

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, January 31, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Malloy(McKague), Senators Cameron, Goedde, Smyser, Tippetts, Johnson, 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.

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

MINUTES: **Senator Stennett** moved, seconded by **Vice Chairman Malloy**, to approve the minutes of January 24, 2012. The motion carried by **Voice Vote**.

**Public Employee Retirement System of Idaho
Rules Review**

DOCKET NO.

59-0106-1101

PERSI Retirement Rules. Joanna Guilfooy, Deputy Attorney General, PERSI, stated this docket changes Retirement Rule 162 to adopt new contingent annuitant factors for the Public Employee Retirement System of Idaho (PERSI) members who retire on or after July 2011. When a PERSI member retires they can choose a regular retirement which is a monthly benefit for their lifetime only or the member can choose a contingent annuitant option. A contingent annuitant option would give the member a lower benefit each month for their lifetime and allows them to name a contingent annuitant that will get the same benefit for the remainder of the contingent annuitant's lifetime. Because the member benefit is lower the factors vary depending on the age difference between the contingent annuitant and the member. These factors are in place to keep it equal to the value that the member would get if they had just selected straight retirement instead of the contingent annuitant option.

MOTION: **Vice Chairman Malloy** moved, seconded by **Senator Schmidt**, to adopt Docket No. 59-0106-1101. The motion carried by **Voice Vote**.

59-0106-1102

PERSI Retirement Rules. Ms. Guilfooy, said this docket changes Retirement Rule 552 which canceled the schedule and increased the contribution rate to the sick leave fund paid by public schools. Prior to July 1, 2006 there was only one rate per school; on July 1, 2006 a rate increase went into effect with terms based on how many days of sick leave teachers would receive. There were other special increases for July 1, 2007 and 2008. These increases were subsequently delayed as temporary rules. After the most recent actuarial evaluation of the sick leave fund in 2010, the Board determined, based on that valuation, that the rate increases would be taken off data and the rates will stay at the July 1, 2006 rate. **Senator Smyser** asked for clarification of the rate. **Ms. Guilfooy** replied that the current rate for schools is nine to ten days of sick leave 1.16% of payroll and for eleven to fourteen days of sick leave 1.26%.

MOTION: **Senator Smyser** moved, seconded by **Vice Chairman Malloy**, to adopt Docket No. 59-0106-1102. The motion carried by **Voice Vote**.

DOCKET NO.
17-0209-1102

**Industrial Commission
Rules Review**

Medical Fees. Patti Vaughn, Medical Fee Analyst, Industrial Commission, stated in accordance with *Idaho Code*, 72-803, the Industrial Commission has adopted rules for the annual adjustment of medical reimbursement for workers' compensation medical services. We now request your final approval of this Rule. Workers' compensation physician services are paid according to a Resource Based Relative Value Scale (RBRVS) method of reimbursement, where the acceptable charge is the product of a relative value unit assigned to each medical procedure by the Centers for Medicare & Medicaid Services (CMS), and a corresponding monetary conversion factor determined by the Industrial Commission. The table spanning pages 106-107 shows the conversion factors assigned to each medical service category. Several of these service categories were adjusted during the 2011 Legislative Session. Further adjustments of these categories are not found to be warranted at this time. The categories of anesthesia and radiology, however, have not experienced any adjustment since July 1, 2008. Therefore, upon review of a variety of indices, including but not limited to the Medicare Economic Index, the Consumer Price Index (CPI), and the change in the Idaho state average weekly wage, the following adjustments are found to be appropriate. The anesthesia conversion factor will change from \$ 60.05 to \$ 60.33 (+0.46%). The radiology conversion factor will change from \$ 87.72 to \$ 88.54 (+0.93%). No additional changes to the physician fee schedule have been adopted at this time.

Senator Goedde stated in the fall of 2010 the Industrial Commission was in Coeur D'Alene and at that time there were a number of family practitioners that came forward to make a very compelling argument for equitable fee payments under the RBRVS. Has the Industrial Commission looked into the reimbursement scale between the family practitioners and specialists? **Ms. Vaughn** replied that the Industrial Commission did take this into consideration and made some changes last year. One of the bigger changes was in that category. **Senator Schmidt** stated, since he is a family physician, he had noticed these changes last year in the RBRVS and he thought they were quite appropriate. But family medicine payment is still approximately half of what is paid to the specialty physicians in this Scale. Will there be further changes to the RBRVS concerning this fee disparity in the future? **Ms. Vaughn** replied that no specific changes have been discussed at this time, but the consensus is to try overtime to move toward fewer conversation factors.

Ms. Vaughn spoke to the hospital and Ambulatory Surgery Center (ASC) fee schedule on page 108. New methods of reimbursement were adopted last year and just recently went into effect on January 1, 2012. The rates established by this rule for inpatient and outpatient services have not been in effect a sufficient amount of time to assess the need for any adjustments. Therefore, no rate adjustments have been adopted for the facility fee schedule. Since the drafting of our rule, CMS adopted changes to a component of the Ambulatory Payment Classification (APC) reimbursement method used for hospital outpatient and ASC services that left a portion of our rule ambiguous. Therefore, as found on page 109, the Commission has adopted a technical language correction to avoid having to continually adopt responsive language to periodic changes made by CMS. We ask for these changes to become effective on July 1, 2012, at the start of the new fiscal year. Your approval of this rule is requested to help ensure adequate access to medical services for Idaho's injured workers as well as containment of medical costs that may result in additional costs to employers.

Senator Cameron asked for the definition of what the Industrial Commission feels is a reasonable charge? **Ms. Vaughn** replied typically if there is a dispute of whether a charge is reasonable it can come through the Commission's Fee

Resolution process. They would hold it within the parameters of usual, meaning that hospitals cannot charge more than they are charging non-workman's comp and cannot exceed the 90% of what Idaho providers are tracking for the services. **Senator Cameron** advised the 90th percentile of your answer that has been a normal standard for usual and customary, but that is not what the rule spells out. When you say "reasonable charge," is it the actual charge of the physician or the medical service charges for the service or whether that means the usual customary charge, rates that are being paid by Medicaid and Medicare patients, or a discounted rate that might be paid for a patient that is insured with Blue Cross? How is the Commission navigating the "reasonable charge"? **Ms. Vaughn** answered there is a difference between what is charged and what is paid. The Industrial Commission does not have data that they can go to in establishing reasonable charges. They do rely on the parties to make their case and if there is still room for doubt they survey providers and determine whether the charge is reasonable.

MOTION: **Senator Goedde** moved, seconded by **Senator Schmidt**, to adopt Docket No. 17-0209-1102. The motion carried by **Voice Vote**.

17-0211-1101 **Rules Governing Security for Compensation - Self Insured Employers.** **Jane McClaran, Financial Officer, Industrial Commission**, advised the Idaho Industrial Commission has had growing concern over whether security requirements are adequate to ensure the protection of injured workers in the event of an insolvency of a self-insured employer. Last year, the legislature adopted comprehensive changes to the rules governing security for compensation, including the separation of rules governing self-insured employers from those governing insurance carriers. Subsequently, the Commission focused its efforts during the past year on further refining requirements for self-insured employers and conducted rulemaking through a subcommittee of the Commission's Advisory Committee. All self-insured employers were invited to attend those meetings and representatives from Ada County, City of Boise, City of Nampa, Idaho Power, the LDS Church, Les Schwab, J. R. Simplot, and St. Luke's in addition to several other stakeholders actively participated. The subcommittee members and Advisory Committee members reached consensus, and in fact, no member expressed opposition to any of the proposed changes. Additionally, the Commission elected to hold public hearings in all three regions of the state in October 2011 (dates and locations listed on page 112). Again, no one testified in opposition.

The most significant changes to the rules on security for compensation for self-insured employers include: 1) Expanding the qualification requirements - adds a five-year claims history, an insurance plan (including proposed excess insurance coverage), an actuarial study, and a feasibility study; 2) Providing more flexibility relating to security deposits – expands acceptable types of security, recognizes financially sound and actively managed employers by allowing credits toward the required level of security; and 3) Providing improved accountability in reporting – proposes an entirely new reporting form that transitions self-insured employers from reporting the nebulous "outstanding awards" to reporting "total unpaid liability." Reporting frequency decreases from quarterly to semi-annually and security adequacy is evaluated annually.

Senator Cameron asked is the Industrial Commission loosening the restrictions on a self-insured plan? **Ms. McClaran** replied the Commission is not loosening the requirements. You will see on page 115 of the rule the addition of several new requirements for those who are applying to become self-insured. The Commission is allowing the current self-insured to have some flexibility but increasing the security deposit requirements which is among the proposed changes. In response to a question from **Senator Cameron**, **Ms. McClaran** advised that there is criteria for self-insured employers on page 115. The Commission requires the self-insured

employers to report total unpaid liability. It is a much larger amount that self-insured employers must report to the Commission. The security related to the liability divide a primary security deposit which will range between \$350,000 to \$600,000 plus sufficient security for their total unpaid liability. **Senator Cameron** asked are these employers reporting all unpaid liability for their businesses? **Ms. McClaran** advised that on page 121 shows the report form and it is the liability specifically to work comp claims. In response to a question from **Senator Johnson**, **Ms. McClaran** advised that on page 114 are the proposed changes. At this time the Commission does not require an actuarial study be included with their documents. The credit for insurance, on page 115, shows the primary security deposit is a credit toward the total security required.

MOTION: **Senator Goedde** moved, seconded by **Senator Cameron**, to adopt Docket No. 17-0211-1101. The motion carried by **Voice Vote**.

DOCKET NO. **Bureau of Occupational Licenses
Rules Review**

24-0101-1101 **Rules of the Board of Architectural Examiners.** **Roger Hale, General Counsel**, said this docket primarily focuses on updating and making some changes in some education requirements. On page 153 under 004.,2 the Board is updating the NCARB Handbook for Intern and Architects from 2009 to 2011. Under 450.01 the Board is increasing the amount of continuing education that is required from eight to twelve hours each year. The continuing education renewal date will now be based on a calendar year. On page 154, continuing education has been inserted as a requirement to reinstate a license. Under 09. they are revising that the nature of the program be more consistent with the national program. On page 155 under 04. they have increased the record keeping requirement from three years to five years for continuing education. On page 156 the Board is eliminating an exemption for the continuing education if you are a resident of another jurisdiction and you meet that states continuing education requirement then you were exempt from meeting Idaho's requirement.

MOTION: **Senator Smyser** moved, seconded by **Senator Cameron**, to adopt Docket No. 24-0101-1101. The motion carried by **Voice Vote**.

24-2201-1101 **Rules of the Idaho State Liquefied Petroleum Gas Safety Board.** **Mr. Hale**, advised this Board uses the LPG Gas Code to set the standards for controlling gas dealers as well as storage facilities. This Board is updating the code that it uses to set standards for its profession from the 2004 code to the 2011 edition.

MOTION: **Senator Schmidt** moved, seconded by **Senator Goedde**, to adopt Docket No. 24-2201-1101. The motion carried by **Voice Vote**.

DOCKET NO. **Bureau of Occupational Licenses
Pending Fee Rules**

24-0401-1101 **Rules of the Idaho Board of Cosmetology.** **Mr. Hale**, stated that the Bureau of Occupational Licensing collects funds for all of the Boards and the funds go into a single account under Occupational Licenses. The pending fee rule before you is a decrease of license fees. The Cosmetology Board would like to decrease their license fees by a total of \$124,000. If you add the decreases and the increases of the Boards, the Bureau's pending fee rule is a decrease of \$50,000. In response to a question from **Senator Cameron**, **Mr. Hale** advised as of December 31, 2011 the Board of Cosmetology had \$1,000,563,867 in their account. The action they propose will reduce this account annually by \$107,000. There are approximately 19,000 licensees under the Cosmetology Board. **Senator Cameron** asked for clarification on how much the Board will project to generate versus how much it will expend each year? **Mr. Hale** stated that the Boards budget for fiscal year of

2011 was \$525,000 and as of December 31, 2011, it had expended \$261,000 of the projected budget.

MOTION: **Senator Tippets** moved, seconded by **Senator Stennett** to adopt Docket No. 24-0401-1101. The motion carried by **Voice Vote**.

24-1801-1101

Rules of the Real Estate Appraiser Board. Brad Janice, said this docket includes some needed housekeeping changes for clarification and consistency but there are a couple of indicative changes. On Page 29, Subsection 010, 07 has been amended to read "Classroom Hour." Fifty minutes out of each sixty minute hour in a setting that is set forth in these rules". On Page 33, Subsection 150; Fees charged to their licensees are mandated and set forth through the Appraisal Foundation of Congress 02; Original License will increase from \$125 to \$140; 03, License Renewal will increase from \$350 to \$365; and 06 Original License Via Reciprocity will decrease from \$125 to \$100. There are approximately 171 courses that our approved by the Board for continuing real estate education and currently they charge no fee to these providers. The Board approved to charge the providers a fee and setting that fee at \$100 for each course of the providers. 12. An increase from \$25 to \$40 to be submitted by the state to the federal government. Continuing Education is changing to a two year cycle as opposed to a one year cycle. Subsection 350, c is new and states that examination and successful completion of Certified Residential Appraiser examination is added to the guidelines of the Appraisal Qualifications. 401, 02 Hours required. The hours of equivalency have been raised from 15 to 30 of classroom hours of instruction in courses or seminars during the two years. The courses must cover the most recent Uniform Standards of Professional Appraisal Practice (USPAP) edition.

Senator Goedde said on page 32 subsection 07, classroom hour language has been struck that addresses on-line virtual classrooms, has that been moved to another section in your rule? **Mr. Hale** stated that the rule does not specifically provide for on-line education. If you look on page 44, the rule speaks to continuing education on section 401.03 which defines different possibilities for continuing education credit. The Boards intent on revising that section was to allow the continuing education rules to govern many acceptable venues for continuing education hours. The Board does approve on-line education courses and has done so for some time. **Senator Goedde** asked for language to be placed in the rule that would stipulate that virtual on-line instruction courses would be acceptable for continuing education hours. **Mr. Hale** stated that the Board could prepare a letter that addresses virtual on-line instruction courses be accepted for continuing education.

Senator Tippets stated that the language on page 32 states that fifty minutes out of each sixty minute hour shall be in a setting that is set forth in these rules. Where is it set forth in the rules what kind of setting the training that must be in for the fifty minutes out of each sixty minutes? **Mr. Hale** replied on page 44 the rule explains different types of courses and the requirements of those courses. It also states the requirements for the instructor and that ultimately the Board must approve the venue of instruction. **Senator Tippets** stated that if they are defining the fifty minutes out of sixty minutes be in a setting, that setting needs to be defined in the rule.

Senator Tippets stated that on page 34 the rule proposes a continuing education provider application fee. Would you please describe to the Committee what is the process for reviewing a provider. **Mr. Janice** stated that they review each of the courses to see if the content of the courses meet the needs of their licensees and offer current up-to-date information. Reviewing the agenda of each of these courses can take up to five days, but one to three days for most of the courses. The number of courses that they review does become a burden on staff. **Senator Tippets** asked

if a course provider wants to be approved to provide classes, would the provider send in \$100 application fee to be approved as a provider or not until their company has a course approved and then would they send in a \$100 fee for each of their courses? **Mr. Janice** explained that the \$100 fee is per course. **Senator Tippetts** stated the per course fee is not very clear in the rule. The rule should spell out that each provider is required to submit each course for approval and that requires a fee.

MOTION: **Senator Goedde** moved, seconded by **Senator Johnson** to hold Docket No. 24-1801-1101 in Committee. The motion carried by **Voice Vote**.

24-2501-1101 **Rules of the Idaho Driving Businesses Licensure Board.** **Mr. Hale** advised that the House Business Committee voted to deny this docket this afternoon. This rule would need approval from both sides to proceed into rule.

MOTION: No motion.

There being no further business, the meeting adjourned at 2:53 p.m.

Senator Andreason
Chairman

Carol Deis
Secretary