insurers

Mike Brassey, Idaho Life & Health Guaranty Association explained the Association is a non-profit Association formed in 1977 when the State of Idaho adopted the current National Association of Insurance Commissioners (NAIC) law on guaranty associations. The purpose of the Association, which all insurers who are authorized to sell life or disability insurance must by statute belong, is to undertake the task of servicing the policies of Idaho residence when an insurer is in the process of liquidation either in Idaho or in another state. The Association is under the control of a board of directors and the board includes all of the Idaho domestic insurers that are authorized to sell life insurance. Early, in 2010 the Board of Directors of the Association began to review current law, which is a 1977 law, and compared it to the current NAIC model law. The Association made the decision to vote in favor of adopting the newer regulations because they gave tighter definitions and better procedures to tell on an interstate basis whose residents are getting paid by what association. Historically, to try to sort out who is a resident and who is not for the purposes of the Association in question, the Board made the choice of repealing the existing law and replacing it with a new law with a minimum amount of additional changes to allow it to conform to the Idaho Insurance Fund.

MOTION:

Senator Smyser moved that **S1090** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Smyser** will be the sponsor of the bill.

ADJOURN:

There being no further business, the meeting adjourned at 1:41 p.m.

Senator Andreason
Chairman

Carol Deis
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 22, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|---|--|----------------------------------|
| MINUTE APPROVAL: | February 3, 2011 | Senator Smyser |
| GUBERNATORIAL APPOINTMENT: To Be Voted On: | Appointment of R. D. Maynard to the Idaho Industrial Commission for a term commencing January 13, 2011 and expiring January 13, 2017. | |
| <u>RS20466</u> | Relating to Bail Agents Reimbursement for Certain Expenditures and Certain Amounts is Permitted | Roy Eiguren, Bail Agents |
| <u>H76</u> | Relating to Public Employment and Coverage; Remove Reference to the State Insurance Fund | Jane McClaran, Financial Officer |
| <u>H105</u> | Relating to the Idaho Bureau of Educational Services for the Deaf and the Blind; Deemed a Governmental Entity | Representative Wendy Jaquet |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Smyser
Sen Tippets
Sen Stennett
Sen Schmidt

COMMITTEE SECRETARY

Carol Deis
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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 22, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Smyser, Tippetts, Stennett, and Schmidt

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.

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

MINUTE APPROVAL: February 3, 2011

MOTION: **Senator Smyser** moved to approve the minutes of February 3, 2011. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** announced that the Committee was ready to take action on the reappointment of **R. D. Maynard** as a Commissioner to the Idaho Industrial Commission for a term commencing January 13, 2011 and expiring January 13, 2017.

MOTION: **Senator Cameron** moved to send the gubernatorial appointment of **R. D. Maynard** to the Idaho Industrial Commission 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 Cameron** will be the sponsor of the candidate.

RS20466 **Relating to Bail Agents Reimbursement for Certain Expenditures and Certain Amounts is Permitted**

Roy Eiguren, on behalf of Aladdin Bails Bonds, stated that this legislation deals with recovery of costs associated with absconding defendants that flee the jurisdiction. The bail industry is not ready to ask for an unanimous consent for printing at this point because they are still in negotiation with the Department of Insurance on the recouping of these fees. The bail industry and Department are still trying to work out the differences in the bill. **Mr. Eiguren** asked that this legislation be held.

H76 **Relating to Public Employment and Coverage; Remove Reference to the State Insurance Fund**

Thomas Limbaugh, Commissioner, Industrial Commission advised that **H76** is a proposed amendment to Idaho Code, Section 72-205. The proposed amendment is a housekeeping measure which removes the language set by a school equals work compensation policy with the State Insurance Fund. Current law states a student participating as schools work experience program will be covered by the school district's workers' compensation insurance policy with the state insurance fund. However, Idaho Code, Section 72-301, authorizes any employer, including school districts, to self-insure their obligations under this law with the approval of the Industrial Commission. Recently, there were some

school district's that became self-insured, therefore, the removal of this language on page 2, line 2 will eliminate any confusion created by this conflict.

MOTION:

Senator Goedde moved that **H76** 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.

H105

Relating to the Idaho Bureau of Educational Services for the Deaf and the Blind; Deemed a Governmental Entity

Brian Darcy, Idaho Educational Services for the Deaf and the Blind, said the legislation corrects an oversight and would change the Idaho Educational Services for the Deaf and the Blind's (IESDB) current status as a governmental entity back to the status of a state PERSI employer, only for purposes of PERSI participation. Prior to H1074, 2009 Session, IESDB was a state PERSI employer and all its employees were mandatory PERSI participants. However, that legislation changed IESDB to a governmental entity, but did not preserve the state PERSI employer status. The result was that as a governmental entity, IESDB must now negotiate a contract with PERSI and pay an actuarial entry cost (approximately \$15,000) as required by Idaho Code, to reinstate those same employees. This legislation would avoid those requirements and any interruption of employee benefits.

MOTION:

Senator Cameron moved that **H105** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Stennett**. The motion carried by **Voice Vote**. **Senator Cameron** will be the sponsor of the bill.

ADJOURN:

There being no further business, the meeting adjourned at 1:41 p.m.

Senator Andreason
Chairman

Carol Deis
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, March 01, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|----------------------------------|--|---|
| MINUTES: | February 10, 2011 | Stennett |
| | February 15, 2011 | Schmidt |
| <u>RS20140C1</u> | Relating to Security for Compensation an Employer May Become Self-Insured | Thomas Limbaugh, Commissioner |
| <u>S1123</u> | Relating to the Prohibition of Real Estate Transfer | John Eaton, Idaho Association of Realtors |
| <u>H79</u> | Relating to the Employment Security Law Workforce Development Training Fund | Bob Fick, Communication Manager |
| <u>H80</u> | Relating to the Employment Security Law Corporate Officer Claim for Benefits | Bob Fick, Communication Manager |
| <u>S1127</u> | Relating to Idaho Real Estate License Law That Certain Licensees May Give An Opinion Of The Price of Real Estate | Jeanne Jackson-Heim, Executive Director |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Smyser
Sen Tippets
Sen Stennett
Sen Schmidt

COMMITTEE SECRETARY

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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 01, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Smyser, Tippetts, Stennett, and Schmidt

**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.

MINUTES February 10, 2011
APPROVAL: February 15, 2011

MOTION: **Senator Schmidt** moved to approve the minutes of February 15, 2011. The motion was seconded by **Vice Chairman McKague**. The motion carried by **Voice Vote**.

MOTION: **Senator Stennett** moved to approve the minutes of February 10, 2011. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**.

RS20140C1 **Relating to Security for Compensation an Employer May Become Self-Insured**

Jane McClaran, Financial Officer, Idaho Industrial Commission, asked the Committee to consider sending **RS20140C1** to the Judiciary and Rules Committee for a print hearing and be returned to the Commerce and Human Resources Committee. This bill amends Section 72-301, Idaho Code, which deals with security for payment of compensation. This bill is primarily a housekeeping measure which will update the term workmen to the commonly used worker's and it also replaces the term surety with the term insurer as defined in Section 41-103, Idaho Code.

Senator Stegner stated is the C1 of **RS20140C1** the reason why this legislation is late through the process. **Ms. McClaran** replied that they had drafted this as agency legislation and it was processed through DFM as a pre-file. There was feedback from the industry, a wait for the advisory committee to meet February 8, 2011 which generated additional input on February 11, 2011, and these procedural delays caused the legislation to be late.

Senator Tippetts asked if this legislation is just a housekeeping measure, which changes some terms, is there some reason it could not wait until the next legislative session. **Ms. McClaran** said that this change is needed because it will clarify what portion of the statute is specific to insurance carriers and what portion is specific to self-insured employers. Currently, the term surety as defined in their section of statute refers to both carriers and the self-insured.

MOTION: **Senator Stegner** moved unanimous consent that **RS20140C1** be referred to Judiciary and Rules Committee to consider printing **RS20140C1**. The motion was seconded by **Senator Tippetts**. The motion carried by **Voice Vote**.

John Eaton, Idaho Association of Realtors, stated this legislation relates to the prohibition of real estate transfer fee schemes that have developed across the country. This transfer fee shows up at the closing of the property as a 1% transfer fee, which is attached to the property for 99 years. Every time the home would sell these fees will be reconveyed back to a private company in New York. The builder records this transfer fee at the time of build and it is not effective on the transfer of his sale to his client it shows up in every sale after that original purchase. The Idaho Association of Realtors, Bankers Association, and Idaho Land Title Association looked at the national model legislation to deal with these transactions. There are 19 states that have already passed legislation to outlaw this practice across the country. The Federal Housing Finance Administration, which oversees Freddie Mac, Fannie Mae, HUD, and FHA, has come out with guidance and will not loan on property until these fees are removed.

The main definition is transfer fee covenant on page 2, a through h. It will not include any provisions of a purchase contract, mortgage security, real property listing agreement or other agreement which obligates one party to the agreement to pay the other as whole or partial consideration unless it is only on a on-time basis. This makes sure that the existing real estate transactions that we have today do not get affected by this legislation. If there is something in the transaction that requires payment such as: Any provision in a deed, memorandum, mortgage, deed or promissory note; commissions payable to a licensed real estate broker; any real estate closing costs; any provision of a document requiring payment of a fee or a charge to an association (homeowner association). Homeowner association fees, none going back to a third party, so the builder could not have an agreement with the homeowner association to transfer fees back to the building group. Section 55-3103, Idaho Code, states that real estate transfer fees are unlawful. Item number two under this section states that nothing in this section shall imply that a transfer fee covenant recorded prior to the effective date of this section is valid or enforceable.

After this legislation had been reprinted the Associations discovered that they needed to modify the language again for cell phone towers. Typically, these towers lease space on a piece of property. Cell phone towers change hands frequently and in the lease agreement it will say if you sell this tower you convey back a fee to me, the property owner. The property owner, by receiving the fee, knows that the tower has been sold and the new owner information. In this transaction the property owner would be a third party to the contract. **RS20434A3** amends page 2 of the printed bill, in line 6, line 26, 32 and adds item h.

MOTION:

Senator Cameron moved that **S1123** be referred to the 14th Order for Amendment. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Senator Cameron** will sponsor the bill.

H79

Relating to the Employment Security Law Workforce Development Training Fund

Bob Fick, Communication Manager, Department of Labor, advised that **HB79** extends the life of the Workforce Development Training Fund to January 1, 2018. The fund is financed by a 3% set aside on the unemployment insurance tax and reimburses employers for providing new jobs or retraining workers to change jobs that are in jeopardy of elimination. The fund provides up to \$2,000 per worker for training expenses in urban areas, and at least five new jobs have to be created. In rural areas, the fund provides up to \$3,000 for training just one new worker. The council set a minimum wage for eligible jobs at \$12 an hour plus employer-assisted health benefits in 2006. This has had a dramatic affect on the quality of the jobs that the workers may be trained. Up until that time the average pay for jobs that had been subsidized was \$14.00 hour but since 2005 the average pay has increased to \$18.84 per hour.

Under the law, the fund balance is monitored monthly, and any unobligated balance over \$6 million must be transferred to the Unemployment Insurance Trust Fund. The recession has limited demand on the fund, and the Department has reverted about \$4 million to the Unemployment Insurance Fund over the past 18 months.

MOTION:

Senator Goedde moved that **H79** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Schmidt**. The motion carried by **Voice Vote**. **Senator Goedde** will be the sponsor of the bill.

Chairman Andreason asked **Mr. Fick** to give a brief update on where the State is with unemployment and job recovery. **Mr. Fick** stated that this upcoming Friday they will be updating the unemployment rates for January/February. The unemployment rate in December was 9.5% that is 1/10 of a point below the record rate from 1982-83 which was 9.6%. This ties the rate in the depth of the recession which was 9.5% last February. There are 72,000 people unemployed in the state which is a record. As for jobs the worst of the recession concerning jobs was in July/August of 2009 there were 7.3% fewer jobs than in July/August of 2008. The state has lost about 58,000 jobs in the recession. Since April the job market has been flat; there is no job growth. Unemployment benefits are running 65-70% of a year ago.

H80

Relating to the Employment Security Law Corporate Officer Claim for Benefits

Bob Fick, Communication Manager, Department of Labor, said **HB80** is intended to solve two problems. First, many business owners who are corporate officers have complained repeatedly about paying the unemployment insurance tax on their wages when they see no possibility that they will ever collect unemployment benefits. This bill will allow them to opt out of coverage.

Second, monitoring of unemployment claims filed by corporate officers since October 2007, two months before the recession began, through March 2010, nine months after the recession ended, found that 5,170 of the 30,000 or so corporate officers in Idaho collected \$42 million in unemployment benefits. These 5,200 officers paid just \$5.8 million in unemployment insurance taxes on their wages. All corporate officers paid \$35 million on all their wages during that period. The issue is not that these officers are collecting unemployment benefits, but that a number of them are claiming to have laid themselves off for lack of work and ceased collecting a paycheck when they are actually keeping their businesses afloat and using unemployment benefits to pay the bills. In the audits they found that some are seasonal businesses and the corporate officer lays himself off in November and uses unemployment to finance the bills and then starts the business back up in the spring.

This bill will require all corporate officers at the beginning of every other year to decide whether they want to be covered by unemployment insurance and if they opt out of unemployment then they will not pay any taxes on their wages and they will not be eligible for benefits. If they decide to be covered they will pay the tax on their wages and then they will be able to collect unemployment but only at the point where the business is legally dissolved. If they restart the business within the benefit year of their unemployment, it would be evidence that their lay-off was voluntary and the benefits that had been paid to them would be considered an overpayment and they would have to pay those benefits back.

Senator Cameron asked is this legislation the appropriate remedy for the unemployment insurance for these officers? If you allow the choice, you have indicated that the trust fund is collecting \$5.8 million and paying out over \$42 million in benefits. The number of applicants might stay the same or grow if those officers believe that they might or should be eligible for benefits. In the meantime, we haven't incurred or increased any additional contribution to the trust fund for them, in fact we may be diminishing the amount of money collected by the trust fund because those who absolutely have no intention of collecting unemployment may choose not to participate. **Mr. Fick** emphasized that individuals who want to collect benefits have to legally dissolve their company. They may not restart the company for the 12 months of that benefit year. The Compliance Department believes this language in the bill will protect the fund against the inordinate excess of benefits to taxes collected on those wages. The compliance investigators also believe the major corporations such as Micron and Hewlett-Packard will still participate in carrying unemployment benefits for their corporate officers. There have been 14 states that have passed this legislation and they have not seen a substantial imbalance in taxes or benefits for corporate officers.

Senator Cameron said suppose a corporation lays off their president. That president had previously signed to collect benefits and the company had been paying unemployment insurance. The Department of Labor commences to pay unemployment benefits to that corporate officer. The corporation rehires someone else, would that new person have the ability to accept or reject at that point of new hire or only on the annual declaration? **Mr. Fick** explained that there are provisions in the bill for individuals to opt-out and also for adding individuals to the unemployment insurance plan in the midst of the two years, but none of these actions can be retroactive. The declarations must be made by the top corporate officers and it applies to all corporate officers.

MOTION:

Senator Stegner moved that **H80** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Tippetts**. The motion carried by **Voice Vote**. **Senator Stegner** will be the sponsor of the bill.

S1127

Relating to Idaho Real Estate License Law that Certain Licensees May Give an Opinion of the Price of Real Estate

Jeanne Jackson-Heim, Executive Director, Idaho Real Estate Commission, advised **S1127** attempts to clarify the real estate license law by adding two terms to the definitions that already exist in the law in other locations.

This legislation does not impose any new requirements on real estate licensees. Both of the changes in the bill pertain to language that has been in the law for many years. However, they have become aware that there is some confusion, primarily because the language isn't easy to find, and they have had some compliance issues.

The first change involves the definition of the phrase "acting in this state", which presently appears in Section 54-2058, Idaho Code, of the license law where it has been often overlooked. This legislation would add it as a defined term in Section 54-2004, Idaho Code, and take it out of Section 54-2058, Idaho Code, (on page 6 of the bill). This definition relates specifically to Section 54-2002, Idaho Code, brokerage activity that requires an Idaho real estate license.

The second defined term that is added is that of "broker price opinion", commonly known in the real estate industry as a (BPO). This definition is presently found only in the Real Estate Appraiser Act, which is in a separate chapter of the Idaho Code. The Appraiser Act requires anyone rendering an opinion of property value to hold an appraiser license, but there are a couple of exemptions for real estate licensees to do market analyses and broker price opinions. If the real estate licensee does not comply with the Appraiser Act, the broker is not exempt from its licensing requirements.

This bill would add the definition of a BPO to the definitions section of the real estate license law, and also a reference to the BPO requirements contained in the Appraiser Act. The proposed change also adds corresponding language to Section 54-2038, Idaho Code, page 5, relating to broker supervision. This section restates some language from the Appraiser Act and reminds licensees that a designated broker has a duty to supervise his licensees and is the conduit for all real estate fees paid to his associates.

Over the last year, the Real Estate Commission and the Real Estate Appraiser Board met several times to discuss this issue and how they can better educate their licensees on compliance with the Appraiser Act. Their two boards worked together to draft this proposed change to the real estate license law.

MOTION: **Senator Smyser** moved that **S1127** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Tippetts**. The motion carried by **Voice Vote**. **Senator Smyser** will be the sponsor of the bill.

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

Senator Andreason
Chairman

Carol Deis
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, March 03, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|--|---|--|
| MINUTE APPROVAL: | February 17, 2011 February 22, 2011 | Senator Smyser Senator Stennett |
| GUBERNATORIAL APPOINTMENT: To Be Heard: | Appointment of Vicki Tokita as Director of the Division of Human Resources for a term commencing February 8, 2011 and expiring January 5 2015. | |
| <u>H81</u> | Relating to Cosmeticians Relating to the Board of Cosmetology's Authority to Discipline and to Sanction | Roger Hales, Bureau of Occupational Licenses |
| <u>H82</u> | Relating to the Idaho Real Estate Appraisers Act | Roger Hales, Bureau of Occupational Licenses |
| <u>H83</u> | Relating to Barbers To Revise Provisions Relating to Approved Barber Colleges | Roger Hales, Bureau of Occupational Licenses |
| <u>H167</u> | Relating to Cosmeticians To Revise Provisions Relating To Regulations for Domestic Schools of Cosmetology | Kris Ellis, Idaho Cosmetology Schools |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Smyser
Sen Tippets
Sen Stennett
Sen Schmidt

COMMITTEE SECRETARY

Carol Deis
Room: WW46
Phone: (208) 332-1333
email: cdeis@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 03, 2011
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Smyser, Tippetts, Stennett, and Schmidt
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.
CONVENE: **Chairman Andreason** called the meeting to order at 1:32 p.m.
MINUTE APPROVAL: **February 17, 2011**
February 22, 2011
MOTION: **Senator Stennett** moved to approve the minutes of February 22, 2011. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.
MOTION: **Senator Smyser** moved to approve the minutes of February 17, 2011. The motion was seconded by **Senator Stennett**. The motion carried by **Voice Vote**.
GUBERNATORIAL APPOINTMENT: **Chairman Andreason** welcomed **Vicki Tokita** who was appearing before the Committee for approval of her appointment as Administrator of the Division of Human Resources for a term commencing February 8, 2011 and expiring January 5, 2015.

Ms. Tokita said she is honored to have the Governor appoint her as the Administrator to the Division of Human Resources. The Division provides consultation to both employees and management on compensation, classification, employee relations, and improvement. **Ms. Tokita** has worked for the State of Idaho for over 34 years with half of that time spent working for the Division of Human Resources. **Ms. Tokita** has built relationships with employees of all levels; her greatest accomplishments have been in helping employees to achieve their potential and assisting agency leadership in managing their agencies. The State is fortunate to have a very talented and dedicated workforce.

Currently **Ms. Tokita** is working on a performance evaluation to help employees to understand the importance that they play as stewards of taxpayer money and providing services to the constituents. The State managers and supervisors are critical to the success of their employees and they are also developing tools to support those efforts. One of the tools is supervisory changes specific to the State that include the hiring process; performance management; coaching and the disciplinary process. **Ms. Tokita** stated she was very mindful of the current budget situation and has been working with agency directors in using existing resources and staff while presenting the training.

Senator Tippetts asked for clarification from **Ms. Tokita** concerning her work history for the State of Idaho in the Division of Human Resources. You have stated you have worked for the Division for the last 17 years, but we notice in that you have no formal education or certification in this field. **Ms. Tokita** responded that was correct. **Senator Tippetts** said no training at all in this area over that

17 years? **Ms. Tokita** explained that she had taken some college courses in compensation, various courses in job analysis, and family medical leave. **Senator Goedde** asked if **Ms. Tokita** belonged to any professional organizations. **Ms. Tokita** responded that she did not belong to any professional organizations. She had explored joining the National Association of State Personnel Executives, but the cost was prohibitive for her enrollment.

Chairman Andreason thanked **Ms. Tokita** for her attendance and advised that the Committee would take action on her appointment at the next meeting.

H81

Relating to Cosmeticians Relating to the Board of Cosmetology's Authority to Discipline and to Sanction

Roger Hales, General Counsel, Bureau of Occupational Licenses advised that this legislation has been drafted to provide the Board with some flexibility in regards to type of discipline they may impose against an licensee. The new forms of discipline would include imposing additional education, training requiring certain supervision during their practice, or to suspend or revoke a license. The bill adds grounds for which a licensee may be disciplined. 1) If they are disciplined in another state the Board can consider that discipline; 2) If they fail to comply with the Board's discipline the Board can further discipline the individual; and they have deleted some archaic language in line 20 from the immoral conduct.

Vice Chairman McKague asked if the cosmetologists get training before you issue them a license to practice, what will the additional requirement of education achieve? **Mr. Hales** explained the cosmetologists have to have formal training to become licensed. Once they are licensed, if they violate the statute or rules of the Board then the Board can impose discipline against that licensee. This bill will provide more flexibility for the Board to take disciplinary action against a licensee related to whether the licensee needed additional education or supervision. It would also allow the Board to implement discipline imposed to a licensee from another state.

Vice Chairman McKague asked how does the Board know when a cosmetician is not performing, would their customers call with complaints. **Mr. Hales** stated that before the Board could discipline any licensee it would have to be a contested case under review. A licensee has to be provided with a notice of what they are charged with, an opportunity to respond to the charges, and then they are entitled to an evidentiary hearing. Once all of these procedures have been completed, and it is determined by the Board that they did violate the law or the rules, at that point the Board would be able to discipline them. **Senator Schmidt** asked how many individuals would you discipline in a year? **Mr. Hales** replied usually around 30 to 40 per year.

Senator Cameron questioned item nine and ten in the bill. In item 9 if you have a licensee who has been who has had their "license suspended or revoked" then the Board could issue sanctions against them in one of the alternatives for discipline spelled out in the bill. If other states have similar sanctions to our states, why would the Board not remedy that with additional supervision and education. The language seems to be restrictive to only, if they had their license revoked or suspended in another jurisdiction. **Mr. Hales** clarified that the Board can consider the significant actions of another state on behalf of a license application. **Senator Cameron** asked on item ten it states if an individual has entered into a disciplinary sanction with the Board and they failed to comply then the Board could use one of the remedies in the bill. **Senator Cameron** had two points of concern: 1) enter in, does that mean that the Board has sanctioned them; and 2) a complaint has been filed. **Mr. Hales** explained that

typically under the Administrative Procedures Act the Board has to enter a final order in the manner in regards to discipline. Number ten in the bill was added to the legislation because of a recent Idaho Supreme Court case which made a judgement stating the Board was limited to statute that sets forth the grounds of which you can discipline a licensee. Because of that judgement this language is being added to most of the professional licensure legislation as grounds for discipline. An order would be entered in a disciplinary matter only after the contested case has been completed. If a complaint has been filed and the Board finds that the licensee has done something wrong then the Board's remedy is to discipline the individual by using the means of additional training, education and supervision. **Senator Cameron** asked If the licensee disagrees with the Board and the Board revokes the license; but the licensee says they never agreed to additional supervision then how would you proceed. Does "entered in" in the language of the bill mean that the Board has agreed to a disciplinary action? **Mr. Hales** stated it could have said "issued" for clarification of this section.

MOTION: **Senator Tippetts** moved that **H81** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**. **Senator Tippetts** will be the sponsor of the bill.

H82 Relating to the Idaho Real Estate Appraisers Act

Roger Hales, General Counsel, Bureau of Occupational Licenses stated federal law mandates that state licensed certified appraisers must appraise real property in Idaho that is associated with a federally related loan transaction. This board is subject to a number of federal mandates including their obligation to attain certain continuing education that meets certain standards as established by the federal government. This board is a dedicated fund agency operating solely upon fees from appraisers and licenses. This legislation would allow the board to set a fee, by rule, for those continuing education provider applications that they are forced to review. The board would be able to charge a fee to recover their expenses of their review process for continuing education providers. The board reviewed 175 applications for seminars which is a time consuming process and currently the appraiser licensure is bearing the costs. This board is in a deficit balance at the present time with a large part of this deficit due to the prosecutions during the boom period of real estate and now the foreclosure activity at this present time.

MOTION: **Senator Stegner** moved that **H82** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Tippetts**. The motion carried by **Voice Vote**. **Senator Stegner** will be the sponsor of the bill.

H83 Relating to Barbers to Revise Provisions Relating to Approved Barber Colleges

Roger Hales, General Counsel, Bureau of Occupational Licenses said this bill clarifies that Idaho Barber Colleges are obligated to teach, as part of the course, the Idaho Barber Laws.

MOTION: **Senator Stegner** moved that **H83** be sent to the floor with a do pass recommendation and be placed on the Consent Calendar. The motion was seconded by **Senator Stennett**. The motion carried by **Voice Vote**. **Chairman Andreason** will be the sponsor of the bill.

H167

Relating to Cosmeticians to Revise Provisions Relating to Regulations for Domestic Schools of Cosmetology

Kris Ellis, representing Idaho Cosmetology Schools, stated that this is a housekeeping bill for legislation that was passed a couple of years ago. That legislation inadvertently classified a licensed cosmetologist as a student, when in fact they are not a student but are licensed cosmetologists training to be instructors. This legislation clarifies the definition of a student instructor to be an instructor trainee and that they are not classified as a student but as an instructor for the student ratio purposes.

MOTION:

Senator Smyser moved that **H167** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Stennett**. The motion carried by **Voice Vote**. **Senator Smyser** will be the sponsor of the bill.

ADJOURN:

There being no further business, the meeting adjourned at 1:41 p.m.

Senator Andreason
Chairman

Carol Deis
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, March 08, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|-----------------------------------|---|---|
| MINUTES | | |
| APPROVAL: | March 1, 2011 | Senator Schmidt |
| GUBERNATORIAL APPOINTMENT: | Appointment of Vicki Tokita as Administrator of the Division of Human Resources for a term commencing February 8, 2011 and expiring January 5, 2015. | |
| To Be Voted On: | | |
| <u>S1139</u> | Relating to Security for Compensation, Insured with a policy of Worker's Compensation Insurance | Jane McClaran, Financial Officer |
| <u>H108</u> | Relating to the Employment Security Law and to Unemployment Benefit Financing | Bob Fick, Communications Manager |
| <u>H109</u> | Relating to the employment Security Law, Extended Benefits | Bob Fick, Communications Manager |
| <u>H122</u> | Relating to the Employment Security Law and to Unemployment Benefit Financial | Bob Fick, Communications Manager |
| <u>H154</u> | Relating to the Employment Security Law Penalty for Professional Employers Failed to File Quarterly Wage Reports | Bob Fick, Communications Manager |
| PRESENTATION: | Exergy Development Group | Dr. Don Church, Economist & Professor Boise State University |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Smyser
Sen Tippetts

COMMITTEE SECRETARY

Carol Deis
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Sen Stennett
Sen Schmidt

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 08, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Tippetts, and Stennett

ABSENT/ EXCUSED: Senator Smyser and Schmidt

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.

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

MINUTES APPROVAL: **March 1, 2011.** Due to **Senator Schmidt's** absence the minutes will be approved at the March 10, 2011 meeting.

GUBERNATORIAL APPOINTMENT: **Senator Tippetts** moved to send the gubernatorial appointment of **Vicki Tokita** as Administrator of the Division of Human Resources to the floor with the recommendation that it be confirmed by the Senate. The motion was seconded by **Senator Stennett**. The motion passed by **Voice Vote**. **Senator Tippetts** will be the sponsor of the candidate.

S1139 **Relating to Security for Compensation, Insured with a Policy of Worker's Compensation Insurance**

Jane McClaran, Financial Officer, Industrial Commission, stated the proposed changes are limited to updating the term workmen to the commonly used workers (lines 13, 29, 33 and page 2, line 5). In addition, this amendment clarifies the portion of statute applicable to insurers, as defined in Section 41-103, Idaho Code, (referenced on lines 14 and 15), and that portion applicable to self-insured employers, by replacing the term surety with that of insurer (lines 14, 29, 34, 41, 42, and page 2, lines 3 and 4).

While these proposed amendments do nothing to change the original legislative intent of maintaining a security deposit adequate to secure the payment of benefits to injured workers and their families, making these statutory changes better clarifies the distinction between insurers and self-insured employers. This lays the groundwork necessary for the Commission to further work with its Advisory Committee and the Security for Compensation Subcommittee to resolve the issues surrounding the adequacy of security for self-insured employers.

MOTION: **Senator Stegner** moved that **S1139** be sent to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman McKague**. The motion passed by **Voice Vote**. **Senator Stegner** will be the sponsor of the bill.

Relating to the Employment Security Law and to Unemployment Benefit Financing

Bob Fick, Communications Manager, Idaho Department of Labor, advised **HB108** addresses two issues: 1) Repayment of the \$202.5 million loan secured from the federal government to pay unemployment benefits between June 2009 and April 2010; and 2) Enhancing the financial stability of the Unemployment Insurance Trust Fund in the long run.

The bonds would be handled through the Idaho Housing and Finance Association similar to the GARVEE Bonds. The bonds would be repaid in \$50 million a year increments from 2012 through 2015 from the tax receipts employers pay into the trust that exceed the benefit payments out of the trust in each of those years. The interest rate is currently estimated at 2.25 percent plus another 0.73 percent in fees. The interest and fees will be paid from the Unemployment Insurance Trust Fund Reserve, which currently has a balance of about \$75 million. Federal law precludes using direct trust fund receipts to pay for anything other than benefits. The bonding interest rate is more than a full percentage point below the federal interest rate charged on outstanding loans. The interest rate will be 4.1 percent for 2011 and will change each year. Idaho began accruing interest on its loan balance on January 1, 2011.

The alternative to bonding is allowing the existing law to operate. It will impose a surcharge on Idaho employers at the same time they will be trying to regain profitability—.3 percent on the first \$7,000 paid each employee in 2010, 0.6 percent in 2013, and 2 percent in 2014. This will raise about \$157 billion with excess tax revenue over benefits during those three years that would be sufficient to pay back the debt. Bonding this debt lowers the interest rate and it avoids the three years of surcharges on employers. Employers will still pay until 2016 through the state tax rates that remain at the maximum level for an additional two years, but that will come during a period when the economy is stronger and business is more able to afford the additional expense.

The second part of **HB108** increases the solvency factor component of the formula that determines the target balance for the Unemployment Insurance Trust Fund. This increases the solvency factor for the trust fund from currently 0.8 to 1.5. The solvency factor sets the target for the balance in the trust fund. At 0.8 the targeted balance is 80 percent of the highest three years of benefit payments in the previous 20 years, about \$200 million; under a target of 1.5 it would be closer to \$400 million. The solvency factor was at 1.5 prior to 2005 when the unemployment insurance tax and benefit laws were rewritten. At that time a consensus of labor, business, legislators and the Department agreed that the new economy would have shorter and shallower recessions than in the past.

The group felt that lowering the target balance for the trust fund put the money that was saved to better use by leaving it in the hands of entrepreneurs rather than letting it sit idle in a trust fund. The immediate savings to employers was estimated at \$200 million, coincidentally, the amount the state had to borrow. Had the solvency factor been kept at 1.5 in 2005 the fund would have weathered the recession without going broke and the tax rates would have been at the maximum for only one year instead of six.

The increase in the trust fund will occur over 8 years at one-tenth increments per year starting in 2012 and running through 2018. **Mr. Fick** guided the Committee through three charts: 1) Chart 1 shows the effect under three possibilities on the base rate, which is the rate from which all of the other 13 rates are calculated.

Under the method recovering the money that the U.S. Department of Labor will use the rates go down dramatically and start to come back up. The 1.5 solvency factor offers more stability to business and sets rates on an uninterrupted downward trend whereas 0.8 maintains the volatility of rates that employers have experienced in recent years. The rate hit a record low in 2008 reflecting the strong expansion and then hit the legal maximum in 2010 as the recession took hold; 2) Chart 2 shows what the effect is on the balance of the trust fund. The green line is FUTA penalties, surcharge by the federal government, that raises the trust fund up over \$300 million but then it comes back down as it responds to economic recovery and settles in around \$200 million; and 3) The final chart shows the balance per covered employee in the trust fund. One of the problems the trust fund faces is that while high benefit years hold the target balance higher the number of employees expands and that increases the vulnerability of the trust fund in times of recession.

Senator Tippetts asked for clarification of the assumptions that the Department has made in compiling these projections. Assuming that the Department's recovery will continue and that the State will reach more historic levels of unemployment.

Mr. Fick said they project a continued slow recovery of the economy nothing near the recovery that was experienced after the 2001 recession. It does anticipate return of unemployment to what would have been normal prior to the last expansion. They do not expect to see unemployment back below 3 percent, as it was in 2007; between 4 to 5 percent would be normal. Another matter in support of increasing the solvency factor to 1.5 is that the bond issuing experts want that increased solvency factor as additional assurance that the department will be able to repay the bondholders. **Senator Tippetts** asked would you characterize these projections as conservative? **Mr. Fick** stated that would be a correct assumption, again they project a very moderate recovery.

Senator Goedde stated that he was on the task force that looked into the solvency factor and it was their consensus to lower the factor on the theory that future recessions would be shorter. Also, at that time, they looked into the maximum benefit and that impact on employers, if this is being changed that also should be revisited. **Mr. Fick** emphasized the maximum benefit is determined based on a schedule in the law from 52 to 60 percent of the average weekly wage. When taxes are at their lowest than the maximum benefit is at its highest 60 percent. When taxes are at their highest than the maximum benefit is at its lowest 52 percent. In the last two years the maximum benefit fell from \$364 per week to \$336 per week as taxes went up from employers. The average benefit fell from \$357 to \$340.

Jayson Ronk, Vice President, Idaho Association of Commerce and Investment, in support of H108 stated that this bill will create cashflow for businesses and employers by allowing the Department of Labor to bond out the loan for unemployment benefits which the Department borrowed from the federal government.

MOTION:

Senator Goedde moved that **H108** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**. **Senator Goedde** will be the sponsor of the bill.

Bob Fick, Communications Manager, Department of Labor, said **HB109** ensures that unemployed workers in Idaho will remain eligible for the extended federal benefits through end of 2011. Under the current formula to determine eligibility for benefits the state must have an unemployment rate above 6.5 percent and that rate has to be at least 110 percent for the most recent three months of the two previous years. Idaho has qualified under those provisions and will continue to qualify through the first half of 2011. The Department estimates that the state will not meet the 110 percent requirement because of the high unemployment rates in the second half of 2009 and 2010. The federal government has allowed us to continue to maintain eligibility by using a third year back. Using the third year (2008) will allow the Department to meet the 110 percent requirement and eligibility is maintained for workers who have exhausted their regular 10 to 26 weeks of state benefits to continue to get federal extended benefits. **Senator Stegner** asked is the federal government allowing other states besides Idaho to use the third year back formula to meet the 110 percent requirement? **Mr. Fick** replied that Idaho is not the only state that will be applying this third year formula. At this time, he did not know how many other states have been authorized to use the third year back.

Mary Gersema, owner of Employers Resource, testified in opposition to this bill. **Ms. Gersema** stated that she has owned a professional employer organization based in Boise for the last 26 years. The company is the tenth largest private employer in the state. As a professional employer organization she co-employs employees that work at her clients work sights. In 2010 she issued 14,000 W-2's that represented employees in 47 states. The effective tax rate for employment in Idaho is higher than the other states where they do business. Idaho has the second highest effective tax rate for employers in the nation. Idaho's cost is \$1,118.88 per employee per year versus California's cost of \$245 per employee per year. This becomes a deterrent for any business starting a new business in Idaho and for any existing companies to create jobs. In 2010 her wage base for unemployment was \$12 million, the unemployment rate was 4.32, and paid the State of Idaho for unemployment \$545,000. If Idaho had a \$7,000 wage base such as California her unemployment bill would have been \$127,000; saving the company \$400,000 in 2010. **Ms. Gersema** contacted the Idaho Department of Labor for a projection of 2011 effective tax rate for employers (Attachment 2 and 3) that rate will make Idaho to be the most expensive state in the nation for employers. Let's move Idaho from the most expensive state in this country to a more reasonable place.

Alex LaBeau, Idaho Association of Commerce and Industry, spoke in support **H109** stating there has been confusion about this legislation in the house and now here today. This bill just addresses federal dollars, these are not state dollars. The state is not going into anymore debt. This legislation is the second piece of benefits from the negotiation of the Bush Tax Cuts and the extension of labor benefits that occurred in Washington, D. C. The state has already adopted the Bush Tax Cuts and this is the second piece that of extending the labor benefits. Idaho is a high unemployment state and it would be nice to get people back to work, but the fact of the matter is, the jobs don't exist. Under this legislation employers will continue to pay the tax; but the real decision before us today is whether to except the extended benefit funds in order to continue to extend those benefits to employees that qualify. By voting no on this legislation the Committee would be denying federal funds that are available which will not cost the state anything and if not accepted will cut off benefits for individuals who continue to need those benefits. Everyone of the dollars that will come in from these benefits

will be spent right back into the economy. These dollars are definitely needed amongst the high unemployment base that the state faces at this present time.

Chairman Andreason asked **Mr. LaBeau** to respond to the statements that were made by the previous presenter. **Mr. LaBeau** explained the issues that were raised with respect to the tax rate and the penalty that would be accessed against employers were dealt wit in **H108**. **H108** deals with the unemployment debt of \$200 million by bonding it at that very low interest rate. The bill also creates an additional solvency factor to level out the rapid increase or decrease of the unemployment tax rate that has been seen in past years.

MOTION:

Senator Cameron moved that **H109** 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 McKague** will be the sponsor of the bill.

H122

Relating to the Employment Security Law and to Unemployment Benefit Financial

Bob Fick, Communications Manager, Department of Labor, stated **H122** changes the formula that determines how many weeks an unemployment insurance claimant will receive benefits. There is a table in the law that sets out how many weeks a claimant receives unemployment benefits based on the ratio of his high quota to his total earnings in a base year. **H122** revises the table and shifts it upward so that workers who have much more volatile earnings receive fewer weeks than claimants who have more stable earnings and are more closely tied to the labor force. This proposed legislation is in response to complaints from some employers, primarily in the Magic Valley, that certain individuals who work only intermittently, but make good money for the time they work, qualify for a weekly benefit that is higher than their weekly wage if you average their earnings over 52 weeks.

For example a person laid off from a steady job making the average annual wage would make about \$9,000 a quarter every quarter - about \$692 a week. That means the weekly benefit would be the maximum benefit of \$336 (\$9,000 divided by 26 equals \$342 and no benefit can be higher than \$336). The ratio of the high quarter \$9,000 to the total base-period wage \$36,000 is four so the claimant would be eligible for \$336 a week for 26 weeks.

A claimant made \$9,000 in a quarter, an amount that could easily be earned at harvest, and then \$5,000 the following quarter and nothing in the remaining two base-period quarters. The maximum weekly benefit would still be \$336, but the claimant would get the benefit for only 11 weeks because the ratio of the high quarter to all quarters is just over 1.55. Averaging the wages over the entire base comes to \$269 a week.

HB122 revises the ratio table to reduce the number of weeks workers with volatile base-period incomes like the one above would receive in benefits. There is no effect in the total amount of benefits paid. There is an effect for the employer on the amount of benefits that will be charged against their business for this employee.

MOTION:

Senator Cameron moved that **H122** 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.

Relating to the Employment Security Law Penalty for Professional Employers Failed to File Quarterly Wage Reports

Bob Fick, Communications Manager, Department of Labor, advised **HB154** imposes a civil penalty on professional employer organizations that fail to comply with the 1994 law requiring that they report quarterly wages by individual client.

The Department has had little compliance by professional employer organizations (PEO), since the bills passage. The Department did a random audit of six employer organizations last fall and all six failed to comply.

This bill will impose a penalty of \$100 per client whose employee wages are not reported separately to a maximum of \$5,000 per quarter. Without the information on each client-employer, employers can use the PEO to cloak otherwise illegal actions. When these businesses fail to report as the law requires, it is extremely difficult to determine if and when employers have contracted with a PEO and have assumed the PEO's tax rate or if the employer has gone out of business. Without the information on each client-employer, employers can use the PEO to cloak otherwise illegal actions. They can move into a PEO and while under its umbrella conduct a major layoff that would increase their rates if the department knew of the layoff and then leave the PEO with its record untainted by the layoff because the individual wage and employment information was not supplied to the department as the law requires. A company with a negative experience rating and a high tax rate that comes with it can go into a PEO, shut down under the current name then reopen under a new name with the same employees and eventually leave the PEO hoping that the department will not figure out that it has dumped its high rate against the law.

Senator Tippetts asked what is the reason for non-compliance of PEO's not reporting the individual wage information? **Mr. Fick** stated the Department believes that it is the effort to fill out the paperwork would be the main reason the wages are not being reported. Over the last 16 years they have tried to work with the organizations to try to get them to report the wages. They have two or three employees in the Department's Compliance Bureau who do nothing but track the missing PEO information down; if the PEO's would comply with supplying the quarterly reports these workers could be freed up to be used in the fraud and overpayment cases.

Senator Stegner said is there a similar penalty for other employers for failure to report wages. **Mr. Fick** stated that in 2005 the Legislature passed a penalty on employers who failed to file quarterly reports of wages equal to the amount of tax owed or \$250. The penalty was extremely effective and there were many imposed. The next year the Legislature revised that penalty that employers are charged to 50% of the tax or \$100 for the first violation, 75% and \$175 for the second violation and 100% and \$150 for the third violation. The penalties are only invoked in cases where the employer has chronically failed to file or they are a late filer. Many of the PEO's are lumping together all the employees and wages into one report. There is no way to tell how many of the 500 employees belong to what company and how the wages are allotted to each worker of that client.

Mary Gersema spoke in support of **H154** stating that as a PEO they were of the understanding that they had a choice of whether to file unemployment individually or consolidate the filing. In the competitive environment of their industry it would not make any sense to take companies that have a very high unemployment rate and group them into her companies lower unemployment rate. Their behavior would, over time, increase the rate of her company and hence they would not be competitive in the PEO field.

MOTION: **Senator Tippetts** moved that **H154** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Tippetts** will be the sponsor of the bill.

PRESENTATION: **Exergy Development Group**

Dr. Don Church, Economist and Professor, Boise State University was ill and unable to give his presentation.

ADJOURN: There being no further business, the meeting adjourned at 2:30 p.m.

Senator Andreason
Chairman

Carol Deis
Secretary

AMENDED #1 AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, March 10, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|----------------------------------|---|------------------------------------|
| MINUTE | March 1, 2011 | Senator Schmidt |
| APPROVAL: | March 3, 2011 | Senator Smyser |
| <u>RS20404C1</u> | Relating to Worker's Compensation Insurance Fraud | Senator Goedde |
| <u>H132</u> | Relating to Engineers and Land Surveyors; Define Terms and Make Technical Corrections | Dave Curtis, Executive Director |
| <u>H130</u> | Relating to Immunization Assessments | Shad Priest, Deputy Director |
| <u>H131</u> | Relating to the Idaho Health Carrier External Review Act | Shad Priest, Deputy Director |
| <u>HCR15</u> | Rejecting a Certain Rule of the Certified Shorthand Reporters Board | Representative Ellsworth |
| <u>H183</u> | Relating to the Mobile Home Park Landlord-Tenant Act to Provide for the Manufactured Home Residency Act | Jack Lyman, Idaho Housing Alliance |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Smyser
Sen Tippetts
Sen Stennett
Sen Schmidt

COMMITTEE SECRETARY

Carol Deis
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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 10, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Smyser, Tippetts, Stennett, and Schmidt

**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.

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

MINUTE March 1, 2011

APPROVAL: March 3, 2011

MOTION: **Senator Schmidt** moved to approve the minutes of March 1, 2011. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

MOTION: **Senator Smyser** moved to approve the minutes of March 3, 2011. The motion was seconded by **Vice Chairman McKague**. The motion carried by **Voice Vote**.

RS20404C1 **Relating to Worker's Compensation Insurance Fraud**

Senator Goedde stated **RS20404C1** makes a change to the Worker's Compensation Statute to add penalties for insurance fraud, the same is found in Title 41, Idaho Code. The penalty for insurance fraud would go from a misdemeanor to felony and increases the statute of limitations from one year to five years. Worker's compensation fraud is normally not found in the first year of a claim. **Senator Goedde** asked that this legislation be sent to State Affairs to be printed.

MOTION: **Senator Tippetts** moved a unanimous consent request that **RS20404C1** be referred to the State Affairs Committee with a recommendation to print. The motion was seconded by **Vice Chairman McKague**. The motion carried by **Voice Vote**.

H132 **Relating to Engineers and Land Surveyors; Define Terms and Make Technical Corrections**

Dave Curtis, Executive Director, Board of Professional Engineers and Professional Land Surveyors advised the legislation is adding some consistent definition terms in five chapters of Idaho Code that relate to surveying. Consistency is necessary whether they are reviewing plats, records of survey, corner records, or any other aspect of Idaho Code. This consistency has been accomplished by adding the definition of a "public land survey corner," "street," and "public street" to the Highways and Bridges Laws. The definitions are the same as those used in the Plats and Vacations Law. The definition of "reference point" has been amended in the Plats and Vacations Law and the Corner Record Law, and then added that amended definition to the Highways and Bridges Laws along with Record of Survey Law. The definition of "witness corner" has been in the Plats and Vacations Law and added that definition to the Highways and Bridges Laws, and the Corner Record Law. Removed the definition of a "survey" from the Record of Survey Law and added the definition of a "land survey" to the Plats and Vacations Law, the Engineers and Surveyors Licensing Law and the Record of Survey Law. The

definition of a "property controlling corner" in the Corner Record Law and Record of Survey Law. Added the definition of a "benchmark" to the Engineers and Surveyors Licensing Law and the Corner Record Law. The final definition addition of a "control survey" to the Corner Record Law.

In the bill the Board has clarified the requirement that Professional Land Surveyors monument corners when they perform a land survey and to record the survey if certain conditions are met. Requires perpetuation of original evidence of the location of a public land survey corner with monumentation meeting current statutory requirements. Continued protection of property controlling corners and accessories to corners, and to add the requirement to protect points set in control surveys and benchmarks. Clarify the requirements of a Highway Right-of-way Plat and any ambiguity in the requirement that surveys be conducted to a predetermined minimum accuracy.

Senator Stennett asked for clarification between the old form of markers on property and the new magnetic marker system, when does the old system have to be undone? **Mr. Curtis** said when a professional land surveyor comes across a monument that does not meet the requirements, the magnetic detectability, they would be authorized to replace the old monument with the magnetic marker that meets the current standard and not be subject to the fine.

Senator Tippetts stated that on page 4, line 36, states that "all points shall be marked with magnetically detectable monuments conforming to Section 54-1227, Idaho Code unless special circumstances preclude use of such monument." Who is authorized to determine if there is a special circumstance that would preclude the surveyor from using the magnetically detectable monument? **Mr. Curtis** explained that the Professional Land Surveyors make the determination by applying professional judgement in those circumstances. For example: If a corner falls on top of a large rock formation it would not be reasonable to expect a pin to be placed in this location. It would be more typical to chisel an X on the rock. **Senator Tippetts** said on page 10, lines 38-40, the surveyors are required as the duty when making a land survey that is not preliminary in nature, to set permanent and reliable magnetically detectable monuments at all unmonumented corners field locations. Could you describe the magnetically detectable monuments? **Mr. Curtis** advised that a typical monument used by land surveyors is reinforcing bar 1/2 inch x 2 feet long, some situations require a more substantial monument 5/8" x 2 feet long. They are required to mark the monuments with their professional land surveyor license number.

MOTION:

Senator Tippetts moved that **H132** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**. **Senator Tippetts** will be the sponsor of the bill.

H130

Relating to Immunization Assessments

Shad Priest, Deputy Director, Department of Insurance said this proposed legislation amends legislation that was adopted last year to create the Idaho Immunization Assessment Board. The purpose of the Board is to work with insurers, third party administrators and the Department of Health and Welfare to develop an assessment process for covering the costs of vaccines for Idaho children. The assessment is paid by insurers and health plan administrators to fund the purchase of vaccines at reduced cost through the federal vaccine program. The vaccines are used for children who are not eligible for federally funded vaccines. The vaccines purchased by the Department of Health and Welfare with the assessment funds are then made available to health care providers at no cost.

The Immunization Assessment Board is made up of representatives from insurers, health plan administrators, employers, health care providers, the Department of Insurance, the Department of Health and Welfare, and a member from the House and one from the Senate. The program benefits health care providers because they only need to carry one inventory of vaccines, rather than separately accounting for vaccines that are purchased with public funds and those purchased with private funds. It benefits insurers and employers that provide health plans by creating a mechanism to purchase childhood vaccines at reduced cost through the federal vaccine program. It benefits the public in general by assuring wide availability of vaccinations for children. Last year was the first year of operation for the Assessment Board and it successfully raised approximately \$10 million dollars for vaccinations. During the assessment process the Board found several areas of the new law that were in need of additional clarification. This bill makes those changes. The important changes are: 1) It clarifies the Board can consult with experts as needed to carry out its duties; 2) It broadens the categories of information the Board can request from the Department of Health and Welfare; 3) It clarifies that the assessment will be made annually; 4) It clarifies that childhood vaccines be purchased through the Assessment Program will be those that having effect a recommendation for the advisory committee on immunization practices of the Center for Disease Control and Prevention; 5) Clarifies that the Board may use some of the assessment funds to pay for administrative costs associated with administering the program; and 6) Clarifies that any excess funds from the assessment will be applied to subsequent funding periods.

MOTION:

Senator Smyser moved that **H130** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Smyser** will be the sponsor of the bill.

H131

Relating to the Idaho Health Carrier External Review Act

Shad Priest, Deputy Director, Department of Insurance stated this bill amends Idaho's Health Carrier External Review Law, which took effect last year. The External Review Law provides an opportunity for persons who have had a health claim denied by an insurer to obtain an independent review of the denial. The way the law works is that a person who had a health insurance claim denied and has completed the insurer's internal grievance process can file a request for external review with the Department of Insurance. The Department then randomly assigns the request to an independent claim review organization, that has previously been approved by the Department, to conduct reviews. The claim is then reviewed by a physician with no connection to the insurer or the insured. The physician renders a decision on whether or not the physician feels a claim was justifiably denied or the claim should have been covered. The Department received thirteen requests for external review, three of those were deemed ineligible under the law. Of the remaining ten, two were reversed. The changes being made by this bill incorporate some additional features of the model External Review Law developed by the National Association of Insurance Commissioners. The changes being made by this bill: 1) Expand the types of claims that will be eligible for review. Currently, the only claim denials eligible for review are those where the insurer determines the service is not medically necessary or where the service has been denied as experimental or investigational. This legislation will expand the categories of claims eligible for review to include claims denied based on appropriateness, health care setting, level of care, or effectiveness. (page 1 and through out); 2) Clarify the types of claims that will be considered "urgent care requests" eligible for an expedited review process (page 6); 3) Delete language that would have allowed the Department of Insurance to impose a fee to be paid by a person seeking external review. The Department has not found it necessary to require that the insured pay a fee to access the external review process (pages 8 and 15); 3) Add language

permitting an appeal for external review without first exhausting the insurer's internal grievance process in cases where the insurer has failed to follow its own processes for review, or in cases where there is an urgent care request and waiting for internal review would jeopardize the health of the insured (pages 9 and 13); and 4) Add language requiring that an insurer approve a health care treatment within one business day of receiving notice of reversal of the health carrier's decision by an external review organization (page 12). These changes are being driven by the new federal Affordable Care Act which requires that insurers comply with a state law that meets certain minimum requirements for external review or they will be subject to federal external review.

Senator Schmidt said this bill has to do with health carrier external review; but under health carrier would the definition also include disability insurance claims? **Mr. Priest** stated that in Idaho the term disability insurance is a broad term used to describe health insurance law. This law pertains to those companies offering health care services, which are services for diagnosing for the cure of health conditions due to illness or injury.

MOTION: **Senator Cameron** moved that **H131** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Schmidt**. The motion carried by **Voice Vote**. **Senator Cameron** will be the sponsor of the bill.

HCR15 **Rejecting a Certain Rule of the Certified Shorthand Reporters Board**

Representative Ellsworth said **HCR15** is a resolution that came out of the Judiciary and Rules Committee regarding shorthand reporters rules. A certain rule of the Certified Shorthand Reporters Board relating to rules of procedure be rejected. The portion that was rejected to outline conditions in which the Board could allow an individual to seek an additional year of authorization, although they had already passed the additional grace period of the previous year. The Board wanted to have specific items outlined so they could ask the individuals have you begun your continuing education and then they stated that it is up to the discretion of the Board. This language will be removed from the rule.

MOTION: **Senator Cameron** moved that **HCR15** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**. **Senator Schmidt** will be the sponsor of the bill.

H183 **Relating to the Mobile Home Park Landlord-Tenant Act to Provide for the Manufactured Home Residency Act**

Jack Lyman, representing Idaho Housing Alliance said he was representing the Idaho Housing Alliance (IHA) and was previously known as the Idaho Manufactured Housing Association which represents the people who build, service, install and sell manufactured homes. It also represents the owners and operators of manufactured home communities—those areas that many of you may refer to as mobile home parks.

The Landlord Tenant Act was originally passed in 1981 and has been amended seven times over the past thirty years. As currently written, the act only applies to mobile homes and does not apply to manufactured homes. Mobile homes are defined in Section 39-4105, Idaho Code as factory assembled structures constructed before June 15, 1976. Manufactured homes are defined in the same section of code. They are defined as structures constructed after June 15, 1976. **H183** also defines "park model." These are an increasingly popular, low-cost housing option. **H183** extends the existing provisions of the Landlord Tenant Act to all of these housing types. In addition, several definitions are included to modernize the act. "Tenant" becomes "resident" and "mobile home park" becomes community.

We have also defined a number of other terms to add clarity to the act.

For the past several years landlords have met with groups representing tenants to seek agreement on changes to this law. The Board hoped they would reach agreement so we could make sure the existing law would apply to landlords and tenants regardless of housing type. Being sensitive to the changes residents had proposed over the years, the Board included more than a dozen changes that have been requested by the residents. When there was agreement on a provision or specific language, they included it in this bill. When agreement could not be reached, the Board retained the existing provisions of the law.

One major point of disagreement that remained was under the existing law if a tenant failed to pay the rent on time, the landlord would give them a three day notice demanding that the rent be paid. If the rent is not paid after the three day notice, the landlord may then give them a 20 day notice to vacate the rental. The tenants have requested that this 20 day period be extended to 120 days; with the equivalent of getting four months of free rent. They then requested a 90 day notice and when this bill was heard in the house the tenants were seeking a 45 day notice. The 20 day period is the start of the process to have a tenant vacate the property. The landlords of these parks explain that when a tenant cannot pay the rent it is in the landlords interest to try to help the tenant find a way to pay the rent. The last thing they want to do is to lose someone who has been paying the rent in the past.

One major revision contained in the bill is the issue of abandoned homes. Existing law requires that a landlord engage a lengthy and costly legal process to gain the right to dispose of a home that has been abandoned. This bill creates a new system that will ease that task. It is patterned after the existing system used by the Department of Transportation (DOT) for abandoned automobiles. Since mobile homes, manufactured homes and park models are all titled through DOT and have Vehicle Identification Numbers, this system will required no additional forms or personnel at DOT, and the bill has no fiscal impact.

Senator Stegner asked if the tenant in a manufactured home community doesn't pay the rent for one month will they be subject to removing their home in 20 days? **Mr. Lyman** responded that yes the way the law operates, is if you do not pay your rent then legally under this act, you have 20 days to vacate. 1) There is a community owner that does not want the manufactured home hauled out of the community and they will work with the tenants to try to help them pay the rent. 2) There would be the option of renting the unit out to someone else or sell the home as it is in place. The owner must have some protection as to not allowing individuals four to six months of free rent while the tenant seeks other housing options. **Senator Stegner** clarified not paying the rent does not equate to free rent the tenant still has an obligation to make up any rent in arrears. **Mr. Lyman** stated that the example that **Senator Stegner** picked is an extreme example. The example he might use would be the mobile home that might be easily moved and if someone has decided that they are going to move in five months they will quit paying the rent today knowing that nobody can force them out for six months. They would get five months of free rent and pick up and leave. The tenant would still have a legal obligation to pay the rent, but how would you ever recover the lost rent. The provision that is in the code today is the three day notice and the twenty day vacate which has been in the law for thirty years. **Senator Stegner** asked if we took this legislation to the amending order and the Senate did modify the vacate to ninety days would the IHA reject the entire bill? **Mr. Lyman** replied that he would have to approach the Board of Directors of IHA and the result of the negotiation would be that there would be no coverage for manufactured homes and that has been the situation for the last thirty years that manufactured homes existed when the bill was originally passed. The

Board would not like to see the bill not pass over the tenant vacate issue.

Senator Stennett asked how do you handle removal of the manufactured home structure that has been vacated and left. **Mr. Lyman** explained that it would be unlikely that the home would ever become abandoned. If it was abandoned, under the definition of the law, the landlord would petition the DOT for the sale. The DOT would then notify the legal owner and any lien holder's. They have fourteen days to object to the sale. If they don't object, then the landlord is allowed to proceed with the sale and to recover \$200 worth of cost to recover whatever they are owed as the possessionary lease holder and any balance that is left is deposited into a trust fund at the DOT. The legal owner can then make a claim against that trust fund to collect the proceeds. The abandoned unit that landlords are worried about are the rundown units that the tenant does not want to sell or can't because of the age and rundown condition. The landlord realizes that the unit has been sitting vacant for two months and they have the expense of the disposal of the unit.

Senator Tippetts asked how current law without the passage of this bill applies to manufactured homes. Does this notification procedure also apply to manufactured housing as well, or only with the passage of this legislation? **Mr. Lyman** replied that he did not know. If the judge thinks that manufactured homes are mobile homes and they go ahead and apply the law. If the judge decides that the law does not apply to the structure then they would probably do an unlawful detainer section of the law and it would be three days, just like an apartment house.

Melanie Roper, as the legislative advocate (intern) for Catholic Charities of Idaho and the Roman Catholic Diocese of Boise, spoke in opposition to **H183** stating that as a non-profit, social service organization, Catholic Charities of Idaho has spent the last several years working in collaboration with other agencies, landlords, and with residents of manufactured home communities to craft language for the manufactured home bill that serves the needs of both the landlords and the residents of the communities.

Originally, they had asked to extend the period of notice and time a person would have to move if they were unable to pay their rent from three days notice and twenty days to move their mobile home or vacate to 15 days notice and ninety days to vacate. This is not an attempt to facilitate "free rent" but is a more realistic timeframe to allow residents to make the appropriate arrangements. Twenty days is simply not a reasonable amount of time for residents to relocate for two main reasons: 1) Residents who own their homes and rent property in the park community, it is a very costly and time consuming process to move their manufactured home, ranging anywhere from approximately \$3,000 to \$15,000. This cannot be completed in twenty days. 2) Processing rental assistance can be time consuming, and more than twenty days is needed for agencies like the Catholic Charities to help residents access these services.

In the interest of compromise, we would be willing to support the bill if it were amended to increase the number of days residents are given to vacate from twenty days to forty-five days.

Senator Smyser asked **Ms. Roper** how long does it take for the Catholic Charities to process individuals to receive assistance? **Ms. Roper** stated that it depends on the agency and the processing time varies and she did not have that information with her. **Senator Cameron** asked **Mr. Roper** how many individuals are you assisting on a monthly basis in this regard? **Ms. Roper** did not have the information available, but would provide the information on return to her office. **Senator Stegner** asked if the Association would be willing to amend the vacate time to forty-five days? **Mr. Lyman** replied he is not authorized to make that decision on

behalf of the Association; but would take the request back for their direction. A point of clarification concerning the removal of manufactured housing. It takes a long time to arrange for the movement of a manufactured home **Mr. Lyman** could arrange to have it moved within two days. There is a problem in finding a piece of ground to move it to and there is certainly the issue of the cost to have it relocated. If a tenant is unable to pay their rent they probably do not have the resources to move the home. The situation will not change if there are an extra ten or fifteen days added to the vacate notice in the legislation.

MOTION: **Senator Stegner** moved to hold **H183** for a time certain next Thursday. The motion was seconded by **Senator Schmidt**.

SUBSTITUTE MOTION: **Senator Cameron** moved that **H183** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Smyser**.

ROLL CALL VOTE: **Chairman Andreason** called for a **Roll Call Vote** for **Senator Cameron's** substitute motion. **Chairman Andreason, Vice Chairman McKague, Senators Goedde, Cameron and Smyser** voted **aye**. **Senators Stegner, Stennett and Schmidt** voted **nay**. The **substitute motion** carried. **Senator Smyser** will be the sponsor of the bill.

ADJOURNED: There being no further business, the meeting adjourned at 2:34 p.m.

Senator Andreason
Chairman

Carol Deis
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, March 15, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|--------------------------------|--|---|
| MINUTE APPROVAL: | | |
| <u>RS20585</u> | Relating to Worker's Compensation Law to Revise Provisions Relating to Security for Payment of Compensation and for Public Employer to Be Self-Insured | Senator Goedde |
| <u>S1146</u> | Relating to the Public Housing Protection Act | Mike Ditimburgh, |
| <u>S1147</u> | Relating to Employment Relating to Restrictions on Employment of Certain Children | Senator Winder |
| <u>HJM3</u> | Health Insurance Agents and Broker Commissions | Jim Genetti, Idaho Association of Health Underwriters |
| <u>HCR20</u> | High Deductible Health Savings Account Insurance Policy for State Public Employees with Specified Basic Characteristics | Representative Thayn |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Smyser
Sen Tippets
Sen Stennett
Sen Schmidt

COMMITTEE SECRETARY

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 15, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Smyser, Tippetts, Stennett, and Schmidt

**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.

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

RS20585 **Relating to Worker's Compensation Law to Revise Provisions Relating to Security for Payment of Compensation and for a Public Employer to Be Self-Insured**

Senator Goedde said this legislation deals with the Industrial Commission and the self-insured worker's compensation program for public entities. It modifies the application process to supply the Commission additional information before they approve a self-insured worker's compensation program. The bill includes further definitions and use of a service fund, places restrictions on fund management, and provides for liquidation of the fund. **Senator Goedde** asked that this legislation be sent to State Affairs to be printed.

MOTION: **Senator Cameron** moved unanimous consent that **RS20585** be referred to the State Affairs Committee with a recommendation to print. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

S1146 **Relating to the Public Housing Protection Act**

Mike Ditimburgh, Executive Director, Caldwell Housing Authority explained the goal of his presentation was threefold to show how the legislation conforms with federal law, demonstrate the necessity of the law, and gain the Committee's support for the legislation. In 1988 Congress passed the Anti-Drug Abuse Act which was specifically written to help landlords of public housing to hold their tenants more strictly accountable for behavior of their tenants. The Act states specifically " a public housing tenant, a member of the tenant's household, guest, or any other person under the tenant's control shall not engage in criminal activity including drug related criminal activity on or off the public housing premises, while the tenant receives public housing. Such criminal activity shall be cause for termination of tenants lease.

S1146 provides the necessary definitions and outlines five different reasons to evict tenants for cause from public housing and identifies the procedure for filing court actions. **Mr. Ditimburgh** gave the definition of a resident family member and guests which will be the individuals held accountable in this legislation. In today's economy with so many people being forced out of housing they have people doubling up. They have boarders and lodgers moving into public housing that are not necessarily on the lease agreement. Nationally and locally, the vast majority of damage to public housing is caused by family members and guests. Six other western states

have adopted similar legislation, California, Washington, New Mexico, Arizona, Montana and Colorado. Their legislation prohibits in various combinations drug, gang, criminal related activity, intentional property damage, threatening other tenants, illegal use of the property, activity that disrupts liveability, unwanted activity that causes the management money and providing false information. The general premise of the whole legislation allows eviction of the tenant when a tenant, resident family member or guest engages in any criminal activity as defined in paragraphs (a) through (d) of this subsection, or whose actions are counter to the public housing provider's requirement to maintain the public housing premises in a decent, safe, and sanitary condition. As a manager of public housing the Housing Authority is provided with a large responsibility to make sure that the public housing, housing that is paid for by taxpayers, is maintained in a decent, safe and sanitary condition.

Senator Smyser asked how effective has this legislation been in enforcement in the other western states where it has been adopted? **Mr. Ditimburgh** replied that he has done the research on the laws from these states, but did not go to the effort to contact other housing authorities to check on how effective the legislation has been in maintaining their public housing.

Senator Cameron asked for clarification to understand why the State of Idaho would want a separate section of code strictly for public housing? Why wouldn't these protections be added to the traditional section of code that would apply for all housing whether it would be privately or publicly managed? **Mr. Ditimburgh** explained that eventually the language in **S1146** should be incorporated into the unlawful retainer code; this question was brought up at the print hearing that it would likely be incorporated. **Mr. Ditimburgh** stated the reason for the bill to be only inclusive of public housing is because he is not an owner or property manager of private housing, but the manager of public housing. **Senator Cameron** asked who drafted the legislation? **Mr. Ditimburgh** said he drafted the legislation by taking information from different groups and the input of the Attorney General's Office.

Senator Stennett stated the section b and c of the bill concerning "off premises" which would require tenants to have complete control of extended family, friends and guests on and off premise to keep their housing is disturbing. For example: It is ludicrous to think that grandma who has a grandson, who had taken drugs before he comes over for dinner on the property and after he leaves he gets caught by the police, according to the definition in this legislation, would be a reasonable reason for evicting her. **Mr. Ditimburgh** stated it is not reasonable to assume that this situation would occur. The intent and the general provisions in this bill states "that anyone who engages in any sort of activity that threatens the health or safety of other tenants." **Mr. Ditimburgh** is not looking for reasons to terminate tenants. **Senator Stennett** again stated with the language and the broadness of being on and off premises there could be abuses of the intent. **Mr. Ditimburgh** stated the activity that happens on or off the property for certain acts on or off the housing authority premises that cause tenants to be frightened, cause them to move out. The reputation of an individual may proceed them as a criminal and they might frequent the premises of the housing authority and as a result a tenant might move out.

Senator Tippetts asked what part of the legislation did he see as unique to the Idaho legislation. **Mr. Ditimburgh** stated the uniqueness is on page 2, Line 4, (a) the tenant, resident family member or guest engages in any activity, on or off the public housing premises, that intimidates or seriously threatens: (i) The health, safety or rights of other tenants; and the public housing staff. **Senator Tippetts** asked is it common in the other states that you reference to hold the tenant responsible for the actions of guests or family members off the premises? **Mr. Ditimburgh** stated he

did not have the records in front of him to answer the question.

Senator Cameron asked could **Mr. Ditimburgh** define activity in Line 4, (a); whether an individual had been excused of selling drugs, being in possession of drugs, etc. with the wording wouldn't the housing authority manager stand as the judge and evict the family? **Mr. Ditimburgh** explained that the housing authority would not be the final verdict in a matter. The tenants still have their due process in the courts. The reason they did not put in the legislation that you had to be convicted of a crime, in order to be evicted from the property, is if an individual gets arrested for a crime they might not go to court for two years. Also, there is a higher evidentiary standard than what the housing authority would be subordinating their right to sue in district courts to higher standard to beyond reasonable doubt.

Senator Tippets asked does the language on page 2, lines 36 through 39 appear in any of the other six state's statutes? **Mr. Ditimburgh** stated no this language is unique to this legislation. There is some specific language in the decision of the Supreme Court which concluded by arguably assigning a burden of proof by turning the tenants knowledge or control over the wrong view of the public housing authority. The Ninth Circuit Court made it unlikely that the Public Housing Authority will ever be able to evict a tenant who does not have knowledge of their household members or guests drug activities or other activities. Faced with the possibility of eviction terrorized by the fear of retribution the tenant has every reason to deny control. The Ninth Circuit decision makes it easier for Public Housing Authorities to evict tenants for non-payment than for posing a serious threat to health and safety. Ironically, while the objection to the Ninth Circuit Court that the eviction of the so called innocent tenant is clearly motivated by the notion of any equality or fairness the Ninth Circuit decision begets equality and unfairness those who object to the eviction of innocent tenants are concerned with the hardship of the innocent tenant household members however sacrificing the interest of the many law abiding citizens.

Senator Stegner asked how much collaboration had **Mr. Ditimburgh** had from his housing community in writing this piece of legislation? **Mr. Ditimburgh** stated he had consulted other individuals in his field such as the Intermountain Fair Housing Council along with other housing organizations and they never responded or put him off that they schedule a meeting.

Richard Maddutt, Intermountain Fair Housing Council, spoke in opposition to the bill. Intermountain Fair Housing Council did not see this piece of legislation until it was sent by fax by the housing authority in the state. Their concern is that the bill has some unique elements to this legislation that are not matched in the other state's legislation, the legislation is far reaching and general. There is general discomfort concerning this legislation among public and private housing provider individuals around the state. This legislation should fall under the unlawful detainer portion of the state code and the legislation should have much more collaboration because of the unique elements that are far reaching and vague. Nothing in this bill that protects residents or members of the community from some housing providers that will send you information. Mr. Law Enforcement we think someone has reported so and so has been doing tagging with paint or alledged such and such. The present state statute allows a responsible and knowledgeable private or public housing provider many adequate means to rid their housing of tenants who are not obeying the law or breaching the rules. In public housing, rural development and HUD rules are even more stringent to remedy unwanted activities in those communities. It is almost certain that this legislation would be challenged as having a disparate impact on the Federal Fair Housing Act because it will be used in that way.

Lisa Steele, Boise City Ada County Housing Authority, read some highlights out of a letter written by **Deanna Watson, Executive Director of the Boise City Ada County Housing Authority**, in opposition to the legislation: 1) Disparate impact on protected classes under the Federal Fair Housing Act. It fails to account for language barriers, disabilities, or other barriers that are federally protected,. and 2) The language contained within the legislation is nebulous, broad and far reaching. Some definitions are left open to the interpretation of the reader which opens it up to various interpretations not necessarily intended by the legislation. They feel there might be more appropriate avenues to address the concerns. One might be to look at the Idaho Landlord Tenant Law under the "expedited eviction" category to expand the definition for non-payment of rent and drug related activities to also include gang activity as an additional offense eligible for a fast track eviction.

Noel Gill, Northwest Real Estate Capitol Corp., a non-profit organization that specializes in ownership and management of affordable housing. They are in support of some aspects of the legislation related to the gang activity. They have had quite a few experiences with the gang element in their housing and related some incidents.

Lisa Dabel, Executive Director, Idaho Affordable Housing Management Association, said the Idaho Affordable Housing comes with conditional support of this legislative action. Their agency helps the most vulnerable individuals the disabled, elderly, single parents and the nouveau poor. Behavior based for cause eviction is unnecessarily over encumbering our public housing. One of the aspects of this legislation that they do support is section a (i) and (ii) which is the tie between a specific behavior that threatens the health and safety of others. The Fair Housing Act requires landlords to take action against any residence harassing another tenant but because of the protective class status their hands are currently tied with trying to evict the harasser.

MOTION:

Senator Cameron moved to hold **S1146** in committee. The motion was seconded by **Senator Stennett**. The motion passed by **Voice Vote**.

S1147

Relating to Employment Relating to Restrictions on Employment of Certain Children

Senator Winder stated this legislation before you is an amendment to Section 44-1301, Idaho Code, which came from the Meridian School District with regard to their employment of students in the school lunch program.

Eric Exline, Public Information Officer, Joint School District No. 2, Meridian School District, advised in their school district and many around the state they have instituted a program where students voluntarily give up their time at lunch to work in the school cafeteria. In the elementary level they help in the line serving food and with clean-up; their compensation is a free meal. At the middle and high school level the students work for a longer time, are more involved in food preparation, serving of food, and clean-up; they get paid for this work. The school districts believe that the program is a valuable tool in teaching them the value of work and citizenship. Some students do not qualify for a free or reduced lunch and this is an alternate way for them to earn a meal and help their family's budget.

This fall it was brought to the Districts's attention that because the middle and high school students get paid for the work they perform they were in violation of Section 44-1301, Idaho Code, dating back to 1911. This section of code stipulates that a student cannot work during the hours in which a public school is in session. The district is requesting that this amendment be passed to allow this valuable program to continue in the districts.

Senator Stegner said the term employed on line 20 of the bill denotes to him that the students would be paid and have deductions taken out of their paychecks.

Mr. Exline explained that at the elementary level the student's compensation is simply a free meal, however at the middle and high school level they are paid in 10 minute increments. The students turn in time cards and are paid wages out of the hot lunch program which is a self-supporting program.

MOTION: **Senator Cameron** moved that **S1147** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**. **Senator Winder** will be the sponsor of the bill.

HJM3 **Health Insurance Agents and Broker Commissions.** This bill was not heard because the meeting adjourned.

HCR20 **High Deductible Health Savings Account Insurance Policy for State Public Employees with Specified Basic Characteristics.** This bill was not heard because the meeting adjourned.

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

Senator Andreason
Chairman

Carol Deis
Secretary

AMENDED #1 AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, March 17, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|--------------------------------|---|---|
| MINUTE APPROVAL: | March 8, 2011 | Senator Stennett |
| <u>RS20641</u> | Relating to Worker's Compensation for Certain Fees and Reimbursements | Senator Goedde |
| | Explanation of Idaho's Standing Nationally for Benefits and Taxes | Bob Fick, Communications Manager |
| <u>HJM3</u> | Health Insurance Agents and Broker Commissions | Jim Genetti, Idaho Association of Health Underwriters |
| <u>H179</u> | Relating to Unauthorized Insurers and Surplus Lines | Woody Richards, Surplus Line Association |
| <u>S1166</u> | Relating to Worker's Compensation Insurance Fraud | Senator Goedde |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Smyser
Sen Tippets
Sen Stennett
Sen Schmidt

COMMITTEE SECRETARY

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Room: WW46
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 17, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Smyser, Tippetts, Stennett, and Schmidt

**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.

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

MINUTES APPROVAL: **Senator Stennett** moved to approve the minutes of March 8, 2011. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

RS20641 **Relating to Worker's Compensation for Certain Fees and Reimbursements**

Senator Goedde stated with the progress of **H260** there is a section of code dealing with Health and Welfare that has been deleted and that is the basis upon which the Industrial Commission makes the adjustments. **RS20641** adds the language that will give the Industrial Commission the right to make adjustments on those payment schedules.

MOTION: **Senator Tippetts** moved a unanimous consent request that **RS20641** be referred to the State Affairs Committee with a recommendation to print. The motion was seconded by **Vice Chairman McKague**. The motion carried by **Voice Vote**.

HJM3 **Health Insurance Agents and Broker Commissions**

Jim Genetti, representing Idaho Association of Health Underwriters, said the Association represents 250 health insurance agents located throughout the state. **HJM3** is being presented in response to the Federal Patient Protection and Affordable Care Acts Medical Loss Ratio (MLR) Requirement. On January 1, 2011 this requirement mandates that a health care insurer must maintain a medical loss ratio that meets the requirement that at least 80% of individual and small group premiums and 85% of large group premiums must be used for the payment of claims and only 20% to 15% may be used for administrative expenses.

In order to meet this MLR standard, health insurance companies in the State of Idaho have cut agent's commissions from 30% to 60%. Few businesses can absorb a revenue reduction of this magnitude and insurance agents and agencies are no exception. As a result, many producers are considering abandoning the sale of policies in the individual market; an unfortunate outcome for both the producers and consumers in general. Consumers benefit greatly from the expertise of licensed health insurance professionals, not only when purchasing coverage, but when problems arise after the sale.

If this MLR requirement continues to be enforced as written, Idaho will definitely see a marked decrease in the number of health insurance agents. Some predict as many as 50% of the health insurance agents in the state will leave the business. That amounts to about 4,000 jobs, not including supporting staff of those insurance

producers and agencies. The consumer will lose as their advisors and advocates can no longer afford to work on their behalf.

Legislation is being introduced in the coming weeks by Congressman Mike Rogers, of Michigan, to pull producer's fees out of the MLR formula. There appears to be support for this legislation on both sides of the aisle.

This passage of this memorial will send a message to Congress and to Health and Human Services that the Legislature of the State of Idaho supports legislation that will remove agent compensation from the MLR calculation and allow producers to be paid without impacting the insurance industry's ability to meet the federal requirement.

MOTION:

Senators Cameron and Goedde stated pursuant to rules of the Senate 39 (H), of the Idaho State Legislature, they have a conflict but still wish to vote on **HJM3**. **Vice Chairman McKague** moved that **HJM3** 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 McKague** will be the sponsor of the bill.

Explanation of Idaho's Standing Nationally for Benefits and Taxes

Bob Fick, Communications Manager, Department of Labor, advised that the graph shows the average effective rate since 1980. This is the rate that is derived by dividing the total amount of wages paid by covered employers divided by the amount of tax they pay each year; Idaho has always run above the national average. In 2005, when the state went to .8 solvency factor the rate dropped below the nation and then shot back up again in 2008 during the recession. The next chart average UI tax rate by state compares the average effective tax rate of all the states from 2008 to 2010. In 2010 Idaho had the highest effective tax rate of any of the states because of the solvency factor being set at .8. If you look back to 2008 Idaho's rate ranked 33rd in the nation. The volatility that the .8 solvency factor created when it was imposed in 2005. The .8 solvency factor made the trust fund react much more quickly to economic developments so that as the expansion continued in 2006-2007 it drove the rate down to its record low level and 33rd position nationally. When the recession hit in 2008 and 2009 it drove the rate back through the roof to its maximum level. The effective tax rate reset at 1.5 solvency factor will level the changes out and make the fund less volatile; so it can build a sufficient balance to withstand a recession like the one that the state has just been through.

The handout on the outstanding loans from the Federal Unemployment Account shows Idaho is the 25th in the nation in their borrowing status. States that are already paying surcharges are Indiana and South Carolina. The employers are paying a 3/10% surcharge on the first \$7,000. Idaho was targeted to pay a 3/10% on the first \$7,000 beginning in 2010, but will avoid this surcharge by the use of bonding to pay off the loans prior to September and the surcharge will not be a burden in this state.

The UI taxable wage base by state comparison shows that Idaho has a high taxable wage base, compare Idaho any year this has always been the case. The wage base is the average annual wage for the second preceding year for which the rates are imposed. The value of the high level wage base is that many employers do not pay the maximum tax. The wage base is \$60 per hour, which is 33,300 in 2010/2011. Over half of Idaho jobs pay less than this hourly rate so employer's pay only to the maximum of the wages they pay. In the case of \$12 per hour job; the employer would pay \$280 less than the maximum allowed tax possible.

In a previous meeting it was pointed out that Idaho had one of the highest standard tax rates in the nation. This is the rate that new businesses pay when they start a business in Idaho and they pay this rate until they establish an experience with the unemployment system which usually takes six to eight quarters for the experience to be compiled. The formula that determines this rate either sends it up or down by a certain percentage amount; whatever the percentage is will change all the other rates. The last table shows the third quarter of 2010, third quarter of 2009 and the third quarter of 2008 outlines the average weekly benefit and the duration. Idaho's average benefit in 2010 ranked 39th in the nation and the duration was 4 weeks; 2009 numbers show the real impact of the recession on Idaho when the average benefit was \$270 and 2008 average benefit was \$267. The spike is the outcome of high paying workers being laid-off. In 2008 there were 40,000 claimants at the maximum benefit level, in 2009 you had 49,000 at the maximum level and these levels drive up the average rate. In 2011 there are 34,000 claimants at the maximum level and this number reflects claimants exhausting their regular benefits and moving on to extended federal benefits. In 2009 the huge lay-offs by covered employers like Micron, which were greater than you would normally have in a pool of employed claimant, drove the recipient rate up. The highest reciprocity rate that the State of Idaho has had was in 2006 which was almost 52%.

Senator Stennet asked for clarification on the reciprocity rate of 42% in 2010 and 50.5% in 2009, were these percentage differences a reflection of individuals not on benefits because the state had rebounded economically and or the individuals had exhausted their benefits? **Mr. Fick** clarified that the fall-off prior to the recession and after the recession is a result of individuals exhausting their benefits.

Senator Stegner asked would you characterize Idaho's position and management of the trust fund program as one that will help Idaho to recover its position and reserves in unemployment faster than other states? **Mr. Fick** said this is definitely the case with the passage of **HB108**, which increases the solvency factor to 1.5. Once the target balance is back in the trust fund in 2018 the trust fund will be in a position to withstand just about any economic downturn short of the great depression without having to borrow.

H179

Relating to Unauthorized Insurers and Surplus Lines

Woody Richards, representing Surplus Line Association, advised this legislation was jointly drafted by the Surplus Line Association and the Idaho Department of Insurance. Surplus line insurance can include unique and high risk insurance coverages that standard insurance companies don't sell such as ski areas, high explosives, aviation risks, or liquor bars. Surplus line insurance is about 2% of the total insurance market.

Section 1, page 2 states which sections of Idaho Law will apply only to "home state" sales as required by the National Association of Insurance Commissioners (NRRA). Section 2 adds certain definitions to Idaho law. Of particular importance to making the purchase of surplus line insurance easier for large customers, please note that beginning on page 2, line 36 through line 15 on page 3, the bill defines who can qualify as an "exempt commercial purchaser". On page 3, lines 27 through 43 the phrase "home state" is defined which is important for taxing purposes. Home state is where an insured maintains its principal place of business or when there are multiple related businesses, it is the state with the largest percentage of premium attributed to it under the insurance contract. In Section 3 of the bill, beginning on line 9, on page 5, the new law exempts the large commercial purchasers from the requirement that they try to purchase their insurance from admitted insurance companies before an insurance policy is obtained from a surplus line insurer. Section 4 allows the Director of Insurance to participate in national agent data bases

to simplify and expedite licensing of agents. Section 5 establishes the NRRA taxing policy based on the insured's home state for property casualty insurance other than worker's compensation insurance. The current tax rate of 1.5% does not change. The goal of this legislation is to retain as much of the premium taxes for Idaho as possible under the federal NRRA

MOTION: **Senator Goedde** stated pursuant to rules of the Senate 39 (H), of the Idaho State Legislature, he has a conflict but still wishes to vote on **H179**.

Senator Smyser moved that **H179** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Senator Smyser** will be the sponsor of the bill.

S1166 Relating to Worker's Compensation Insurance Fraud

Senator Goedde stated this legislation makes one minor change in Title 41, Idaho Code, the Insurance Code, on the top of page 2 which deals with retaining worker's compensation benefits; but the main change to the bill is in Title 72, Idaho Code, the Industrial Commission Code. The change will bring the penalty for false representation in a worker's compensation claim into alignment with other insurance fraud legislation where the penalty is a felony. The worker's compensation claim fraud sometimes takes several years to detect and the change from a misdemeanor to a felony provides an increase in the statute of limitations from one year to five years.

MOTION: **Senator Stegner** moved that **S1166** be sent to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman McKague**. The motion carried by **Voice Vote**. **Senator Goedde** will be the sponsor of the bill.

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

Senator Andreason
Chairman

Carol Deis
Secretary

AMENDED #1 AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:00 P.M.
Room WW54
Thursday, March 24, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|------------------------------|--|-----------------------|
| MINUTE | March 10, 2011 | Senator Schmidt |
| APPROVAL: | March 15, 2011 | Senator Smyser |
| <u>S1185</u> | Relating to Worker's Compensation Law to Revise Provisions Relating to Security for Payment of Compensation and for Public Employer to Be Self-Insured | Senator Goedde |
| <u>S1186</u> | Relating to Worker's Compensation to Revise Provisions Relating to Certain Fees and Reimbursements | Senator Goedde |
| <u>H181</u> | Relating to the Idaho Small Business Federal Funding Assistance Act | Representative Cronin |
| <u>H207</u> | Relating to the Idaho Building Code Act to Revise Provisions Relating to Certain Permits | Representative Luker |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Smyser
Sen Tippets
Sen Stennett
Sen Schmidt

COMMITTEE SECRETARY

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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 24, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Smyser, Tippetts, Stennett, and Schmidt

**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.

CONVENE: **Chairman Andreason** called the meeting to order at 1:02 p.m.

MINUTES March 10, 2011

APPROVAL: March 15, 2011

MOTION: **Senator Schmidt** moved to approve the minutes of March 10, 2011. The motion was seconded by **Senator Stennett**. The motion carried by **Voice Vote**.

MOTION: **Senator Smyser** moved to approve the minutes of March 15, 2011. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

S1185 **Relating to Worker's Compensation Law to Revise Provisions Relating to Security for Payment of Compensation and for Public Employer to Be Self-Insured.**

Senator Goedde stated that this legislation deals with self-insured options that are available to public entities in the State of Idaho in addition to purchasing worker's compensation insurance from the state. Self-insured proposals are reviewed and processed through the Industrial Commission to determine their adequacy and then are approved or disapproved. In recent months a number of self-insured proposals have been submitted to the Commission which lacked vital information to allow the Industrial Commission to make the determination whether they had enough backing to acquire the self-insurance status. On the second page the legislation lists the documents that must accompany a new application from a public entity in requesting self-insured status. In reviewing the bill they found discrepancies in the penalty dollar amounts so **Senator Goedde** asked the Committee to send **S1185** to the amending order so those changes can be made.

Senator Schmidt asked how many entities in the State of Idaho choose this self-insurance option? **Senator Goedde** stated at present there are 28 entities.

Senator Tippetts asked for clarification of the extent of the problem we are addressing in this bill; we have had companies that have decided to self-insure in the past and they lacked the financial means or the expertise to proceed. **Senator Goedde** stated he was only aware of two private entities where the self-insurance plans for worker's compensation had gone bankrupt. **Senator Goedde's** concern is the protection of the taxpayers because a self-insured plan from a public entity that becomes insolvent then becomes the responsibility of the taxpayers.

Alan Gardener stated he is not opposed, has concerns. **Mr. Gardener** has been involved in the worker's compensation field for 40 years. The issue of

self-insurance is better dealt with by utilizing what has been in place for some time which is the expertise of the Industrial Commission Advisory Committee. The skill of the individuals in the public entities know that they can save many dollars by becoming self-insured. The Advisory Committee does not recognize a problem with current procedures that needs this kind of restrictive legislation to solve. The Committee still has work in progress on the qualifications for self-insurance and the Advisory Committee includes those people that are most qualified to solve the issues. If there is no urgency to pass this legislation, **Mr. Gardener** recommended the Advisory Committee be allowed to proceed in developing procedures for this self-insurance legislation.

Senator Cameron said if he understood **Mr. Gardener's** testimony correctly, he has no opposition to this legislation other than it did not go through the Industrial Commission's Advisory Committee and **Mr. Gardener** would prefer that all pieces of legislation dealing with worker's compensation go through that Committee. **Mr. Gardener** clarified that the Advisory Committee does provide analysis of legislation. This bill has all of the appropriate comments but **Mr. Gardener** still felt the bill should have gone through the Committee. **Senator Cameron** asked for **Mr. Gardener** to point out any flaws or problem with this bill. **Mr. Gardener** stated the two key issues in the bill are the protection of the worker and the security for a self-insured entity. This bill oversteps by spelling out all the financial documents and procedures that must be accomplished before the Industrial Commission would approve an entity to be self-insured.

Mike Haxby, Intermountain Claims, said currently his firm administers the claims for all the public entities that have obtained the status of self-insured and he is also the Chairman of the Industrial Commission Advisory Committee. The Industrial Commission had advised the Advisory Committee that they had genuine concerns over the security of a self-insured if it were to fail. Are their requirements strict enough to insure that there would be adequate security for these entities if a failure were to occur. There has been discussion over the past year and the Committee has not made as much progress on the issues as everyone would have foreseen. **Mr. Haxby's** understanding is that the bill that was proposed in its original form by the Industrial Commission was to clear the way for the Advisory Committee to go further to discuss the security for compensation. **Mr. Haxby** would like the final vetting process over the issues of security, the thresholds for self-insured, and the reporting process should be completed by the Advisory Committee.

Senator Goedde asked how long has the Advisory Committee been working on the self-insured plan? **Mr. Haxby** replied one year.

Senator Cameron asked is there anything in this legislation that prohibits the Committee from moving forward with recommendations by next legislative session? **Mr. Haxby** replied his biggest concern is whether or not public entities should be treated differently. **Senator Cameron** clarified should the Advisory Committee decide that, even with the passage of this bill, that there is further clarification needed between public and private entities, there is nothing in this bill that prohibits the Committee from bringing the amendments forward? **Mr. Haxby** stated not that he could see.

Dr. Bruce Gestrin, Assistant Superintendent, Meridian School District, stated he appreciated the language set in Section 72-301H that includes grandfathering of existing self-insured as stated in this legislation. The School District changed to a self-insured model during the summer of 2010; after a thorough study of the trend data over a five year period and were determined to change to a self-insured model. The decision was made for three reasons: 1) Better treatment of our employees; 2) Potential cost savings of \$350,000 for 2011 followed by potential future savings greater than that; and 3) The value gained from implementing a strong safe return to work prevention program throughout the District. **Dr. Gestrin** believes that all self-insured employers, public or private, should be treated equally under the law. This proposed legislation hinders other public entities from becoming self-funded in the future. In line 37 of the bill the current language reads that any employer may become self-insured by obtaining the approval of the Industrial Commission. The Commission shall adopt rules governing the qualifications of self-insured employers by depositing and maintaining with the Commission security satisfactory to the Commission securing the payment by said employer of compensation according to the terms of this law. The nature and amount of security deposit with the Commission be a condition under which an employer may continue to be self-insured. The existing law gives the Commission all of the statutory authority to properly determine whether or not a proposed public entity would meet their guidelines under the current code. If it becomes necessary to further delineate regulations, it should be done through the administrative rule process rather than Idaho Code.

Finally, **Dr. Gestrin** pointed out the information that was contained under the statement of purpose which states the Industrial Commission has faced a proliferation of applications from public entities in the past year. The final sentence, fiscally sound plans should also reduce the number of failed plans which are costly to administer. Since 1940 there have been 94 self-insured, currently there are 28, proliferation of new cases are 5, and protect self-insured from costly administration and failed plans. There has been one self-insured group that has withdrawn their application. There has never been an active self-insured that has failed.

Senator Cameron asked if he is opposed to improving the Industrial Commission's application process for these self-insured plans? **Dr. Gestrin** stated that private or public entities should be held to a similar standard. He is not opposed to the additional requirements.

Senator Tippet asked **Thomas Limbaugh** to address the work that the Advisory Committee is doing on this topic and how close they might be to completion?

Mr. Limbaugh stated that the Advisory Committee has been working on the self-insured issue for many years. What the Commission was attempting to do was include insurance companies with self-insured in the statute and the rules and when they found that would not work, they decided to separate insurance companies from self-insured. One thing that is helpful to remember is insurance companies have a guaranty fund but self-insured are stand alone funds. The Commission is worried about the injured worker and protection of them under a private or public self-insured entities.

MOTION:

Senator Cameron stated pursuant to rules of the Senate 39 (H), of the Idaho State Legislature, he has a conflict but still wishes to vote on **S1185**.

Senator Cameron moved that **S1185** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Schmidt**.

**AMENDED
MOTION:**

Senator Cameron moved an amended motion that **S1185** be referred to the 14th Order for amendment. The motion was seconded by **Senator Schmidt**. The amended motion carried by **Voice Vote**. **Senator Goedde** will be the sponsor of the bill.

S1186

Relating to Worker's Compensation to Revise Provisions Relating to Certain Fees and Reimbursements

Senator Goedde advised with the passage of **H260** the section of code that provides the Industrial Commission a basis to set fees has disappeared; **S1186** reestablishes the fees.

MOTION:

Senator Tippets moved that **S1186** 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.

H181

Relating to the Idaho Small Business Federal Funding Assistance Act

Representative Nonini stated this bill concerns the Idaho small business assistance fund. Small businesses in Idaho need the opportunity to grow. This bill will set-up a grant fund to encourage small businesses to apply for federal grant monies to grow their businesses. It is overwhelming for a small business, with a small staff, to write a grant. The Department of Commerce helps these small businesses to write the grants through their assistance fund. When a small business receives the grant assistance from the Department of Commerce they are required to pay a small percentage back into the assistance fund to help other businesses further the process.

Representative Cronin advised the federal grant funds are available to help provide funding for the best early stage innovation ideas. These ideas would be too risky for private investors including venture capital firms. The Department of Commerce realized that Idaho was not getting their fair share of the innovation grants compared to other states. The Department decided to start helping these businesses pursue these grants through their assistance fund. In 2009 eight companies won twelve federal grants totaling \$8.6 million, four of the winning companies were start-ups. This bill will give a much needed boost to the states economic development effort.

Ryan Gray, SGW Designworks, spoke **in support** of this legislation stating that they are a small local engineering company with a staff of three which is trying to grow. In 2010 they received a \$3,000 grant through the state to help the business put together a Phase I CIR proposal; if they are successful in this effort it will mean a 200% increase in their annual gross profits. The estimates are that the grant will return revenue five times the initial investment from the state in the first year of commercialization from military sales alone.

John Eaton, Government Affairs Director, for the Idaho Association of Realtors, spoke **in support** of **H181** stating this is probably the best return on investment that the Department of Commerce offers for the small amount of money that they supply going into these programs. Growing businesses and new job creation is the key for a sustainable real estate economy in Idaho.

Jayson Ronk, Vice President, Idaho Association of Commerce & Industry, spoke **in support** of **H181** stating many small businesses might not qualify for a private investment. This legislation will create an on-going statewide program that will assist them in applying for these grant dollars. They believe that by helping

these small businesses, who are looking for opportunities to expand, is a crucial ingredient for a successful economy.

MOTION: **Senator Smyser** moved that **H181** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Stennett**. The motion carried by **Voice Vote**. **Senator Smyser** will be the sponsor of the bill.

H207 **Relating to the Idaho Building Code Act to Revise Provisions Relating to Certain Permits**

Representative Luker stated the purpose of this legislation is to grandfather in unaffected parts of existing structures from having to meet more stringent building code requirements that were in existence at the time the building was originally constructed. If you are adding an addition onto an existing structure the property owner does not have to upgrade the existing unaffected portion of the structure to new code. When individuals start a new building process on an existing structure they open themselves up to review which can affect the grandfather rights. There is an exception in the bill that states if there is a specific safety hazard then that can be addressed by the building official and required in the permitting process.

Senator Stennett said if there are life or safety hazards then the grandfathered portion would have to be brought up to code, who would make the determination. **Representative Luker** stated that would be up to the building code official and the issuing entity. **Senator Cameron** stated if the building is in violation of the current code, does this allow the property owner not to bring the current facility up to code. **Representative Luker** stated that what the legislation provides is if the building was up to code when it was constructed then the building is grandfathered in. If it was not up to code at the time it was built, then that would be reason to upgrade the structure with the addition. **Senator Cameron** said is there a distinction between private and public facilities. **Representative Luker** stated whatever type of building, this bill would apply to that structure.

MOTION: **Vice Chairman McKague** moved that **H207** 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** requested that he be recorded as voting nay. **Vice Chairman McKague** will be the sponsor of the bill.

ADJOURN: There being no further business, the meeting adjourned at 2:05.

Senator Andreason
Chairman

Carol Deis
Secretary

AMENDED #1 AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:00 P.M.
Room WW54
Tuesday, March 29, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|----------------------|
| MINUTES | | |
| APPROVAL: | March 17, 2011 | Senator Stennett |
| <u>H240</u> | Relating to the Industrial Commission to Revise Provisions Relating to a Certain Premium Tax | Representative Block |
| <u>H256</u> | Relating to Plumbing and Plumbers Installed in Accord with the Idaho State Plumbing Code | Milford Terrell |
| GUBERNATORIAL APPOINTMENT: To Be Heard | Appointment of Teresa Luna as Director of the Department of Administration for a term commencing March 11, 2011 and she will serve at the pleasure of the Governor. | |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Smyser
Sen Tippets
Sen Stennett
Sen Schmidt

COMMITTEE SECRETARY

Carol Deis
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 29, 2011

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Smyser, Tippetts, Stennett, and Schmidt

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.

CONVENE: **Chairman Andreason** called the meeting to order at 1:00 p.m.

MINUTES APPROVAL: March 17, 2011

MOTION: **Senator Stennett** moved to approve the minutes of March 17, 2011. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

H240 **Relating to the Industrial Commission to Revise Provisions Relating to a Certain Premium Tax**

Representative Hartgen advised this bill proposes a reduction in the premium tax paid by insurers and self-insured employers to the Industrial Commission for calendar years 2012 and 2013. Current law requires the Commission to collect 2.5% of net worker's compensation premiums written. In addition, it provides for a 1.3% deduction of the net premiums written by insurance companies from the sum that they are required to pay to the Department of Insurance as a tax on workers' compensation premiums. The amendment reduces the premium tax rate for the Commission from 2.5% to 2% for a two year period, and provides for a permanent credit for insurance companies of 50% of premium tax paid to the Industrial Commission from the premium tax payable to the Department of Insurance. The fiscal impact of \$3.2 million is a very conservative estimate based on projections of a continued decline in premiums written (in part due to the contraction in employment) from the 2010 level of \$36 million to \$311 million by 2012. If revenue remains flat the fiscal impact will be closer to \$4 million.

MOTION: **Senator Tippetts** moved that **H240** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Senator Tippetts** will be the sponsor of the bill.

H256 **Relating to Plumbing and Plumbers Installed in Accord with the Idaho State Plumbing Code**

Steve Keys, Deputy Administrator, Division of Building Safety, stated the history behind this bill starts with the adoption of the 2003 Uniform Plumbing Code by the Plumbing Board. The Board decided that adopting new versions of the code every three years was not necessary or fiscally responsible. Members went on record saying that they would skip the 2006 cycle and would not consider a new version of the code until the 2009 cycle.

In 2008 the Board began discussions relative to adopting an updated version of

the Uniform Plumbing Code (UPC). The Plumbing Board had been made aware in the interim between 2003 and 2009, that some local jurisdictions had voiced a preference for adopting the International Plumbing Code (IPC). The Board decided before moving forward and adopting the 2009 UPC, it should study the differences between the UPC and the IPC to see which would be a better alternative. An industry subcommittee was formed to perform the study of both codes. At the studies conclusion, the subcommittee's decision was to remain with the UPC for the industries familiarity and the plumbing apprenticeship program.

The Board decided to study the 2009 UPC and consider changes to the code that would make it more acceptable and user friendly to plumbers and local jurisdictions while maintaining public safety. The Board conceptually decided to pursue the adoption of the Idaho State Plumbing Code (ISPC), built upon the UPC as the model code for its development. Two industry subcommittees were formed; one committee led by a plumbing inspector from Idaho Falls and another by a apprentice program supervisor at the College of Western Idaho. All the subcommittee meetings were open to comment from the public and notice of the meetings was posted and disseminated to industry participants. The result of the meetings was the Idaho State Plumbing Code which was brought forward for adoption in **H75**. **H75** was changed with input from city representatives and local building officials. The Plumbing Board scheduled a special board meeting to seek input from those with objections to the bill and adopted recommended changes. **H256** came out of those changes and the legislation establishes: 1) One statewide plumbing code as advocated by industry participants; 2) A formal amendment process for the Board to adhere to as it considers amending the Idaho State Plumbing Code which includes express notice to affected parties, and at least two public hearings 30 days apart; 3) Specific authority for cities to amend the code whereby cities can amend the ISPC to better address local conditions; and 4) City's authority to adopt fees and procedures is recognized in paragraph 4, starting on page 2, line 14, where the language stipulates that the permitting provisions contained in the bill do not apply to cities.

The Plumbing Board requests the passage of this legislation for the following reasons: 1) The proposed code has been developed wholly in the public eye, with opportunities for public input at multiple public meetings, through e-mail, or even through mail; 2) The code is designed as a living document developed with an eye towards incorporating amendments and industry changes without necessitating the purchase of new code books. Savings in code book costs alone to industry participants for each code cycle skipped are estimated at \$350,000; 3) The code will be available for review at no charge via the Division of Building Safety's website and the code will be available in multiple formats at charges that are competitive with those charged for model codes; 4) Industry participants need only one book or digital file reflecting the ISPC plus applicable statutory and administrative rule provisions; and 5) Changes suggested by local jurisdictions have been carefully considered, with the most incorporated in the legislation.

Senator Stegner asked how many states have adopted their own building code? **Mr. Keys** replied that most states adopt a model code with modifications; usually they adopt the UPC with amendments. **Senator Stegner** asked how many other states in our area allow a similar model code adoption. **Mr. Keys** explained that most other states allow for local jurisdictions to establish their own programs, but the state adopted code serves as the baseline. The local jurisdictions must post their changes on a statewide website. **Senator Stegner** asked **Mr. Keys** if he is representing that legislation like **H256** is standard as an occurrence in other states? **Mr. Keys** stated he would represent to this Committee that **H256** and the Idaho State Code is more akin to the UPC with fewer changes than what you would find if you moved into the States of Oregon or Washington.

Senator Cameron asked why should the state expand its roll and take on the responsibility to write their own codes, rather than adopting the UPC? **Mr. Keys** said there is no qualifiable difference in the amount of money spent on code books. To have an ISPC would make it more convenient for the participants. UPC is designed as a model code and to be modified by an adopting jurisdiction to suit the entities needs. **Senator Cameron** said with the adoption of **H256** there would be a loss of historic control by local government, cities, in following the UPC. At the adoption of the code a city could modify the UPC for their individual needs. By the state adopting a code under **H256**, it seems we are taking local control away from the cities. **Steve Keys** stated the overriding argument has been that the state code would serve as the baseline for the local jurisdictions and that has always been the intent of the code. **H256** is not to preclude local jurisdiction from modifying or amending the code to suit their specific needs. What is explicit in this bill is that local jurisdictions do not have the authority to adopt a code completely separate from the ISPC. **Senator Cameron** asked would the local governments be able to adopt the uniformed codes and not the state code? **Mr. Keys** replied the ISPC, with approximately twenty changes, is the UPC and the cities have the right to amend the code to suit their purposes.

Senator Schmidt asked what process would the cities have to go through to switch from the UPC to ISPC. Currently they must buy new code books every three years under the UPC code, how would that change using the ISPC? **Mr. Keys** replied under the ISPC process as amendments are made to the code they would be able to be incorporated into the original document. They may have to purchase the updates for the book, but not the entire book. **Senator Schmidt** asked what would the ongoing charge be to the cities for the updates? **Mr. Keys** stated it would be a nominal charge for any updated documents. **Senator Schmidt** said when he questioned his local city on the process of code book changes they informed him that it is a very expensive process. **Mr. Keys** said the bill represents that the publisher of the ISPC is offering to produce the code book much cheaper. **Mr. Keys** stated that is one of the key purposes of the adoption of the ISPC is to avoid having to upgrade every three years with the UPC.

Senator Stegner said with all the controversy that has come along with this bill and your testimony that UPC is really not that much different then the ISPC, what is the advantage of the switch? **Mr. Keys** said the primary motivation in creating the ISPC is to break away from the every three year fight on the adoption of the new version of the UPC and cut down on the expense. The ISPC code will be on the Department of Building Safety's website so that any industry participant could look at the code for free.

Mayor Jared Fuhriarn, City of Idaho Falls, spoke in opposition to the bill for three reasons: 1) Loss of local control; 2) Loss of local voice; and 3) A disconnect from the nationally recognized standard for plumbing that has been in use for the last 36 years. This bill will restrict a cities ability to amend code through a process of notification and entities chosen solely by the State Planning Board. Currently cities have a member of Internal Association of Plumbing and Mechanical Officials (IAPMO) that can share and shape changes to the UPC. That voice would become meaningless if the state code is the only choice for cities. Currently cities have no vote on the State Plumbing Board and would not be granted such under this proposed bill. Historically the voice issue has been offset by the authority granted to cities, this bill would greatly diminish this authority. Extension of powers that would be given to the Plumbing Board is of great concern to the cities because the Board is comprised exclusively of members who are or have been plumbing contractors.

Dennis Davis, City of Nampa, spoke in opposition stating the State of Idaho has always adopted the codes that have been developed nationally as recognized standards for their building project. Nampa currently has 17 projects that are valued over \$200,000 and 9 of those projects come from out-of-state developers. The City of Nampa is actively recruiting economic development and they want to make their City the most attractive place to do business. When developers and companies ask the City what codes are you following they can point to these nationally recognized standards that are used in the state. By using these standards it makes a smooth transition for the developers to design their facilities for them. The new code will cost the City and the State of Idaho money to administer. It will be burdensome to the development community, at a time when we should be doing everything possible to reduce bureaucracy and offer consistency. The development of this code was neither shared nor were we asked to participate in its development before this legislation was brought forward to the Legislature.

Bob Corbell, representing the Mechanical Contractors of Idaho spoke in support stating that he supports H256 for the uniformity that it will create for the industry and the state.

Pete Crow, representing the International Association of Plumbing and Mechanical Officials (IAPMO) spoke in support stating the ISPC is based upon the 2009 UPC the national plumbing code with state amendments. Few if any codes are adopted without state amendments and are amended because of different climatic concerns, laws and rules.

Chairman Andreason asked **Mr. Keys** to clarify the testimony from the city mayors on how **H256** will restrict cities abilities to enforce and apply code for their jurisdictions. **Mr. Keys** responded that he believes **H256** gives them avenues to adopt amendments that they feel are necessary to better suit their local conditions.

Milford Terrell, Chairman of the State Plumbing Board, spoke in support stating that when this bill started three years ago they put together a committee of individuals from all over the state. One of the main reasons that the Board started to look at the possibility of a state plumbing code was every three years the codes get changed and there is an expense of purchasing the new code books, for young apprentices this outlay of funds can be prohibitive. It is becoming more difficult to attract young apprentices into the plumbing industry because they have to go to four to five years of school in order to become a licensed plumber. During their schooling they will have to buy two sets of code books.

The ISPC not only includes the 2009 UPC, but the ADDAPA rules.

Senator Stennett stated you spoke to the issue of making the coding process affordable for young individuals coming into the trade. Why are we not talking about taking existing codes and putting them on line instead of going to a state system. **Mr. Terrell** explained that the UPC code is not available on-line, that is why the State Board is proposing the ISPC **H256**. The ISPC, which includes the UPC, will be available on-line and in a three-ring binder hard copy.

Senator Stegner asked for the estimated cost difference between the ISPC versus the Uniform Code. **Kelly Pearce, Director, Department of Building Safety**, stated that the ISPC three-ring binder cost would be \$112, a CD \$63 or they may view it free on-line (not to print). The ISPC three-ring binder includes the UPC, the twenty plumbing code changes and the ADAPPA rules (get two books for the price of one). The cost of the UPC is also \$112. **Senator Stegner** replied that the ISPC book might be a more convenient deal. The State of Idaho provides the ADDAPA rules and the code free to individuals on-line and you can print them. It may be convenient to have all the information in one location but there is no significant cost savings that it would drive the adoption of this bill.

Senator Cameron stated one of the big issues at the heart of this legislation is that the cities want to be able to adopt their own rules and not have to be under a state rule. **Mr. Terrell** replied the Board would allow the cities to adopt the UPC for their cities instead of the ISPC. **Senator Cameron** asked for clarification that the Board would have no problem in amending the bill to make it clear that cities could adopt either the UPC or the ISPC. **Senator Cameron** stated that the bill creates a higher threshold that cities must cross in order to adopt a code.

Charles Allen, President of Idaho Association of Building Officials, spoke in opposition stating that **Mr. Terrell** made reference to three code books; there is only one enforcement book, the UPC, and that is the only book plumbers need at this time. There was no consensus on the initial bill drafting. For 35 years the code has worked why does the code need to change? ISPC will have the authority for input on code changes and at the local level they will be restricted by putting the process in the state's hands.

Chairman Andreason said he would put this bill back on the agenda for Thursday, March 31, 2011 in hopes that the parties may find consensus in the interim.

**GUBERNATORIAL
APPOINTMENT:
To Be Heard**

Chairman Andreason welcomed **Teresa Luna** who was appearing before the Committee for approval of her appointment as Director of the Department of Administration for a term commencing March 22, 2011 and she will serve at the pleasure of the Governor.

Teresa Luna advised that she began her career with the State of Idaho in November 2002 as an Executive Assistant in the State Controller's Office. In January 2007, transitioned to the Department of Administration to serve as the Communications Manager; and in September 2008, was promoted to Chief of Staff. While serving in this capacity she worked closely with the Administration staff and the Department of Education to develop and roll out the Idaho Education Network.

Other key projects include: conducting meetings across the state to educate retirees on changes to the State's medical coverage; developing a plan to address health insurance eligibility standards for part-time employees; as well as implementing a Best Value approach to statewide procurement efforts.

In July 2010, started serving as the interim Director for the Department of Administration.

Chairman Andreason thanked **Ms. Luna** for her attendance and advised that the Committee would take action on her appointment at the next meeting.

ADJOURNED:

There being no further business, the meeting adjourned at 2:58 p.m.

Senator Andreason
Chairman

Carol Deis
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:00 P.M.
Room WW54
Thursday, March 31, 2011

NOTE MEETING TIME CHANGE

| SUBJECT | DESCRIPTION | PRESENTER |
|--|---|---|
| PAGE: | Page Presentation & Thank You | |
| MINUTES APPROVAL: | March 24, 2011 | |
| <u>H299</u> | Relating to the Idaho Health Carrier External Review Act | Stephen Thomas, Idaho Association of Health Plans |
| GUBERNATORIAL APPOINTMENT: To Be Voted On | Appointment of Teresa Luna as Director of the Department of Administration for a term commencing March 11, 2011 and she will serve at the pleasure of the Governor. | |
| <u>H283</u> | Relating to Insurance and Trade Practices and Fraud | Jim Ginetti, Idaho Association of Health Underwriters |
| <u>H195</u> | Relating to Motor Vehicle Dealers and Salesmen Licensing | Trent Wright, Idaho Automobile Dealers Association |
| <u>H256</u> | Relating to Plumbing and Plumbers Installed in Accord with the Idaho State Plumbing Code | Milford Terrell, Plumbing Contractor |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Smyser
Sen Tippets
Sen Stennett
Sen Schmidt

COMMITTEE SECRETARY

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 31, 2011

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Smyser, Tippetts, Stennett, and Schmidt

**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.

CONVENE: **Chairman Andreason** called the meeting to order at 1:01 p.m.

PAGE Page Presentation and Thank You.

Chairman Andreason recognized **Rebecca Kelley** who has done a wonderful job supporting our Committee. Letters of recommendation and thank you were given to **Ms. Kelley** in appreciation for a job well done.

H299 Relating to the Idaho Health Carrier External Review Act.

Stephen Thomas, representing Idaho Association of Health Plans, advised this legislation along with **H131** pertain to external review of health insurance denial of benefits and gives the insured the opportunity of an external independent review organization to review and give a ruling on the claim. A state statute was passed in 2009 to create this review process working jointly with the Department of Insurance. In 2010 the Department modified the statute by passing **H131**, Federal Health Care Reform. The state law in Idaho does not provide for Employee Retirement Income Security Act (ERISA) self-funded plans, but **H299** has language that states these self-funded plans may opt into the state statute if they wish to do so.

MOTION: **Senator Cameron** moved that **H299** 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.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** announced that the Committee was ready to take action on the appointment of **Teresa Luna** as the Director of the Department of Administration. **Ms. Luna** had appeared at the March 29, 2011 Committee meeting and had been appointed to serve a term commencing March 11, 2011 and she will serve at the pleasure of the Governor.

MOTION: **Senator Tippetts** moved to send the gubernatorial appointment of **Teresa Luna** as the Director of the Department of Administration to the floor with the recommendation that it be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion passed by **Voice Vote**. **Senator Tippetts** will be the sponsor of the candidate.

Jim Ginetti, representing Idaho Association of Health Underwriters, stated Idaho Code 41-1314 was amended in 2006 to allow life, property and casualty producers to give gifts, prizes, etc. of up to \$50.00 to a policyholder or prospective policyholder and of aggregate value not to exceed \$200 in a calendar year. Prior to that amendment nothing of value could be given to a policyholder or prospective policyholder outside of the terms of the insurance contract. However, this change in law left out the disability insurance producers and companies.

HB283 gives the disability, health insurance producers, the same latitude to offer gifts; prizes, etc. to policyholders and gives them the opportunity to compete on an equal basis with their fellow agents, selling other lines of insurance.

The original intent of the 2006 amendment was to allow producers to give marketing items such as pens or calendars or offering golf games or lunches without violating the law. This legislation affords the health insurance producers the same opportunity to work on a level playing field within the insurance arena.

Senators Cameron and Goedde stated pursuant to rules of the Senate 39 (H), of the Idaho State Legislature, they have a conflict but still wish to vote on **H283**.

MOTION:

Senator Stegner moved that **H283** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Stegner** will be the sponsor of the bill.

Representative Sims stated that for the record she is a new automobile and motorcycle dealer. The roles of manufacturers and dealers in the delivery and service of new automobiles are totally separate and different. Manufacturers build the cars and they sell them to the dealers, they are out of state and some out of the country. Dealers nationwide and statewide are individually owned and they find a market for the manufacturer's product. Everything that you see at a dealership is bought and paid for by the dealers. Automobile franchise laws exist in every state to protect the dealers and the jobs they provide.

On page 7, lines 1 through 11 deals with the operation of a dealership by the manufacturer or distributor due to bankruptcy of the franchise holder and is not to exceed two years. Lines 16 through 22 states that manufacturer may not condition a sale of a dealership to site control. Many automobile franchises throughout the country are family owned and they are passed from one generation to the next. In passing the business from generation to generation the manufacturers will assert that the franchise maybe passed on conditions that they set. The legislation clarifies that a manufacturer's upgrades to the facility cannot be a condition of moving a franchise from generation to generation. A voluntary acceptance of some nature of the site control can be accepted by the dealer. Page 8, line 13-32, deals with the manufacturers denial of allocation, withholding payments, or other action upon site control. Exporting of automobiles by US dealers should not be charged back for the inadvertent sale of these vehicles. Also, page 8 deals with selling of specific extended service contracts. Franchise dealers offer their manufacturer's service contracts to their customers. Existing laws are also clarified in this legislation to include price for compensation or warranty parts and labor and that it should not be less than the amount charged by the dealer to retail customers for non-warranty work. Idaho customers and also those traveling through our state want to ensure that all customers, especially warranty customers, are treated quickly and problems corrected. Thirty- two states now

require retail be paid to dealers on parts and forty-two states now require retail be paid on labor. The dealers and the service departments have no control over what is warranty and what is not, it is based entirely on the manufacturers' decision. On page 12, section 13 addresses the intended cost recovery of the manufacturer by implementing surcharges back to the dealer to cover the payments they make to the dealer of retail for parts and service on warranties. This would put Idaho dealers at a significant cost disadvantage adding a \$500 to \$800 surcharge per car to Idaho auto dealers will drastically affect sales. This practice is unfair and outlawed in many states.

Bruce Breshears, Bonanza Motors, Burley, Idaho, testified **in support** of this legislation stating that they are a privately owned dealership and along the border of Utah and Nevada. Both Utah and Nevada have retail labor and parts rates and as an Idaho dealer they are not afforded this same parts and labor rate. There is a spread between retail labor and parts rate and warranty labor and parts rate. Charge backs should not be administered as most dealers are unaware that a customer will be taking the vehicle out of the US.

Ken McClure, representing, General Motors Corporation, stated there are three items remaining that the dealers and manufacturers could not come to consensus on in this proposed legislation. It is their request that the bill go to the amending order out of this Committee or to have the bill held until next session.

Franchises between a manufacturer and dealers are contracts. When legislation overrides these contracts there should be a very good reason to do so. The three items that they are requesting as amendments to the bill are: 1) Page 9, following line 15, insert: This deals with extended warranties the term coercion you cannot coerce somebody to sell your extended warranty to the exclusion of someone else's extended warranty. The language says that the manufacturer's cannot provide incentive for the sale of their extended warranty which is also coercion. There is an amendment that they have agreed to with **Mr. Wright** that the incentives for extended warranty sales are all right so long as they are not coercion. If you wish to compete in contest to sell the most extended warranties and if you win you can accept the incentive. If you want to receive a commission for having sold extended warranties from General Motors instead of someone else then they may do so. This language would add a new subsection E in the bill to clarify that this type of a warranty incentive is acceptable; 2) Retail compensation/retail rates for warranty work. In most commercial enterprises the more volume of business you bring to a company the better rate you will receive. Almost all dealers of most of the brands have as their single largest repair customer the manufacturer and the manufacturer is held captive by this relationship. The dealers have a guaranteed flow of work they want to be paid retail that there is no discounted rate to them. That is contrary to typical business practice; but the manufacturer has agreed to these terms. However, there is a particular problem on page 11 of the bill which is addressed by the second amendment. On line 9 the bill states that the retail warranty rate the manufacturer has to pay "must not be less than the schedule of compensation for an existing dealer." The amendment states it must not be less than the scheduled compensation for the dealer. So it is that dealers retail rate, not his neighbors retail rate. If there is a difference between two company's retail rate, it is the one who is doing the work that has the rate; and 3) Cost recovery. If you pass the **H195** as written it will impose a greater cost on the manufacturer for selling vehicles to dealers located in Idaho. Manufacturer will be required to do more things and not allowed to do other things.

The manufacturer had asked the dealer association to include a provision which will state the manufacturer can have a provision to recover that cost. Their provision in this current law on page 12, subsection 13, the manufacturers asked that this be deleted entirely. The Dealer Association did not agree to the deletion, but they did agree to add a phrase that says the manufacturers may not increase the price of vehicles other than in the normal course of business. **H195** if passed will require Idahoans to bear greater costs than other states. That we ought to be specifically allowed to recover those greater costs from Idaho consumers who buy the vehicles. Part of the margin in the sale of a vehicle that is currently going to the manufacturer by passage of this bill that margin will go to the dealer.

Senator Cameron asked why should it be the public policy of the state to allow a manufacturer to charge the dealers a higher level than that of other dealers in other states? **Mr. McClure** responded by passage of this statute the Legislature would increase the manufacturers cost wherever it applies, which is only in Idaho. If costs go up in this state, the manufacturer would be forced to recover those costs here. By the Committee's action you don't increase the cost to the manufacturer for a vehicle sold outside the State of Idaho. **Senator Cameron** stated this is a product that your manufacturers are creating for the purchaser of the product is purchasing the warranty to make sure that the product works as was portrayed at the time of sale. Why should the citizens of the State of Idaho have to pay for the warranty and then pay for it again in the purchase price because they had to use the warranty. **Mr. McClure** explained that it is not the cost of the warranty as contained in the contract between the manufacturer, dealer and the purchaser. It is the additional increment of cost that is not in the contract which you are imposing by passage of this legislation. **Senator Cameron** stated that the imposition of the passage of this bill that you have to pay the retail cost of the repair of that warranty of the product for which the manufacturer created in essence the only incurred cost is because you are paying the retail rate for that warranty. **Mr. McClure** said the contracts currently in place between the manufacturer and the dealer provide for lower reimbursement and this bill would override those contracts requiring manufacturers to pay retail reimbursements; this higher amount would come out of the manufacturer's pockets and nullify the contract that is in place. As a consequence the manufacturers are looking for a mechanism to recover the costs which are directly attributable to increase in rate to retail rate. **Senator Cameron** asked doesn't the manufacturer have the ability to recover costs through your normal cost of doing business and pass this retail rate onto the customers. Why do these costs have to attribute these costs specifically to Idahoans? **Mr. McClure** said in the bill as written, without the amendment, the manufacturer is unable to pass the costs along. What they are seeking in the amendment is the right to recover these retail costs. The dealers amendment states that they can raise their prices in an ordinary course of business or they could raise their prices to Idaho customers to recover the additional costs. **Senator Cameron** stated that Idaho law has no effect on a manufacturer that is domiciled in Michigan. They would only have to comply with Idaho law in contract proceedings. General Motors Corporation could certainly pass on those expenses of their operations as part as normal business to the cost incurred to the dealer for the car.

Gary Tanner, Evans Keane, representing the Idaho Auto Dealers Association, stated that he had nothing to add.

Jeremy Pisca, Risch and Pisca, representing Alliance of Automobile Manufacturers advised that the Alliance of Automobile Manufacturers is the trade association of twelve manufacturers locally. The Alliance has concerns about **H195** and asks that there be some amending to this legislation. One item in the bill that they take issue with is the retail rate and they request that the amending language would be as follows: On page 12, following "imposition", insert: "unless such charge, surcharge or other imposition is charged uniformly as a component of the vehicle invoice price to all same-line make dealers in the state regardless of the warranty reimbursement rate charged by any individual dealers." Customers coming into the dealer to have warranty work performed are a captive market. The dealers get reimbursed for parts and labor with a percentage mark-up. What **H195** says is that regardless of any agreement the dealer has entered in with the manufacturer, the dealer will submit a retail rate for labor and parts. If the Committee were to adopt the amendment that is contained in the letter (Attachment 1), it would allow the dealer to collect their retail rate and the manufacturer to recoup their costs of doing business in a manner that is not punitive or directly singling out an individual dealer. They would recover costs in a manner that is uniform amongst same-line makes and models.

Senator Cameron asked why should the Committee impose a surcharge on dealers in this state versus a customer buying a vehicle in Oregon. **Mr. Pisca** stated because not all of these laws are uniformed, they are very state specific. Some states have cost recovery provisions, the bulk of states do not have cost recovery provisions. The states that have the recovery provisions are currently repealing them. **Senator Cameron** asked **Trent Wright, Executive Director, Idaho Auto Dealers Association**, if he would inform the Committee what the surrounding states charge for warranty work? **Mr. Wright** explained in the statutes of Washington, Oregon, Nevada, Utah, Wyoming or Montana all have a reimbursement rate at the retail level for parts and labor.

MOTION: **Senator Tippetts** moved that **H195** be referred to the 14th Order for amendment. The motion was seconded by **Vice Chairman McKague**.

ROLL CALL VOTE: **Chairman Andreason** then called for a **Roll Call Vote** for **Senator Tippetts'** motion. **Senators Schmidt, Tippetts, Smyser, and Cameron, Vice Chairman McKague and Chairman Andreason** voted **aye**. The motion carried.

H256 Relating to Plumbing and Plumbers Installed in Accord with the Idaho State Plumbing Code

Steve Keys, Deputy Administrator, Division of Building Safety, advised that at Tuesday's meeting he failed to make clear that the International Association of Plumbing and Mechanical Officials, the prospective publisher of the Idaho State Plumbing Code, has stipulated that free access to the on-line version of the code, and future versions of that code, will be maintained. This should serve to mitigate any issues related to the costs associated with adopting the Idaho State Plumbing Code (ISPC).

The Department of Building Safety (DBS) and the Plumbing Board chairman did entertain an offer of compromise put forward by the Association of Idaho Cities. The initial offer would have allowed cities to adopt nationally recognized codes other than the Uniform Plumbing Code. That offer was respectfully refused, and a counter offer was made by DBS relating to the possible substitution of the Uniform Plumbing Code (UPC) for the ISPC. This offer was understood to be contingent on acceptance by the Board, the industry, and the Representatives across the

rotunda, who endorsed the concept of Idaho-specific codes built upon nationally recognized model codes. The Association of Idaho Cities responded with a further modification to the bill stipulating that the amendments adopted at the state level to the code would not apply to local jurisdictions; a definitive non-starter for all supporters of the original legislation.

Senator Cameron asked if it was the Plumbing Board's intention in drafting this legislation to minimize or reduce the confusion of codes for the plumbers. **Mr. Keys** answered that would be a true statement. **Senator Cameron** asked if there was a more important goal for the Board. **Mr. Keys** replied that the other goal was to eliminate the every three year cycle of consideration and adoption of new codes and the expense of that procedure. **Senator Cameron** asked why create a state code different from the UPC in order to accomplish the goals. **Mr. Keys** explained that national codes are not adopted in totality by jurisdictions. They are typically adopted with local amendments. In surrounding states like Oregon, Washington and California their state plumbing code is basically the UPC with amendments and rules adopted. **Senator Cameron** stated that in an attempt to make the code easier and less costly it has become more complicated by allowing jurisdictions to adopt either the UPC, the ISPC or the International Plumbing Code (IPC). **Mr. Keys** stated the intent of the bill was to have the ISPC code for plumbers for the State of Idaho and no other jurisdiction has the right to adopt in total any other code. The jurisdictions do have the ability to amend the ISPC to include whatever provisions from another code that they may choose to incorporate into their local ordinance.

Senator Tippetts asked if this legislation passes, what will happen to the codes that the cities have adopted and will they switch to the ISPC in July of this year? **Mr. Keys** said every local jurisdiction in the State of Idaho has adopted the UPC. If the legislation passes, the jurisdictions would have to adopt the ISPC as their code. **Mr. Tippetts** asked when the UPC is updated in three years and the state incorporates the changes into the ISPC, essentially it would change every three years. **Mr. Keys** stated it gives the state the ability to incorporate amendments into the ISPC on more than an every three year basis if needed.

Lane Triplett, Plumbing Instructor for Local 296 in Boise, spoke in support of this legislation stating that as an instructor and a plumber, there could be rules and codes in one book. If the plumber has jobs in different jurisdictions with different codes to comply with, you can get red tagged and lose time. One set of codes covering the whole state will avoid confusion.

Lee Rice, Chief Plumbing and Mechanical Official, City of Boise, spoke in support of the legislation stating that the City of Boise believes that having the 2009 UPC amendments and IDAPPA Rules published as the ISPC in one document will be of better use to plumbers. Adopting the ISPC will allow the plumbers to uniformly install plumbing systems throughout the state. The Mayor and Council have confidence in the make up of the board and their technical abilities to choose which code to use for the State of Idaho.

Russell Goyen, Chief Plumbing and Mechanical Inspector, City of Idaho Falls, stated that the City of Idaho Falls is opposed to the bill in its present form. Idaho cities need to retain their political ability to be able to amend the code without automatically adopting the State's Idaho Administrative Procedures Act (IDAPA) Rules and the amendments. The rules and amendments come from the Idaho Plumbing Board, which is industry dominated by plumbing contractors. Cities are concerned that the IDAPA Rules may reflect a different view point than what is always in the best interest of the citizens of Idaho.

Mr. Goyen said the bill incorporates the IDAPA Rules in the proposed legislation. **Senator Tippetts** asked is this the basis of the City of Idaho Falls' opposition to the bill? **Mr. Goyen** replied that having the IDAPA Rules in the legislation is one of the reasons they are opposed to the bill.

Representative Crane spoke in support of the legislation and advised the Committee of the main issues of this bill that are contentious: 1) Every three years the code changes and you have to buy a new book. The ISPC would be on line and also in a three-ring binder so you could insert the updates to the code; 2) The local municipalities have the control to change the code; and. 3) There is a power struggle for control between the plumbers and the cities.

Gilbert Ponds, Ponds Plumbing, spoke in support of the legislation and is in support of the UPC that is part of this legislation because it builds to a higher standard and there should be code consistency throughout the State of Idaho.

MOTION:

Senator Smyser moved that **H256** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Tippetts**.

Senator Cameron stated it sets the state up with a new code and usurps the power of the local entities. The local entities should have the right to determine the appropriate code in their jurisdiction. The local entities will have to go through a more laborious process in order to amend the code for their purposes. **Senator Tippetts** stated that he felt there was value in having one code with the IDAPA Rules as the standard for the state.

**ROLL CALL
VOTE:**

Chairman Andreason then called for a **Roll Call Vote** for **Senator Smyser's** motion. **Senators Goedde, Smyser, and Tippetts and Chairman Andreason**, voted **aye**. **Vice Chairman McKague, Senators Cameron, Stennett and Schmidt** voted **nay**. The vote tied and therefore failed.

ADJOURN:

There being no further business, the meeting adjourned at 3:16 p.m.

Senator Andreason
Chairman

Carol Deis
Secretary

AMENDED #2 AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:00 P.M.
Room WW54
Wednesday, April 06, 2011

| SUBJECT | DESCRIPTION | PRESENTER |
|-----------------------------|---|---|
| MINUTES | March 24, 2011 | Senator Schmidt |
| APPROVAL | March 29, 2011 | Senator Smyser |
| <u>H256</u> | Reconsideration of Vote on H256 | |
| <u>H331</u> | Foreclosure of Residential Property Secured by Deed of Trust | Brian Kane, Office of the Attorney General |

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Andreason
Vice Chair McKague
Sen Stegner
Sen Goedde
Sen Cameron
Sen Smyser
Sen Tippets
Sen Stennett
Sen Schmidt

COMMITTEE SECRETARY

Carol Deis
Room: WW46
Phone: (208) 332-1333
email: cdeis@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Wednesday, April 06, 2011

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman McKague, Senators Stegner, Goedde, Cameron, Smyser, Tippetts, Stennett, and Schmidt

**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.

CONVENE: **Chairman Andreason** called the meeting to order at 1:01 p.m.

MINUTES March 24, 2011

APPROVAL: March 29, 2011

MOTION: **Senator Smyser** moved to approve the minutes of March 29, 2011. The motion was seconded by **Senator Schmidt**. The motion carried by **Voice Vote**.

MOTION: **Senator Schmidt** moved to approve the minutes of March 24, 2011. The motion was seconded by **Senator Smyser**. The motion carried by **Voice Vote**.

H331

Foreclosure of Residential Property Secured by Deed of Trust

Brian Kane, Attorney Generals Office, stated the backdrop of the legislation was the Attorney General's Foreclosure Report. In 2010 Idaho ranked eighth in the nation in foreclosures; the Boise and Nampa area was one of the hardest hit and in one of the top three metropolitan areas. This translated to one in every twenty-one Boise or Nampa properties receiving some form of foreclosure notice. There is not one part of Idaho that has not been touched with the foreclosure issue.

The top three complaints as they compiled their report: 1) Consumers did not receive notice of the date and times of postponed foreclosure sales; 2) The foreclosures were occurring before a consumer could negotiate their loan modification; and 3) Consumers were also losing time, money and homes through fraudulent foreclosure rescue and mortgage modification schemes. This legislation provides notice to consumers, creates a track record for the interested parties to ensure all the necessary steps have been complied with and attempts to resolve any doubts within the process in favor of a homeowner possibly keeping their home.

Under existing law when a foreclosure sale is postponed under deed of trust the trustee can undertake a consequent sale with no advance written notice. Section 1, page 2, lines 45 to 5 on page 4 of the legislation requires a trustee pursuing foreclosure to mail written notice of such rescheduled sale 14 days in advance of the sale. Section 2 of the bill includes the addition of 40, pages 2-7 including the addition of a new Section 45-1506C, Idaho Code, lenders provide written notice along with notice of default in cases involving a potential foreclosure. It details the obligation owed and the ramifications of foreclosure if the homeowner doesn't share the default. It encourages homeowners to contact the lender to ask about any available loss mitigation programs including mortgage loan modification. This is also accompanied by a modification request form. Under the new section, the lender must respond to a request for loan modification. The most common

complaint that the Attorney General's Office received was that homeowners thought that they were in the loan modification process but they never heard from their lender in response to their request and their house was foreclosed. The notification process in this legislation ensures that the homeowner will know that they are in the process because they will have a meeting or a telephone call with their lender on the issue. The lender has to file an affidavit stating that they have complied with the notice requirements at least 20 days prior to the foreclosure. Section 3, page 7, lines 19-30 creates a new Section 48-603F, Idaho Code, addressing mortgage modification activities and the fees allowed. The language states that charging or collecting any fee in connection with mortgage loan modification activities shall constitute a violation of the Idaho consumer protection act, unless the person charging or collecting such fees is licensed. This is solely to go after the mortgage and foreclosure rescue entities.

Senator Tippetts stated that one of the criticisms that he has heard about the legislation is that if a homeowner shows up with a letter consenting to a loan modification from their lender that the auction would continue anyway. **Mr. Kane** stated if a homeowner shows up with a letter the worst case scenario will be that the sale would be postponed for an additional 14 days.

Kris Ellis, representing Idaho Land Title Association, advised that their industry was allowed to make comments on the pre-legislation, when the initial report was presented by the Attorney General's Office. There are unintended consequences of this legislation that can harm the consumer. The cost of the notices are born by the homeowner should they obtain a loan modification. If they do not have a modification then it is added if they short sale it to their 1099 and then they can be taxed on the money.

The Land Title Industry has some alternatives to the legislation: 1) A simple postponement for 8 hours to contact the beneficiary to mediate short term problems that arise; 2) Website that the trustees currently have where it shows the stage of the foreclosure on a piece of property; 3) Consumers be given access to that website .so they can track their own process; and 4) Modification affidavit is mailed by the title company with a letter with a phone number for the bank that holds the mortgage on the property.

The Idaho Land Title Association requests that the bill be held and an amended bill be brought back next year.

Richard Mollerux, Idaho Land Title Association spoke in opposition stating that the Board of Land Title Association has concerns with the language and length of time of the postponement of foreclosures. They would ask that the bill be held for amendment.

Senator Cameron asked wouldn't the lender prefer a mortgage modification rather than an auction sale of the property. **Mr. Mollerux** explained that a modification or short sale of the property would be best, but he has seen instances where trustees say they do not want to postpone the auction sale.

Ken Howell, General Counsel to the Idaho Bankers Association, spoke in support advising that under current Idaho law for foreclosure three procedures must take place: 1) A notice of default must be recorded and must be served by certified mail to the borrower; 2) Those trustee sales must be served and must be posted on the property; and 3) The trustee sale takes place. This bill makes very few alterations to this process. It does require that along with the original sale notification the borrower be provided with an additional form with a contact number for the bank. The bank contact information will allow the borrower to discuss the status of their loan and how they might proceed to get the loan cured or any mitigation programs. This bill requires that an affidavit be filed stating that the title company has provided a copy of the notice. The legislation provides that if the homeowner takes advantage of the opportunities that this bill creates for them to contact their banker that they have a 45 day period to discuss the status of the loan and available mitigation processes. At the conclusion of that process the beneficiary/lender will record an affidavit that states that they have afforded an opportunity to the homeowner to have the loan discussion, they have had the discussion and they have complied with the statute. This is the only thing that this bill really does that changes the foreclosure process from the current legislation. The way it changes the current process is very good for the consumer and gives them a telephone number that they can call to request a meeting with the lender. It expressly requires that the lender take a definitive 45 day grace period to respond to the consumer who has made the request for a meeting. From the lenders perspective it is valuable because if the borrower wants to make mitigation request of the lender they have to do so in writing by return receipt mail so the lender has proof that the consumer has taken action in the matter.

The Attorney General's report indicated that last year there were 19,000 foreclosures in Idaho. Of those foreclosures the Attorney General received 253 complaints. For the first two months of this year there have been 2,400 foreclosure filings per month extended through the end of the year that would mean over 28,000 foreclosure filings. If the industry does not pass the legislation, but waits until next year, there would be nearly 10,000 potential homeowners that this legislation could help.

Roger Seiber, Capitol West Public Policy Group, representing Northwest Trustee Services, spoke in opposition advising that they were not at the Attorney General's meetings but had met with them yesterday where they expressed three points of concern with this legislation: 1) Same day postponement issue; 2) The forms; and 3) The Spanish language issue. In the rush to put this legislation through there have been some procedures left out and they should be simple to fix if the Committee chooses to send this bill to the amending order. Their firm is ready with amendment language and to work with the proponents of the legislation.

Gavin Gee, Director of the Department of Finance, spoke in support of the legislation stating that their Department has worked closely with the industries that they regulate which are the banking, credit, finance companies, and mortgage brokers. This industry is impacted by the foreclosure process because they are in the mortgage business. They have seen the same problems as the Attorney General's Office in their consumer complaint department. The process of foreclosure is challenging and many of the problems that this legislation proposes to address are communication issues. This legislation will protect and help the consumer by enhancing the communication process, because it requires that the communication be documented between the parties involved. The majority of the complaints that their office has received have been against the largest financial institutions and mortgage servicers and the communication process breakdowns.

The Department believes this is important legislation because the foreclosure

problem is growing in Idaho due to the high unemployment, bankruptcy, and declining real estate values.

Alan Cameron, Idaho Credit Union League, stated that the Idaho Credit Unions have considered the legislation and are in support of the bill.

MOTION: **Senator Cameron** moved that **H331** be sent to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman McKague**. The motion carried by **Voice Vote**. **Senator Cameron** will be the sponsor of the bill.

H256 Reconsideration of Vote on H256

Chairman Andreason explained that **Vice Chairman McKague** thought there was a substitute motion to vote on in favor of the bill during the vote on **H256** at the March 31, 2011 Committee meeting. **Vice Chairman McKague** asked that the vote be reconsidered and leadership agreed that a reconsideration of the vote could take place. **Vice Chairman McKague** called for special consideration on revoting **H256**.

MOTION: **Senator Smyser** moved that **H256** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Tippetts**.

SUBSTITUTE MOTION: **Senator Cameron** moved a substitute motion to hold **H256** in Committee. The substitute motion was seconded by **Senator Stegner**.

ROLL CALL VOTE: **Chairman Andreason** then called for a **Roll Call Vote** for **Senator Cameron's** substitute motion. **Senators Stegner, Goedde, Cameron, Stennett and Schmidt** voted **aye**. **Chairman Andreason, Vice Chairman McKague, Senators Smyser and Tippetts** voted **nay**. The substitute motion passed and **H256** will be held in Committee.

ADJOURN: There being no further business, the meeting adjourned at 2:01 p.m.

Senator Andreason
Chairman

Carol Deis
Secretary